**Marlborough District Council**

Decisions in relation to

Plan Change 62 to the Wairau Awatere Resource Management Plan

and

Plan Change 27 to the Marlborough Sounds Resource Management Plan

# New Dairy Farms

Decision made under delegation from the Marlborough District Council Environmental Policy Committee.

S. E. Kenderdine

**Commissioner S.E Kenderdine (Chair)**

S Barsanti

**Councillor G Barsanti**

**Commissioner R Beech**

Dated this 13 day of November 2013

**INTRODUCTION**

[1] The Marlborough District Council (MDC) has concern over the vulnerability of its water resources in various parts of the District from the impact of discharges from rural land use intensification - in this particular case dairying. Contaminants such as nitrogen and phosphorous from non-point discharges are of particular interest because they derive from animal effluent and fertiliser applications. There are currently no controls on the discharge to water from run-off, drainage and leaching. As the MDC's 2011 *State of the Environment Surface Water Quality Report* indicates, for the region, there is a clear link between pastoral agriculture and degraded water quality.[1]

[2] While Marlborough may appear to be the homeland of viticulture, the MDC recognises that there is potential for significant expansion of existing dairying in the Rai, Pelorus, Kaituna and Tuamarina River catchments and the Canvastown area, and also onto existing pasture in a number of areas, such as the Wairau Valley, the Awatere Valley, and Flaxbourne.

[3] The method MDC has chosen to address its concerns is by introducing plan changes to the Wairau Awatere Management Plan (WAMP) and Marlborough Sounds Resource Management Plan (MSRMP) that set out new policies and rules relating to new dairy conversions. In so doing, the Council anticipates it will be able to implement most of the policies of the National Policy Statement Freshwater Management (NPSFWM), except for Policy A1 of that document which requires the MDC to establish cumulative containment limits for all water bodies. 'Limit' is defined in the NPSFWM as 'the maximum amount of resource use available which allows a freshwater objective to be met'.[2]

[4] The difficulty MDC has around Policy A1 is that the statistics for establishing cumulative nutrient limits in the Marlborough District are not yet available. In this regard, a programme for staged implementation was notified by the MDC in November 2012, in accordance with Policy A1. This programme includes, as an interim measure, proposed controls on new dairying in the proposed plan changes. [3]

[1] This follows on from a Report of the Parliamentary Commissioner for the Environment: *Water Quality in New Zealand: Understanding the Science* (2010) Chapter 9.
[2] See *Giving Effect to the National Policy Statement: Freshwater Management,* Councillor Jerram (Report prepared by Pere Hawes), para 7.
[3] Section 32 Report at 1. For resolution of the timeframe around Policy A1, see Schedule 2 to this decision.

[5] On 25 April 2013, the Council notified changes to both plans: WARMP Proposed Change No. 62: New Dairy Farms, and MSRMP Proposed Plan Change No. 27: New Dairy Farms.

[6] At closing of submissions, six were received for Plan Change 62, and seven for Plan Change 27. At closing of further submissions, an additional two submissions were received.

[7] On 3 September 2013, the MDC's Environmental Policy Committee delegated the authority to hear and make decisions on the two plan changes to a hearing's subcommittee consisting of S.E Kenderdine (Commissioner and Chair), Councillor G Barsanti, and Mr R Beech (Commissioner). The Chair and Councillor Barsanti are accredited under the Government's Making Good Decisions programme.

[8] A Hearing was held for the two plan changes on 4 September 2013. Five people spoke to their submissions including the author of the S42A Report, Mr Paul Whyte, Senior Planner (Associate) for BECA.

[9] The Submitters were:

- Marine Farm Association Incorporated (Plan Change 27)
- Marlborough Province of Federated Farmers of New Zealand (Plan Changes 27 and 62)
- Te Atiawa Manawhenua Ki Te Tau Ihu (Plan Change 27)
- Department of Conservation (Plan Changes 27 and 62)
- Nelson/Marlborough Fish and Game Council (Plan Changes 27 and 62)
- Phillip J and S Woolley (Plan Change 27)
- Parkes, Sharon (Plan Change 27)
- Dairy NZ (Plan Change 62)

**THE SITES AND THEIR LOCALITIES**

[10] MDC provided maps showing extensive areas now available for the dairying expansion, noting that while there are no significant conversions to dairy farms at this point in time, it wishes to be proactive in addressing declining water quality in the District. Flaxbourne and Kaituna, which are seen as suitable for new dairy farming are shaded in green, with current dairy farms in blue.

The green shaded areas are extensive. We viewed a sample of these areas on our site visit. Maps provided also identified many of the water courses that exist in these areas.[4]

**SUBMITTERS IN SUPPORT**

[11] The Department of Conservation (DOC) provided detailed submissions on various aspects of Plan Change 62 to WARMP and Plan Change 27 to the MSRMP which we refer to below. It did not however appear at the hearing, declaring itself generally in support of the findings of the S42A Report provided by Mr Whyte.

[12] Te Atiawa Iwi members are Tangata Whenua. They too did not participate in the hearing. We incorporate some details of their submission to the MSRMP elsewhere, noting that they sought other amendments encouraging MDC to incentivise dairy operators, such as through rating, concessions, and meeting approved farm management systems. The Iwi also seek that goat and sheep farming should be brought within the proposed plan changes as having potential for milk production.

[13] Nelson/Marlborough Fish and Game Council (Fish and Game) were generally supportive of both Plan Changes but with additional requirements, which we refer to below. The organisation was represented at the hearing supporting its original submission.

[14] The Marine Farm Association Inc. supported all changes, concerned as it is for the downstream effects of water quality on the water quality of the coastal environment.

[15] The detailed S42A Report provided by Mr Paul Whyte was largely supportive of the changes put forward by the MDC.

**SUBMITTERS IN OPPOSITION**

[16] P.J and S.M Woolley generally opposed both proposed plans but also wanted new dairy farms to be conditional activities, with the conditions of consent to reflect those found in Fonterra's terms and conditions of supply.

[17] Opposing submissions also came from the Marlborough Province of Federated Farmers of New Zealand (Federated Farmers), Dairy NZ, and Mrs Sharon Parkes, a dairy farmer situated in Pelorus Sound.

[4] See Schedule 1 to this decision

[18] Federated Farmers generally opposed both Plan Changes. The organisation considers that there is no gold rush to new dairy farms conversions in the Marlborough District to justify the Plan Changes, and therefore they should be withdrawn. It considers that the environmental performance of dairy farms has improved substantially in recent years, and consequently they are all now required to meet strict standards set out in the *Sustainable Dairying: Water Accord (Feb. 2013)* (the Accord), developed under the oversight of the Dairy Environmental Leadership Group (DELG)[5]. Federated Farmers also provided a further submission in response to all submissions which generally reiterated its earlier objections. They were represented at the hearing by Mr Michael Bennett (Christchurch) and Mr Gary Barnett (Marlborough). Fonterra, represented by Mirka Langford, Sustainable Dairying Advisor, appeared in support of Federated Farmers.[6]

[19] Mrs Parkes submitted on Plan Change 27 on the grounds that existing dairy farms provide enough compliance with Fonterra's and MDC's requirements now. The MDC's compliance requirements should not be greater than Fonterra's.

[20] Dairy NZ opposed Plan Change 62 to the WARMP on the basis that the dairy sector is already implementing an ambitious range of initiatives that meet the objectives of the proposed Plan Changes in any event. The submitter included welcome information relating to these initiatives. Dairy NZ also seeks better integration of what issues may be addressed by MDC in reviewing the Marlborough Sounds Regional Policy Statement (MSRPS), MSRMP, and the WARMP in light of the NPSFWM.

**STATUTORY FRAMEWORK**

[21] Part 2 RMA contains the purpose and principles underlying sustainable management of the environment, which we refer to at the end of this decision.[7]

[22] Section 32(3)(a)(b) and (4) RMA require consideration of alternatives and assessment of the benefits and costs of adopting any objective, policy, rule or method in the Plans. An evaluation must encompass whether each objective is the most appropriate way to achieve the purposes of the RMA, having regard to their efficiency and effectiveness. The decision-maker must also

[5] The DELG comprises representatives from the dairy sector, central government, regional councils and the NZ Fish and Game Council.
[6] While Mrs Langford appeared in support of Federated Farmers, Fonterra itself did not make a submission.
[7] See Schedule 6 Part 2 Matters.

take into account the risk of not acting if there is uncertain or insufficient information to carry out such changes.

[23] We also had regard to the Clause 10 (1)(2)(a) and (b) Schedule 1 RMA. We had regard too, to the New Zealand Coastal Policy Statement (NZCPS), the National Policy Statement Freshwater Management (NPSFWM), and the Marlborough Regional Policy Statement (MRPS) together with the numerous provisions of the Wairau Awatere Resource Management Plan (WARMP) and Marlborough Sounds Resource Management Plan (MSRMP). On request from the Commissioners, Mr Whyte provided a list of the relevant provisions from the MSRPS, MSRMP, and WARMP that support the plan changes. That list is attached to this decision as Schedule 4.

**ISSUES ARISING**

[24] The following headings largely follow the S42A Report (which was taken as read in the hearing), although not necessarily in the same order:

- Withdrawal of ('Unnecessary') Plan Changes
- Definition of 'New' Dairy Farming Rules: Policy 12.2.2.3.6 WARMP and Policy 11.3.1.10 MSRMP
- Coastal Waters, Wetlands and Adverse Effects: Introduction 11.1 and Issue 11.2 MSRMP
- Dairy Farm 'Effluent' Run Off?: Issue 12.2.1 WARMP
- Preventative Measures: Fencing, Culverts, and Bridges, Ephemeral Streams, Appropriate Buffer Zones and Riparian Margins: Policies 12.2.2.3.7(a) and 12.4.2.3.7(b) WARMP and Policy 11.3.1.11(b) MSRMP and relevant Appendices
- Sufficiently Sized Ponds for Effluent Storage: Policies 11.3.1.11(c) MSRMP and 12.2.2.7(c) WARMP, and Appropriate Separation Distances: Policies 11.3.1.11(d) MSRMP and 12.2.2.7(d) WARMP
- Rules and Management Plans: Methods of Implementation 12.2.3 WARMP and 11.4 MSRMP
- A Discretionary Activity or Restricted Discretionary Activity: Rule 30.4.1 WARMP and Rule 36.4 MSRMP

**SCHEDULES TO THIS DECISION**

| | |
|---|---|
| Schedule One: | Maps |
| Schedule Two: | Plan Change Provisions |
| Schedule Three: | Freshwater Management Time Tables |
| Schedule Four: | Relevant Plan Provisions MRPS, WARMP, and MSRMP |
| Schedule Five: | General Assessment Criteria for Discretionary and Non-Complying Activities |
| Schedule Six: | Part 2 Matters |

**DECISION SUMMARY**[8]

[25] The decisions reached by the Hearing Committee include the following major points:

**The Plan Changes**

[26] Plan Changes 62 and 27 are accepted with amended provisions as set out in Schedule 2 to this decision.

**Introduction and Issues**

[27] The terms 'coastal water quality' and 'wetlands' are added to Introduction 11.1, and 'coastal water and wetlands' are added to Issue 11.2 MSRMP.

[28] The term 'water resources' is amended to include 'coastal waters': Issue 12.2.1.4 WARMP

[29] The phrase 'dairy farm effluent run off' is amended to 'dairy farm run off', with the deletion of the word 'effluent', Issue 12.2.1.4 WARMP.

**Objectives and Policies**

[30] The term 'new dairy farm' is retained without amendment 12.2.2.3.6 WARMP and 11.3.1.10 MSRMP.

[8] See Clause 10, First Schedule, Resource Management Act 1991

[31] Policies 12.2.2.3.7 and 12.4.2.3.7 WARMP, and 11.3.1.11 MSRMP are amended as follows:

- first paragraph: 'including fencing, bridges, or culverts' added to 'measures'.
- (a) 'bed of any river, lake or wetland' to include 'stream, creek, wetland, significant ephemeral stream, or any drain'.
- (b) 'including a river, lake or wetland or any drain' amended to 'including a river, lake, stream, creek, wetland, significant ephemeral stream, or any drain to intercept the run-off of contaminants from grazed pasture', with reference to:
    i. Appendix J Water Quality Classifications WARMP and Appendix H Water Classifications MSRMP.
    ii. Appendix A Values Associated with Freshwater Sources and Appendix Q locations in Schedule of Water Bodies for Riparian Purposes WARMP; and Appendix I standards, locations, and setbacks in Schedule of Water Bodies for Riparian Purposes MSRMP.
- (c) retain as notified.
- (d) retain as notified.
- (e) retain as notified except that Water Quality Management Plans are to be 'required' as are Nutrient Management Plans: Rules 12.2.3 WARMP and 11.4 MSRMP.

**Rules**

[32] Rule 30.4.1 WARMP and Rule 36.4 MSRMP, the term 'new dairy farming' and the activity as 'Discretionary', are retained without amendment.

**Methods of Implementation**

**Management Plans**

[33] The phrase 'effects on water quality resulting from dairy farming will be avoided or sufficiently mitigated' in the first and second paragraphs, is amended to 'avoided, remedied, or sufficiently mitigated'.

[34] Water Quality Management Plans are amended to be 'required'.

[35] 'Overseer®' remains the accredited nutrient adviser in the second paragraph.

**WITHDRAWAL OF 'UNNECESSARY' PLAN CHANGES?**

**Introduction**

[36] Dairy NZ and Federated Farmers submit the Plan Changes should be withdrawn. Mrs Parkes infers the same outcome in her submission. She considers that additional consents should not be required given the existing compliances farmers must comply with. [9]

[37] Dairy NZ submit that the current dairy sector initiatives, such as the Accord, will meet the underlying objectives of the Plan Changes and the issues are best addressed in an integrated manner in the forthcoming review of the respective plans. The submitter also wishes to see the full implementation of the NPSFWM.[10]

[38] Federated Farmers identify that:

- few dairy conversions are taking place in Marlborough – in fact the number of dairy farms are reducing – thus the plan changes are not needed,
- the organisation supports the voluntary initiatives instigated by the Accord and there is no need for the plan changes,
- the economic benefits of dairying are not accounted for,
- overall concern that a single industry, such as new dairying, is singled out from all other intensive land use activities,
- the industry initiatives are cost efficient and effective.

[39] In addition, Federated Farmers indicate that the Plan Changes will reduce options for farmers who presently hold land suitable for dairy conversions. We were told recent experience in Southland indicates that discretionary activity status for new farms is a significant constraint on future growth due to the uncertainty of a positive outcome through the consent process, and the inability to secure credit to undertake farm purchase. The farmers in particular target Option Four (regulating land use), in that it lacks recognition of key costs such as the ability to source capital, the viability of irrigation schemes, and stewardship[11].

[9] Section 42A Report, para 4.
[10] Submission Dairy NZ: para 1.1.
[11] First Submission, Marlborough Province of Federated Farmers of New Zealand, paras 4.3 - 4.5.

**'Need'**

[40] The concept of not needing the Plan Changes at this point in time belongs more to resource consents resolution under the Town and Country Planning Act 1977, than the Resource Management Act 1991 (RMA). The Environment Court has held that under the RMA, s32 does not require an enquiry as to 'need' in terms of whether the activity is present, or if there is a sufficiency of that form of activity.[12]

[41] Section 3(c) RMA includes **'future effects'** in its definition of effects, while s5(2) in its definition of sustainable management defines the system as a means of managing the use

> **… of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic and cultural wellbeing … while (a) sustaining the potential of natural and physical resources … to meet the *reasonably foreseeable needs of future generations* …** [our emphasis]

[42] By providing these Plan Changes upfront, and indicating on the maps provided where new dairy farms might be located[13], the MDC is providing for the potential of a natural resource to meet reasonably foreseeable needs – given the pressures on the dairy industry to provide milk products for export. The Plan Changes are provided to ensure management practices are put in place at the time of conversion and avoid what has happened in other parts of New Zealand with nitrate contamination from dairying. They are also provided to meet the requirements implicit in sustainable management of Marlborough's natural and physical resources, and to protect many of the values extant in sections 6 and 7 RMA.[14]

**Conclusion on 'Need'**

[43] 'Need' is not relevant under s5(2) RMA, nor s32.

**Voluntary Measures**

[44] Fish and Game considers that voluntary approaches with accords fail to work with everyone, giving as an example MDC's deadline for all stock crossings in the Rai River catchment to be

[12] *Gus Properties Ltd* v *Marlborough District Council* WO75/94 at 16.
[13] Schedule 1 to this decision.
[14] See 30.4.2 WARMP and 36.4.1 MSRMP 'General Assessment Criteria', identified in Schedule 5 to this decision.

bridged and culverted by August 2006. When this did not happen the timeframe was extended to August 2009 and to Mr Lynn's understanding this has still not been completed.[15]

**Discussion**

[45] MDC advised during the hearing that it wished to be as flexible as possible in relation to the Plan Changes, allowing in the process for the initiatives from the dairying sector already in place. In effect, we acknowledge here that the Plan Changes generally acknowledge many of the principles of the Accord. But we point out that the MDC cannot act as a matter of law on agreements between third parties – in this case, between those responsible for the Accord and the members of the industry – if those agreements made between them are broken.

[46] The MDC is also very aware that these Plan Changes may eventually be overtaken by a catchment wide approach, rather than just this particular land use[16]. That approach however is unlikely to be fully implemented for a little time yet, and it will not be until 2024 that the MDC expects to provide nutrient limits for nitrogen and phosphorous.

[47] In *Andrew Day and Others* v *Manawatu-Wanganui Regional Council*, the Environment Court heard that in that case, as in this, some parties put a great deal of emphasis on putting in place voluntary or educative approaches to the identified problems[17]. *The Dairying and Clean Streams Accord 2003* was held up as an example of that approach.

[48] One of the expert witnesses in *Day* however had this to say of voluntary approaches:

> *Voluntary approaches have merit as innovators and early adopters tend to engage in this process. However this approach alone is unlikely to achieve the desired environmental outcome as it will not capture the worst polluters, nor will it account for rapid changes in land use that can occur in short time frames as a result of unpredictable changes in market forces … there cannot be a reliance on voluntary approaches alone …*

[49] The Environment Court completed the discussion with this: *even if those programmes exist, they need the reinforcement of a regulatory regime to set measureable standards and to*

[15] Fish and Game Nelson/Marlborough Submission, V. Lynn, para 3.1
[16] MDC S32 Report at 2.
[17] Andrew *Day and Others* v *Manawatu-Wanganui Regional Council*, Decision No [2012] NZEnvC 182, Part 5, at para 5-10, referred to by both Federated Farmers and Fish and Game.

*enforce compliance with them by those who do not do so simply because … it is the right thing to do*.[18]

[50] While the MDC is proactive in enabling dairy farming by setting out to identify where it may be located, its knowledge is all encompassing to identify at the outset that:

- there are very few point discharges to surface waters in Marlborough and the biggest threat to water quality comes from diffuse pollution from land use,
- water quality is seen to deteriorate in agricultural and urban areas, particularly where there has been little or no riparian management and/or where there are extensive pastoral areas,
- nitrate levels are of most concern in spring fed rivers such as Mill Stream and Doctors Creek and therefore the need to carefully manage groundwater quality,
- land use (in particular pastoral land use) shows a significant correlation with water quality indicating that diffuse pollution is the main problem.[19]

[51] Here the MDC also bases its approach on what has happened with dairy farming pollution elsewhere. It cites the expenses involved in the clean-up of the North Island lakes (Marlborough also has lakes), and the costs related to enforcement procedures around resource consents.

[52] In our opinion, the way in which the MDC has approached the issues in the Plan Changes provides rigor and certainty. In this regard, see existing water quality and natural character provisions elsewhere in the Plans (identified in a list provided by Mr Whyte and attached as Schedule 4 to this decision).

[53] The wording in the Plan Change provisions is also flexible enough to adopt into potential consents much of the intent of the Accord, while some amendments as a result of submissions will also reflect some of their requirements which go further than the notified version of the Plan Changes. And, in the future, the parties' collective, collaborative intentions will develop undoubtedly into the industry's 'Best Practice'[20].

[54] We note in conclusion that the MDC is supported in its s32 approach to relevant issues in the S42A Report. There it notes that:

[18] *Andrew Day and Others* v *Manawatu-Wanganui Regional Council*, [2012] NZEnvC 182, Part 5, at para 5-10
[19] MDC Section 32 Report, Chapter 2 Issue at 3.
[20] DOC Submission para 9 is an example. See detail of activities relative to new dairy farming which may be incorporated into Best Practice.

- the Accord is a relatively new one with no record as to its practicality,
- the reliance of voluntary accords was considered but notes their targets were not always achieved,
- while monitoring arrangements would be carried out for non-compliance, there is no identification as to follow-up,
- audits of voluntary arrangements are retrospective only whereas plan changes ensure management practices are in place at the time of conversion.[21]

[55] As the Parliamentary Commissioner points out, *excess nutrients can have dramatic effects on waterbodies. Nitrogen and phosphorous stimulate plant growth leading to algal blooms (sometimes toxic), oxygen depletion, and ecological damage. Ammonia can kill fish, and elevated nitrate levels can make aquifers undrinkable*.[22] There is thus a wider public interest than just the farming community and the MDC. This example illustrates one of the difficulties we have in correlating the Plans exactly with the initiatives reflected in the Accord. The more we looked at what is involved, the Accord initiatives could tie the MDC to dates, time-frames, measurements, issues etc. agreed between third parties. The MDC cannot regulate on third party agreements or, if the Accord's requirements are breached, require the avoidance, remedy, or mitigation of more than minor adverse effects.

[56] Further, if any of the dairy companies change hands, the successor may require lesser standards than have been agreed to by the existing dairy companies – which leave the issues identified in this decision even more uncertain.

[57] The MDC is the only environmental agency with an overview of the complex water systems in the District. It is essential that it retains the power to regulate (and prosecute if need be).

**Conclusion on Voluntary Measures**

[58] We do not accept that the Plan Changes should be withdrawn on account of voluntary measures put in place by the industry. We do accept some of the voluntary measures may be recorded in the Plan Changes themselves and also in the industry's Best Practice measures being developed in conjunction with MDC.

[21] Section 42A Report, para 4.
[22] Parliamentary Commissioner for the Environment: *Water Quality in New Zealand* – Understanding the Science (2010), Chapter 9.

**Cost and Benefits**

[59] Federated Farmers were particularly concerned about the lack of economic analysis under the MDC's s32 assessment.

**Discussion**

[60] We do not agree that MDC ignored the costs to the dairy farming industry in the S32 Report, and that analysis is worth assessing briefly to find just how the Council did approach the issues identified. Four options were identified under MDC's analysis. We note in particular that the tests are to be read in the context of Part 2 RMA[23] and not just in monetary terms. We also note that where wider issues are in the frame, risks are relevant and, as are here, the intrinsic values of ecosystems and stewardship.[24]

[61] Option One: 'Continuing the Status Quo', contains MDC's current approach towards the management of dairy farms with no changes to the relevant plan provisions. The WARMP and MSRMP currently require resource consents for activities such as point source discharges, water takes and the construction of effluent ponds. But the scope of the current consents does not enable conditions to be imposed in respect of non-point discharges. The S32 Report makes the point that in the longer term there will be potentially greater economic and environmental costs to address deteriorating water quality over time without the plan changes (including potential restrictions on further dairy farm conversions). Nor would this option address the requirements of the NPSFWM.

[62] Option Two: 'Non Regulatory', (which is Federated Farmers and Dairy NZ's option) seeks to improve water quality through the on-going development of voluntary education programmes, such as MDC's Dairy Environmental Farm Programme, Fonterra's 'Dairying and Clean Stream's Accord' (2003), and Dairy NZ's 'Sustainable Dairying: Water Accord' (2013).

[63] In this regard, we gather that sixteen current dairy farms are currently in a farm programme in the Northern Marlborough area, with the MDC paying a portion of the costs of an Environmental Farm Management Plan. These plans help with planning and prioritising farm work to meet the new industry practice requirements.

[23] See Schedule 6 to this decision.
[24] *Minister of Conservation* v *Otago Regional Council* (COO71/2002) and *Foodstuffs (Otago Southland) Properties Ltd* v *Dunedin City Council* 2 NZRMA 497.

[64] We question the (cost) effectiveness of this approach to an anticipated influx of new dairy farms, whilst acknowledging the Council's current proactive intervention to assist the implementation of the Accord's practices. Otherwise we have already discussed voluntary programmes above.

[65] Option Three: An 'Effects Based Approach', considers two further (sub) options – the setting of catchment based load limits for contaminants, together with maximum concentration limits. These requirements have several difficulties. While allowing for assessments to be tailored for each catchment, the approach does not distinguish between the different land uses and will be time consuming and expensive. MDC also identified it does not have sufficient data on nutrient loading to implement such a programme until 2024.[25] Additional Council resources for education and monitoring would also be required if the effects based approach is preferred. Meanwhile, non-point source discharges are difficult to control and monitor, no easy on-site sample analysis is available as samples will need to be analysed by an accredited water testing laboratory, which is costly. Finally on this option, the S32 Report makes the point that land managers investing in such system upgrades, or changing their behaviour, have no guarantee that they will meet off-site discharge limits.[26]

[66] Option Four: 'Regulating Land Use' (an 'activity based' approach). This is the option chosen here by the MDC – that is, requiring resource consent for new dairy farm conversions as a discretionary activity and setting a range of conditions for the management of effects on the land prior to the activity commencing.

[67] We set out below the efficiency and effectiveness of such an approach as itemised in the S32 Report. This option will:

- be simple to administer and provides certainty by specifying the activity, in terms of administration the changes only affect new dairy farms and no consents for existing dairying are proposed,
- provide a consistent approach to all new dairy farm conversions including clarity around expectations and information requirements,
- Best Practice measures can be set in place at the outset (rather than in a reactive and retrospective manner),

[25] MDC Document: *Giving Effect to the National Policy Statement: Freshwater Management*. Councillor Jerram (Report prepared by Pere Hawes), Environment pp1-21. See Schedule 2 attached to this decision.
[26] MDC Section 32 Report, Options Analysis pp 7-8.

- buffer areas along watercourses can be set prior to the commencement of dairy farming on the site, rather than completed by the year 2030 as intimated in one of the Accord documents[27],
- MDC has the discretion to decline applications where the effects are likely to be more than minor or where the supplied information is not of a sufficient standard to address the identified risks,
- conditions can be tailored to the activity, the site and the surrounding context,
- compliance monitoring will be more straightforward with lower costs,
- maintaining water quality in areas where dairy conversions are occurring has wider benefits to other farmers and water users within the downstream catchment and it maximises the subsequent use that can be made of water in the area,
- the discretionary consent process allows flexibility in determining the most appropriate land management practices for the area.

[68] We see this option as efficient and effective for the reasons given. Nevertheless, we acknowledge there will be compliance costs relative to new dairy farms and dairy farm conversions. We also note that a dairy farm set up for individuals is an expensive business. Mrs Parkes told us she had to spend $20,000 on laneways to counter run-off from her farm. And in the *Rai Valley Catchment Update*, provided to the hearing by the farmers, estimated costs to complete that area's environmental actions, per average count for each of the 12 properties identified, were:

- $4,888 for fencing,
- adequate storage and irrigation $23,125,
- bridging and culverting $4,592.[28]

[69] We notice these costs do not take into account the costs around buffers or laneways for run-off, or planting, or other protective systems for riparian margins. Meanwhile, the ability to source capital is for the farmers, not for the MDC.

[27] *Sustainable Dairying: Water Accord*, A Commitment to New Zealand by the Dairy Sector, 'Riparian Management' at 5.
[28] Aorere and Rai Catchments Groups Newsletter, *Two Small Rural Communities Working Together on Water Quality*, July 2012, NZ Landcare Trust.

[70] But equally, we recognise from Federated Farmer's figures, that dairy farming will bring substantial cost benefits to the region. In fact the Farmers detail the 'enormous economic and social benefits' it will bring to the region, and they provided farm working expenses for the 2010/11 year as $746,935 or $1290 per cow. We understand these services are mostly sourced locally and relate to labour, contractor and professional fees, brought-in feed and other services, which will all benefit the region. And they may well have gone up in the interim.

**Conclusion on Costs and Benefits**

[71] Apart from the obvious monetary benefits to the District, and the positive practices dairy farming under the Accord may bring, our conclusion on all of the information put before us is that:

- auditing under the voluntary accords is retrospective, whereas the plan changes ensure management best practices are in place at the time of conversion,
- while monitoring under the Accord will be covered, actions for non-compliance do not appear to be clearly spelt out: there is no identification of actions to follow up on monitoring,
- from May 2013 the Accord required new dairy farm conversions to have systems in place to manage all sources of 'effluent' discharge, but dairy farm discharges are wider than just effluent,
- while dairy companies will monitor and report on 100% compliance, the term 'significant' non-compliance is used in terms of untreated dairy farm effluent discharging into a waterway; we question whether that is good enough, and how the results of that damage are dealt with unless regulatory regimes are available in terms of abatement notices and warnings as to prosecutions,
- non-compliance would be difficult to trace back to individuals without in-depth property auditing, hence as an option it would be time consuming and expensive (it would also require additional council resources for education and monitoring and does not directly address land based practices on individual sites that could have benefits on minimising water quality).

[72] We note that rather than confusing the current activities that may be carried out under the relevant Accord, that:

- as acknowledged by the industry, regional councils must reserve the right to exercise their statutory functions, duties, and rights, as they consider appropriate in the regional context.
- new dairy conversions will comply with all regional plan rules and/or hold all necessary resource consents.
- new dairy farms will establish and operate using Best Practice at the outset to minimise potential negative consequences on water values and interests.[29]

[73] We read these requirements as compliance with the regional rules and resource consents as a first step. 'Best Practice' comes second, based on the regional rules and resource consents in the context of industry practice, some of the latter set out in the Accord and identified by Mrs Langford. Under these Plan Changes, for example, new dairying will have to change from point source 'effluent' discharge to all forms of general dairy farm discharge.

[74] As the S32 Report points out, without the Plan Changes we consider in the longer term there will be potentially greater economic and environmental costs to addressing deteriorating water quality over time (including potential restrictions on further dairy farm conversions). Nor would this option address the requirements of the NPSFWM, or the requirements of Part 2 RMA.

**Overall Decision on Section 32 Matters**

[75] In light of all of the above, we consider:

- the objectives in the Plan Changes are the most appropriate way to achieve the purpose of the Act,
- having regard to efficiency and effectiveness, the Plan Changes (with amendments set out below) will be efficient and effective and the most appropriate way to achieve the purpose of the Act,
- the risk of not acting because there is uncertainty about nutrient limits is addressed by setting these as at 2024.

[76] The Plan Changes are retained as notified with some amendments.

[29] See general statements on such matters in the Accord (2013) *Relationship to Resource Management Act (1991)* at 3.

**DAIRY FARM 'EFFLUENT' RUN OFF?**

Issue 12.2.1.4 WARMP

[77] DOC consider that the addition of the words 'dairy farm effluent run-off' to the Issue should be further amended by the deletion of the word 'effluent'; given that the provisions could be interpreted to only apply to dairy effluent from dairy sheds, whereas the plan changes are to capture non-point discharge contaminants associated with dairy farms.

[78] Fish and Game consider that the words 'dairy farm effluent run-off' should be changed to 'farm development or intensification'.

[79] Mr Whyte, in the S42A report, agrees with DOC regarding deletion of the word 'effluent' because the plan changes would be better reflected given that, as an example, items such as fertiliser discharge are also an issue.

**Discussion**

[80] While expanding dairy farm activities to intensive land use activities is not the Issue in 12.2.1.4, 'effluent run-off' makes the issue the point source discharge. The plan change is to capture non-point discharges, not just an effluent discharge from dairy sheds. Sediments and nutrients are also an issue.

**Decision**

[81] The Issue 12.2.1.4 WARMP be amended to delete the word 'effluent'.

**COASTAL WATERS, WETLANDS, AND ADVERSE EFFECTS**

Introduction 11.1 and Issue 11.2 and Objective 11.3.1.11 MSRMP and Policies 12.2.2.3.7 and 12.4.2.3.7 WARMP

[82] In the Introduction 11.1 and Issue 11.2 MSRMP and Policy 12.2.2.3.7 WARMP it is identified that resource use from new dairy farms in the rural environment may result in changes to 'surface and groundwater quality' only.

[83] DOC submit it is unclear from the 'Introduction' and the 'Issue', under Chapter 11 – Rural Environments, whether the intent of the MDC is to include 'coastal waters' and 'wetlands'. Both are significant aspects of the Marlborough region and vulnerable to the adverse effects associated with land intensification through dairying activities. DOC also request a reference to 'life supporting capacity and health of any associated ecosystem', but in a further submission in response to the S42A Report did not pursue it[30].

[84] The Marine Farming Association considers water quality is of critical importance to marine farmers who rely on quality water for the growth of healthy marine life and the production of safe seafood. It is pointed out that the inherent purity of New Zealand's waters makes products like seafood more valuable and desirable, and that the shellfish industry has made significant investment in the issue, providing a water quality assurance programme which is one of the strictest in the world.

[85] Issue 11.2 MSRMP and Policies 12.2.2.3.7 and 12.4.2.3.7 WARMP also identify that significant adverse effects … 'can be avoided or mitigated by using environmentally sound farming practices that include strategies to manage the effects of dairy farming on water quality'.

[86] DOC request that this second point of the Issue be deleted as it implies all effects can be avoided or mitigated. In DOC's opinion it is inappropriate to provide this level of certainty.

[87] Mr Whyte, author of the S42A Report agrees with the addition of 'coastal water quality' in Issue 11.1 and 'coastal water' in Issue 11.2, identifying that because the MSRMP is an integrated plan that encompasses the coastal marine area, it is appropriate to include the extended definition. He also considers its inclusion will give effect to the NZCPS, in particular Policy 22 'Sedimentation' and Policy 23 'Discharge of Contaminants'. In his opinion however, 'surface water' may be construed to apply to 'wetlands' and it is not necessary to include that term.

[88] In response to DOC's submission on effects, Mr Whyte observes that the wording around 'effects' in the proposed plan under Issue 11.2, simply notes that adverse effects can be addressed by appropriate farming practices. That does not imply that resource consents *will* be granted – particularly as the matter is only an 'Issue' in the proposed plan changes.

[30] In this respect, we note that the WARMP Chapter 6 General Rural Objectives, 12.4.2.3, includes 'the values of the water and their associated ecosystems'. See S32 Report at para. 6.

[89] Fish and Game oppose the use of the term 'more than minor adverse effects' in the Policy 12.2.2.3.7 (and by way of reference also to Policy 11.3.1.11 MSRMP) as they are difficult to define, measure, and monitor, particularly when cumulative effects are taken into consideration.

[90] This organisation argues that, using the words 'no more than minor adverse effects' is problematic and needs revising. How is the concept defined, monitored and measured? Does it include all the other cumulative effects on water quality in the catchment? Environmental water quality limits and thresholds need to be set and measured, against which any application can be measured to assess whether the effects are minor or not. Otherwise it would be impossible to measure the effects on water quality, for example, from the intensification of a single property in a catchment with multiple properties if no limits have been established. If an activity on its own is 'minor' in effect it should not be consented if, when combined with other cumulative effects, it would cause water quality thresholds to be exceeded. This is only possible to do within the context of a limit on resource use or assimilative capacity.

**Discussion**

[91] We agree for all the reasons given by DOC and the Marine Farming Association, together with Mr Whyte supporting the change:

- that the term 'and coastal water quality' be added to 'ground water quality, surface water quality',
- that the term 'coastal water' should be added to 'surface and ground water resources'.

[92] 'Coastal water' and 'coastal water quality' may be seen by some as far away from inland dairy farms, but promoting integrated non-point discharges from water catchments that extend to the coast is the intent of Policy 23(4)(c) NZCPS - quite apart from affecting those dairy farms that are farmed with unreinforced boundaries or buffers on the coasts of Marlborough and their coastal margins. The Marine Farming Association submission here was very pertinent. We note in this regard that s2 RMA **'Coastal Water'** also includes at s2(a) **'Seawater with a substantial fresh water component'**.

[93] Therefore the term 'coastal water quality' should be added to Policies 12.2.2.3.7 and 12.4.2.3.7 WARMP and Introduction 11.1, Issue 11.2 ('coastal water' only) and Policy 11.3.1.11 MSRMP.

[94] As to the suggestion that the word 'wetland' be added in addition to 'surface water' and 'ground water', it is referenced in the S42A report as 'implied' in 'surface water'. We note the definition of 'surface water' in the WARMP means:

> 'water contained in lakes, wetlands, drains, rivers, streams, either permanently or intermittently, as opposed to groundwater.'

So that, in respect of this plan, Mr Whyte is correct.

[95] But the definition of 'wetland' in s2 RMA however, indicates a fusion of certain factors that do not necessarily resonate when the term 'surface water' only is used. The definition states:

> **Wetland includes permanently and intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.**

[96] We consider that the fact that these systems support a natural ecosystem of plants and animals places them in a slightly different category to just surface, ground, or coastal water. We consider the term 'wetlands' is already appropriately identified in both Policies 11.3.1.11(a) and (b) and Policy 12.4.2.3.7(a) and (b) MSRMP, along with 'river', 'lake' etc. as a fusion of surface and ground water supporting a natural ecosystem.

[97] As to whether the effects that may be avoided or mitigated in Issue 11.1 should be deleted, as requested by DOC, we consider they should, in fact, be retained with the addition of the word 'remedied' so that effects can be 'avoided, *remedied,* or mitigated'. The words 'avoided' or 'mitigated' are taken directly from s5(2)(c) RMA, from which the word 'remedied' appears to be deliberately omitted, possibly because the plan changes relate to new dairy farms.

[98] But they will also relate to existing farms conversion to dairy. If current sheep and beef farms (as examples) are converted to dairy then they too need a resource consent for the conversion and the word 'remedy' may have an effective purpose – to remedy earlier farm practices that do not relate to the new Plan Change rules or Accord practices. [31]

[99] In response to Fish and Game's submission on effects, the author of the S42A Report considers that in the absence of detailed information on limits, some descriptive wording is likely to be necessary. In Mr Whyte's opinion, the wording reflects that there is likely to be some kind of

[31] Other land use activities will also be on notice that some of their land practices may need to be remedied to avoid adverse nutrient loading.

discharge but the effects should be to an acceptable degree. He also points out that the definition of 'effects' under S3 RMA includes 'cumulative effects' and so are required to be had regard to.

[100] We agree Fish and Game is trying to be too prescriptive in seeking further qualification to the term 'more than adverse effects'. In any one case it will be a matter of degree until more prescriptive limits are imposed under the MDC's 2024 findings on nutrient limits. The definition of 'Effects' in s3 RMA also provides some answers as well as an appropriate answer to any accumulation of effects. These will be required to be established on the evidence.

**Decision**

[101] We conclude:

- that 'coastal water' be added to Issue 11.2 MSRMP, and that 'coastal water quality' be added to Policy 11.3.1.11 MSRMP,
- that 'on coastal water quality' be added to Policies 12.2.2.3.7 and 12.4.2.3.7 WARMP,
- that the word 'remedied' be included between 'avoided' and 'mitigated' in Issue 11.2 MSRMP and Methods 12.2.3 and 12.4.3 WARMP and 11.4 MSRMP,
- the term 'wetland' should remain where it is in 11.3.1.11(a)(b) MSRMP, and in 12.2.2.3.7(a)(b) and 12.4.2.3.7(a)(b) WARMP,
- that no change/qualification is required to the term 'more than minor adverse effects' in Policy 11.3.1.11 MSRMP and Policies 12.2.2.3.7 and 12.4.2.3.7 WARMP.

**PREVENTATIVE MEASURES**

Objective 11.3.1.11(a) (MSRMP) and Policies 12.2.2.3.7(a) and 12.4.2.3.7(a) (WARMP)

**Fencing, Culverts, Bridges**

[102] DOC seek several amendments to Objectives and Policies 11.3.1.11(a) **Measures to prevent stock entering into or passing across any bed of any river, lake, or wetland**. It suggests the references to 'measures' in Objective 11.3.1.11(a) need to be defined with more specificity. It suggests the term should be changed to include 'fencing, culverts, or bridges' as these are the

only methods that effectively prevent stock entering onto, or passing across, the bed of any river, lake, wetlands, or riparian margins of the coastal marine area.

[103] The S42A Report considers that although these matters are likely ones, they would exclude other potential measures. 'Measures' should therefore be defined in the respective resource consent applications for new dairy farms as conditions. The inclusion of 'riparian margins' is not referred to in the S42A Report.

**Discussion**

[104] We consider that the inclusion of measures such as 'fencing, culverts, or bridges' brings more rigour to the kind of measures MDC might expect in the sensitive environments it administers. The word 'include' before 'fencing, culverts, or bridges' would not exclude other measures, over and above those identified, to be applied as circumstances or resource consents dictate. We note that under the *Dairying and Clean Streams Accord (2003)*, also provided by the farming industry at the hearing, it is identified that Accord-type crossings … 'require a bridge or culvert'[32]. We note also that in the other document provided by the farmers *'Aorere and Rai Valley Catchments Groups Newsletter'* relating to the Rai Valley Catchment, 'fencing' is mentioned as a method to exclude dairy cattle from streams, rivers, and lakes, as are 'bridges and culverts'.[33]

**Decision on Fencing, Culverts, Bridges**

[105] The term 'measures' in Policies 12.2.2.3.7(a) and 12.4.2.3.7(a) WARMP and Policy 11.3.1.11 MSRMP is amended to 'including fencing, culverts, or bridges'.

**Drains and Riparian Margins**

[106] Fish and Game also query whether Policy 12.2.2.3.7(a) WARMP (and Policy 11.3.1.11(a) MSRMP) applies to drains, creeks, ephemeral water bodies etc. and that these should be specified, along with 'river, lake, or wetland'.

[107] Mr Whyte, in his S42A Report, considers that because 'drains' are included in Policy 12.2.2.3.7(b), its specific reference there, and exclusion from specific stock crossings, appears to

[32] The Dairying and Clean Streams Accord, *Snapshot of Progress 2011/2012*: Waterway crossings, Ministry of Primary Industries at 4.
[33] *Two Small Rural Communities Working Together on Water Quality,* Best Steps to Improve Water Quality, Key Issues, July 2012, NZ Landcare Trust.

be deliberate. He acknowledged stock could enter or pass a drain but not graze the riparian margins. He is of the opinion that the inclusion of 'drains' in 12.2.2.3.7(a) may be too onerous because of the topography issues he identifies in relation to that policy – the difficulty with drains and stock on steep sided and narrow slopes.

[108] Fish and Game did not specify why drains should be included in Policy 12.2.2.3.7(a) WARMP, but we noted that at the hearing Mr Lynn submitted in support of the first submission that "at the very least, 'any drain' needs to be included under Policies 12.2.2.3.7(a) and 12.4.2.3.7(a) WARMP and Policy 11.3.1.11(a)".

**Discussion**

[109] A 'water body' is defined in s2 RMA as follows:

> **Water body means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof that is not located within the coastal marine area.**

[110] While 'drain' is not a water body, but a dirt channel holding water, the way the sentence in 12.2.2.3.7(b) is constructed 'including a river, lake, or wetland, *and any drain*' seems intended to set it aside from the other water bodies in the policies, and it is referred to in that way because, we consider, they are artificially constructed to hold an identifiable body of water.

[111] In this regard, Appendix J to the WARMP 'Water Quality Classifications' includes the 'Co-op Drain', and the 'Riverland's Industrial Estate Drain' which are included along with 'Rivers', 'Tributaries', and 'Streams'. But 'Drains' are not mentioned at all in Appendix I 'Schedule of Water Bodies for Riparian Management Purpose' (MSRMP)[34]. Nevertheless that schedule too sets out an extensive list of streams, rivers, creeks, and tributaries.

[112] In relation to why drains, creeks, and ephemeral water-bodies are not included in Policy 12.2.2.3.7(a), we note 'Drains' are mentioned in one of the Accord statements before us. Under the 'Riparian Management' section of the 2013 document, dairy companies are expected to implement measures to exclude cattle from waterways and drains greater than one metre in width and deeper than 30 centimetres on dairy farms [our emphasis]. A definition of the word 'drain' is included in the document's Glossary as follows:

[34] Appendix I-1

*Drain - an artificially created channel designed to lower the water table and/or reduce surface flood risk and which has permanently flowing water but does not include any modified (e.g. straightened) natural watercourse.*[35]

[113] Policy 12.2.2.3.7(b) WARMP also relates to the *Provision of appropriately non-grazed buffers along the margins of any water body…including drains*. Thus Policies 12.2.2.3.7(a) and (b) WARMP and Policies 11.3.1.11(a) and (b) MSRMP relate to two different activities. Sub policies (a) relate to the more heavy duty measures (such as fencing, bridges, or culverts) to prevent stock crossing beds of rivers, lakes, and wetlands. Sub policies (b) relate to buffers around certain locations, such as drains, to intercept the runoff of contaminants from grazed pasture.

[114] In the S42A Report Mr Whyte reflects "…*it is acknowledged stock could enter or pass across a drain but not graze the riparian margins. While this may not be ideal from an environmental point of view, the right balance appears to have been applied in terms of these requirements."*[36] It seems that there is a trade-off from the MDC between 'drains' and 'riparian margins' for reasons that are not clear.

[115] Because of its omission, we examined this issue of drains being included in Policy 12.4.2.3.7(a) very carefully. While there is only very little recognition of drains in Appendix J WARMP, and none at all in Appendix I Schedule of Water Bodies for Riparian Management Purposes MSRMP, with the onset of new dairy farms in the area they may become an issue for the future. If under the Accord, cattle are required to be kept out of drains as well as waterways, then the same should occur in the plan changes. Making reasonable statutory connections between Accord initiatives and plan details is helpful in this regard.

[116] We conclude that the word 'drains' should be included in Policies 12.2.2.3.7(a) and 12.4.2.3.7(a) WARMP, and Policy 11.3.1.11(a) MSRMP because new dairy farms may in future carry large bodies of water, such as drains, the nutrients from which may end up in the rivers, streams, and creeks.

[35] Sustainable Dairying: Water Accord, *A commitment to New Zealand by the Dairy Sector*, February 2013 at 5, 13.
[36] Section 42A Report at 7.

**Decision on Drains and Riparian Margins**

[117] Policies 12.2.2.3.7(a) and 12.4.2.3.7(a) WARMP be amended to included 'drain' after 'wetland'. Similarly with Policy 11.3.1.11(a) MSRMP.

[118] The phrase 'river, lake, or wetland' in the above Policies is amended to include 'streams and creeks'. To give additional rigor to the process, both Plans have Appendices which relate solely to riparian margins - Appendix Q, Schedule of Water Bodies for Riparian Management Purpose (WARMP, Volume 2 A), and Appendix I, Schedule of Water Bodies for Riparian Management Purpose (MSRMP, Volume 2 Rules) – and these should be related to the different policies.

[119] The term 'riparian margins' sought by DOC should not be inserted into the Plan Changes because the term 'margins of any water body' already encompasses the concept sufficiently: see Policy 12.2.2.3.7(b). We note under 12.2.3 Methods of Implementation (WARMP) that MDC has in place a Riparian Management Strategy "to provide further guidance on the appropriate management so that their (inter alia) … water quality benefits are recognised and enhanced". This, if extended to new dairying, will involve consultation with relevant parties.

**Ephemeral Streams**

[120] Fish and Game also query whether Policies 12.2.2.3.7(a) and 12.4.2.7(a) (WARMP) include 'ephemeral streams'. It states that these provisions should include spring fed streams and other valuable ones such as those spawning streams on the North Bank of the Wairau River, and Mill Stream and its tributaries, which are also mentioned in the S32 Report.[37]

**Discussion**

[121] In the Sustainable Dairying: Water Accord[38], the dairying sector states under the heading 'Glossary':

> *Waterway - a lake, spring, river or stream (including streams that have been artificially straightened but excluding drains) that permanently contains water and any significant wetland. For the avoidance of doubt, <u>this definition does not include ephemeral watercourses that flow during or immediately following extreme weather events</u>* [our emphasis].

[37] MDC Chapter 2 Issue: *Nitrate levels are of most concern in spring fed rivers, such as Mill Stream and Doctors Creek, and therefore the need to carefully manage groundwater quality*, at 3.

[38] A commitment to New Zealand by the Dairy Sector developed under the oversight of the Dairy Environment Group (DELG) February 2013, p13. Document attached to Dairy NZ's submission.

[122] Under s2 RMA, the term 'river' is defined as:

> **River - means a continually or intermittently flowing body of fresh water; and includes a stream or modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal).**

[123] Thus an 'intermittently flowing body of fresh water' may be reasonably equated with an ephemeral stream and the definition of 'water body' we refer to above brings ephemeral streams into the requirement as 'part of' a 'river'.

[124] We note the Te Atiawa submission seeks freshwater outcomes that will provide for sustainable and integrated management of freshwater resources, including wetlands and 'freshwater related habitats' – which would also include ephemeral streams.[39]

[125] We observe too that in *Andrew Day and Others* v *Manawatu-Wanganui Regional Council* on the Horizons One Plan[40], that we had cause to look at, ephemeral streams are noted there as part of the matters which contribute to water quality[41].

[126] Mrs Parkes provided us with something of a dilemma. As part of the discussion around ephemeral streams, she told us that a number of small ephemeral streams take up a significant area of her property and that at times of bad weather, one in particular can become a torrent. Protection of smaller streams therefore may be a difficulty.

[127] In assessing Policy 12.2.2.3.7(b) WARMP therefore, we came to the conclusion that it is appropriate to encompass significant ephemeral streams through the provision of 'an appropriate non grazed buffer' along the margins of such streams to intercept the potential runoff of contaminants from grazed pasture.

[128] In the Horizons One Plan, we note 'all setback options have sub-clauses that capture rivers that are not permanently flowing i.e. that are ephemeral'. There was discussion around what is

[39] Te Atiawa Submission.
[40] NZEnvC182(2012), Part 5 'Surface Water Quality in Non-Point Source Discharges', at paras 4.40-45.
[41] See also *Final Report and Decision of the Board of Inquiry Into The Turitea Wind Farm Proposal* Vol. I EPA September 2011, Chapter 9, paras 6-22.

the appropriate width as a threshold for capture. We note the Court settled on a one metre active bed width. [42]

[129] An answer too lies with Policy 12.4.2.3.7(d) WARMP which requires a demonstration of appropriate separation distances between storage ponds and *any surface waterbodies to ensure contamination of water does not occur (including during flood events)*.

[130] We therefore expect the larger ephemeral streams to be accounted for in this demonstration. If there are many small ephemeral streams on site then that block of land may not be suitable for new dairying.

[131] But this is not the end of the issue. Fish and Game raised the issue of named spring fed streams and other water bodies nominated in the current resource management plans for their in-stream values and the valuable spawning streams on the North Bank of the Wairau. It maintains that this information is provided in the Schedules to WARMP and MSRMP and should be linked to these (new) policies and rules.

[132] We agree. The Appendices in both Plans particularise the tributaries, rivers, streams, and creeks that are to be managed (inter alia) for fish spawning, recreation, and aquatic ecosystem purposes and have appropriate water classifications. We consider these Appendices should be referred to in the relevant policies.

**Decision on Ephemeral Streams**

[133] Policies 12.2.2.3.7(b) and 12.4.2.3.7(b) WARMP be retained as stated but with two further additions and they relate to 'ephemeral streams' and linkage to Appendices to J and I of the relevant plans. The policies should now be variously amended to read:

> (b) 'Provision of an appropriate buffer along the margins of…including a lake, river, stream, creek, wetland, significant ephemeral stream, and any drain as identified in the Appendix J WARMP … to intercept the run-off of contaminants from grazed pasture'

Amend MSRMP similarly with reference to Appendix I (noting that Drains are not referenced in Appendix I).

[42] *Andrew Day and Others* v *Manawatu-Wanganui Regional Council,* NZEnvC182(2012), Part 4 'Sustainable Land Use/Acceleration Erosion', paras 4.40-45.

**APPROPRIATE SIZED BUFFER MARGINS**

Policies 12.2.2.3.7(b) and 12.4.2.3.7(b) WARMP and Policy 11.3.1.11(b) MSRMP

(These notified provisions require the provision of an *'appropriate, non-grazed, buffer along the margins of any water body including (etc) … to intercept the run off of contaminants from grazed pasture'*.)

[134] DOC, Fish and Game and Federated Farmers seek different outcomes on this issue. DOC asks that 'fenced' be added as an appropriate measure. Fish and Game require 'appropriate buffer margins' to be particularised. This apparently was debated for the MSRMP more than ten years ago as follows:

> As a minimum
>
> - 20 metres for large areas like the Wairau River
> - 10 metres for habitat or spawning streams, such as Mill Creek and Doctors Creek (which are spring fed)[43]
> - 5 metres for other streams

[135] In Fish and Game's opinion, having these policies specify minimum widths would give adequate certainty for in-stream interests, and allow a case by case approval to be made where necessary if wider buffers are considered. These provisions should be a condition of relevant consents as they are under the *Accord*.

[136] Mrs Parkes states in her original submission *as long as MDC consents and compliances are the same and not greater than Fonterra*[44]*.*

[137] Mr Whyte in the S42A Report considers that the word 'fenced' is too specific [but] it would not necessarily be excluded from consideration. He generally agrees with Fish and Game, that the distance will depend on the type of waterway, but he concludes that specific distances should not be identified. He considers *the policy enables a case by case approval to be taken in determining buffers*.

[138] Federated Farmers request that (b) be deleted in both relevant policies, as experience to date shows that a riparian buffer does not necessarily lead to an increase in water quality, citing 2

[43] See s32 Report, para 2.
[44] Submission 7

case studies undertaken in agricultural catchments in the North Island, the first of which we mention here. [45]

**Discussion**

[139] We asked for a copy of the study referred to by Federated Farmers, with its table (which refers only to planting), and note that it suggests restoration of in-stream communities would only be achieved after canopy closure, with long buffer lengths together with protection of headwater tributaries. It appears from this study that nutrients are diminished when a water body is protected by trees which lower the nutrient levels in hot weather. But a further study in a MAF Technical Paper[46] finds that the effectiveness of grass buffer strips as filters for nutrients and sediment is less in steep hilly terrain than rolling land, as overland flow is concentrated in channelized natural drainage ways giving rise to high velocities.

[140] These studies were very interesting, and we saw many photos of riparian planting in the farming brochures put in evidence. But with the very large pivot irrigators now used in dairying, riparian margins may more usefully be fenced along the boundaries on flat land. But the MAF Technical Paper cited implies planted and treed buffers, as filters for nutrients and sediment, serve a useful purpose on rolling land. It is just they are not so effective on steep hilly land.

[141] The reference to trees raises another issue, and that is the role that they generally play on farms. The Parkyn et al study implies the headwaters of streams [should] be protected in order to lower nutrient levels, and we take it that trees/planting in the headwaters of the streams on farms will play a part in this. We understand many farmers set such land aside from dairying anyway. If native vegetation is an issue it could be set aside in a QEII Covenant. On the flatter farm lands on Parkyn et al's assessment, 'canopy closure' too, has a role in diminishing nutrient impact, so trees on the non-grazed buffer would be helpful. We are aware that many trees and shelter belts which might provide canopies are removed for the introduction of the irrigators and such actions may exacerbate a nutrient run off. This issue may need to be considered when assessing where appropriate buffer margins should be located[47]. We note fencing may not be enough as this in itself will not stop nutrient and sediment run off. Planting, for example, traps sediment.

[45] Parkyn, S.M; Davies-Calley, R; Halliday, N.J; Costly K.F; Craken, S.F. (2003) *Planted Riparian Buffer Zones in New Zealand: Do They Live Up to Expectations?* Restoration Ecology 11 : 436-447
[46] Parkyn, S.M (2004) Review of Riparian Zone Effectiveness, MAF Technical Paper No 2004/05
[47] See: General Assessment Criteria for Rural Zones in both plans. Schedule 5 to this decision.

[142] That aside, we note that in the Dairy NZ submission, that organisation is confident that because the dairying sector is implementing a large range of environmental initiatives, there will be significant reduction in the effects of dairy farming upon water quality in the district. Dairy NZ, for example, cite with approval a 2012 study carried out by Marine and Freshwater Research on five successfully restored dairy farming streams in response to the farming industry's Best Practice.[48]

[143] Turning to the *Accord* attached to Dairy NZ's submission, we did not find reference to specifications around buffer margins. We did find that from 31 May 2015, dairy companies will ensure that all new dairy farm conversions will have a riparian management plan in place before milk collection commences.[49] We note many new dairy developments will need to meet already identified requirements, as Fish and Game suggest, because they are provided in the Values Associated with Fresh Water Sources in Appendix A, the Water Quality Standards set out in Appendix J WARMP and the locations identified in the Schedule of Water Bodies for Riparian Purposes in Appendix Q.[50] Likewise, in Appendix H Water Quality Classifications and Standards MSRMP, and the locations and setbacks in the Schedule of Water Bodies for Riparian Management Purposes Appendix I.

[144] As far as the Fish and Game requirement that seeks setback standards for the Wairau River, and spawning streams such as Mills and Doctors Creek, is concerned, the Schedule for the Management of Riparian Margins in Appendix Q WARMP includes no details of these particular water bodies, let alone distances for setbacks for all other named water bodies in the MSRMP.

[145] Thus, while the Fish and Game approach to setbacks around certain rivers and streams in the Wairau Plan may bring more certainty to the specific issue of 'appropriate measures' in the WARMP, we concluded that MDC's approach is possibly the best one at this point in time. It provides flexibility around the different catchments, with the identification of the various waterways on the different farms, which otherwise may be overlooked. And where there are

[48] Wilcock, R.J.; Monaghan, R.M.; Quinn, J.M.; Srinivasan, M.S.; Houlbrooke, D.J.; Duncan M.J.; Wright-Stow, A.E.; Scarsbrook, M.R. (2012). Trends in water quality of five dairy farming streams in responses to adoption of best practice and benefits of long-term monitoring at the catchment scale. Marine and Freshwater Research (in press). Dairy NZ Submission at 7.

[49] February 2013 at 11.

[50] See Volume Two Appendices J and Q WARMP and MSRMP Vol. 2 Rules Appendix I, Schedule of Water Bodies for Riparian Management Purpose App 1-2.

cliffs on the riparian margins but flood plains on the other, the extent of setback buffers on the margins may differ widely. Meanwhile there should be plan linkages to the relevant Appendices.

[146] In looking at all of these issues, we have concluded that the MDC should seek a Plan Change to record distances for setback margins for Appendix Q WARMP water bodies, and in that process may be able to update its identification of further rivers, streams, creeks etc. that are potentially at risk.

**Decision**

[147] Retain Policies 12.2.2.3.7(b) and 12.4.2.3.7(b) WARMP, and 11.3.1.11(b) MSRMP as notified in respect of 'appropriate non-grazed buffer measures' but amend to include 'rivers, lakes, and streams, or significant ephemeral streams, and wetlands and drains, with reference to:

i. Appendix J Water Quality Classifications WARMP and Appendix H Water Classifications MSRMP.

ii. Appendix A Values Associated with Freshwater Sources and Appendix Q locations in Schedule of Water Bodies for Riparian Purposes WARMP: and Appendix I standards, locations, and setbacks in Schedule of Water Bodies for Riparian Purposes MSRMP.

**STORAGE PONDS AND SEPARATION DISTANCES**

Policies 12.2.2.3.7(c) and 12.4.2.3.7(c) WARMP, and Policy 11.3.1.11(c) MSRMP

Policies 12.2.2.3.7(d) and 12.4.2.3.7(d) WARMP, and Policy 11.3.1.1(d) MSRMP

**'Appropriate' Separation Distances for Storage Ponds and Surface Waterbodies**

[148] Policies 11.3.1.11(c) MSRMP, and 12.2.2.3.7(c) and 12.4.2.3.7(c) WARMP require 'storage ponds for effluent to be sufficiently sized…' Policies 11.3.1.11(d) MSRMP, and 12.2.2.3.7(d) and 12.4.2.3.7(d) WARMP require 'appropriate separation distances between effluent ponds…'

[149] The S42A Report supports neither 'as they will depend on the individual applications and the specific requirements of each other'.

[150] We have assessed these together for conciseness as both require precise specifications as requested by Fish and Game and DOC.

**Discussion**

[151] We concluded the Fish and Game submissions and that of DOC on these policies were too directive and we do not support the suggested amendments to either policy. Water Quality Standards in the Plans, topography, and indeterminate (serious) weather events will dictate some of these issues.

[152] We note too in the *Sustainable Dairying: Water Accord*, under the heading 'Effluent Management', that Dairy NZ has been involved in the development of an Institute of Professional Engineers (IPENZ) practice note for the design of effluent storage ponds[51], where it may be inferred precise elements of 'risk' will be calculated and provided. That, we take it, may be identified as part of the Industry's Best Practice and is a significant innovation.

**Decision**

[153] Policies 12.2.2.3.7(c), 12.2.2.3.7(d), 12.4.2.3.7(c) and 12.4.2.3.7(d) WARMP and Policies 11.3.1.11(c) and 11.3.1.11(d) MSRMP are retained as written.

**MANAGEMENT PLANS**

Sections 11.4 MSRMP, and 12.2.3 and 12.4.3 WARMP and Policy 11.3.1.11(e) MSRMP and Policies 12.2.2.3.7(e) and 12.4.2.3.7(e) WARMP

**Methods of Implementation**

[154] The MDC identifies Water Management Plans are to be 'encouraged' as part of resource consents for new dairy farms and dairy farm conversions, in order to avoid adverse effects on water quality while providing flexibility for farmers to manage their farms in a manner best suited to achieving the outcome they seek. Water Quality and Nutrient Management Plans are identified.

[155] Nutrient Management Plans are 'required' under the same provisions. They are considered a means to demonstrate how nutrient inputs associated with dairying are to be managed to ensure adverse effects on water quality are avoided or mitigated. In such plans, an accredited nutrient adviser, using OVERSEER or similar, will describe how all sources of farm nutrients are to be managed and include such matters as nutrient budgets.

[51] Dairy NZ Submission, para 3.27.

[156] Te Atiawa submit that neither water quality nor nutrient plans will provide the source of optimal sustainability outcomes without the context of an overall 'Farm Management Plan'. Such a plan would cover issues such as riparian margins management and all aspects concerned to meet the challenges of the Marlborough District's unique environment.

[157] DOC supports the requirement to prepare nutrient management plans as they are essential to avoid adverse effects on water quality. It submits that such a plan include nutrient impacts from dairy effluent, animal discharges, fertiliser, and other nutrients to reduce losses of nitrogen and phosphorous from the farm. DOC advises that the plans will provide farmers with the flexibility they require to manage their activity in a manner best suited to achieve the outcomes they are seeking. It suggests that an additional Method of Implementation state that the MDC will undertake work to set cumulative limits for all waterbodies by 2024.

[158] Fish and Game submit that if management plans are to be the means to ensure compliance, they need to be necessary (that is 'required') rather than just 'encouraged' as the plan changes indicate. Fish and Game considers in respect of Policy 12.2.2.3.7(e) both provision of and adherence to the nutrient management plan should be a condition of consent, with the information in such a plan verifiable and able to be audited by a third party process, or by the MDC.

[159] Federated Farmers did not submit directly on the issue of Management Plans. Mr Barnett for the Marlborough Federated Farmers, makes the point that MDC's plan changes do not line up with Fonterra's requirements and all the farmer representatives consider that there should be no daylight between the Accord requirements and the Proposed Plan Changes.

[160] The S42A Report observes that the plan changes are part of an interim step put in place by the MDC until data is available to establish cumulative limits for all water bodies. We have already noted that the MDC currently does not have the data to provide a nutrient management plan in the short term – until 2024.

[161] Dairy companies meanwhile will monitor and report:

- progress with implementation of the data collection programme,

- the average nutrient loss per hectare (by region or catchment as modelled by Overseer (initially for 2013/2014) with a progress update every three years using a five year rolling average once data is available,
- actions and resources devoted to the promotion of good practice in nutrient management reported every three years.

[162] That leaves Water Management Plans and the possibility of farm management plans. Mrs Parkes observed in her original submission that *every farm is different and with a 'farm plan', even with new conversion, the recognition of problems can be seen early in the process*.

[163] As noted above, Mrs Parkes and the farming groups represented are concerned that the conditions and requirements of the MDC future consents would be greater than the requirements laid out by Fonterra and the Accord. They did not want to have to comply with two sets of consents which are slightly different from each other.

[164] In its submission opposing Plan Change 62 (WARMP), Dairy NZ sets out several pages relating to its nutrient management programme which demonstrates an exploration of the subject and its requirements[52].

**Discussion**

[165] We are confident that by the time MDC comes to its own view on nutrient levels in the Marlborough environment in 2024, such activities as Dairy NZ, and the milk companies including Fonterra, will assist MDC in preparing a solid basis with which to compare its own assessment by that year. In addition we note that the Accord requires that all dairy farms must have a nutrient management plan in place before milk collection begins, which provides the industry with considerable urgency.

[166] We understand from the farming representatives that the industry accepts the revised improved Overseer method for measuring nutrients[53]. Its results will be actively updated and worked upon. The time frame indicated by Mrs Langford, for Fonterra, is two-three years from start to completion of finalising all requirements for a new dairy conversion. She also mentioned that she carries out biannual visits to each dairy farm as a monitoring exercise as to what is being achieved.

[52] Dairy NZ Submission pp 4-6
[53] Sixth version. Oral interpolations, Federated Farmers and MDC.

[167] The Accord document recognises however that the industry it relates to is not a substitute for the control of land and water by regional councils under the RMA 1991, or the associated NPSFWM. It recognises that *the Accord is emerging at a time when these councils are fundamentally overhauling the management of water in response to the NPSFWM*.

[168] The point about 'New' Dairy Farms and Dairy Farm Conversions from the date this decision is issued is that the Plan Changes cast a slightly wider but more definitive net over what types of conditions on consents will be required when the new applications are made. The Plan Changes are not retrospective to dairy farms that are already in existence.

[169] We see a requirement for a farm (environmental) management plan, as suggested, which incorporates a water management plan, a riparian management plan, and a nutrient management plan. But consider that will be a requirement that comes from the MDC 'on the ground' which allows it to engage constructively with the industry.

**Decision**

[170] 12.2.3 and 12.4.3 WARMP, and 11.4 MSRMP Methods of Implementation is amended to 'require' a Water Management Plan, as opposed to 'encourage' which is very indeterminate.

**'NEW' DAIRY FARMS OR 'ALL INTENSIVE FARM USES'**

Methods of Implementation 12.2.3, (Rules), 30.4.1, 30.4.3.12.1, 30.4.3.12.2, 30.4.3.12.2 (WARMP) Vol. 2 Definitions. The same type of amendments apply to the MSRMP provisions.

[171] Under the Rules, 12.2.3 WARMP, the plan changes relating to rural activities with the potential to cause significant adverse effects are to include 'dairy farming, factory farming, and intensive livestock farming', and are provided for as 'Discretionary Activities'. This is further expanded at 30.4.1, identifying that new applications must be made for resource consent as a Discretionary Activity for 'new dairy farming'. The term follows through in all related objectives and policies. And under Definitions, 'New Dairy Farming' is defined as follows:

> *New Dairy Farming means a land based activity, having as its primary purpose the farming of dairy cattle for milk production, and related activities on land converted for that purpose after the date of the public notification of the Resource*

*Management Plan Change 62, but does not include any increase in the area or intensity of an existing dairy farming operation that is undertaken without any additional dairy shed.*

[172] Reference is made by Te Atiawa to potential land uses such as goat and sheep farming for milk production. It identified also these activities result in stock access to water and/or nutrient enrichment in water bodies.

[173] Fish and Game seeks more specific definition and inclusion of all intensive land uses in the plan changes, not just new dairy conversions. Having read the S42A Report which rejected its requests, Fish and Game stood by its original submission and requested the Hearings Committee to give it further consideration. Mr Lynn, for the organisation, had this to say: *As precedent we note that in the Interim Environment Court decision on the Horizons Regional Council's Proposed One Plan, all existing dairy, intensive sheep and beef, cropping and horticulture operations, in priority catchments will require a resource consent for nutrient management. Also in the interim decision any new conversions to those land use activities anywhere in the Horizons Region will require resource consent*.[54]

[174] Mr Whyte, in the S42A Report, accepts that land use intensification can result in a deterioration of water quality, but considers that dairy farming is the major contributor if inappropriate practices are implemented. He supports MDC's view that the most appropriate course of action is a provision that addresses the key type of land use (dairying) relating to deterioration in water, by placing some checks and balances when conversions occur in order that management practices may be implemented at the commencement of operations.

**Discussion**

[175] The notified version of Plan Changes 27 - 62 at Council level, targeted 'new dairy farms' and no others. The difference with the Horizons One Plan is that the notified version of the Proposed One Plan brought to the table a regulatory regime of intensive land uses such as dairying, intensive (i.e. involving the use of irrigation) sheep and beef farming, cropping, and commercial vegetable growing, both existing and new.[55]

[54] Fish and Game New Zealand, Further Submission 2, para 2.2
[55] *Andrew Day* v *Manawatu-Wanganui Regional Council*, Part 5, paras 5-12 – 5-17.

[176] These were then dropped by the Hearing Panel set up by the Horizons Regional Council. The changes sought were finally watered down to 'a regime of reasonably practical farming practices'. For the reasons set out in the Horizons One Plan Environment Court decision, the Court did not accept them. Instead, the Court reinstated all intensive land uses and eventually supported their inclusion, with an agreement by Federated Farmers, on all matters relating to improving the water quality in the Wanganui/Manawatu areas except extensive (as opposed to intensive (irrigated)) sheep and beef farming – particularly the nitrogen management regime.[56]

[177] In this case, Fish and Game directly raised the issue of including all intensive land uses in the District, in its original submission and therefore it comes within the Environment Court's decision in *Re an Application by Vivid Holdings Ltd (1999)*[57] in that it is reasonably and fairly raised. Fish and Game then reserved the right to expand on the issues it raised initially and to comment on other submissions where appropriate. Mr Lynn, in his further submission to the Hearing, simply noted that the S42A report had rejected Fish and Game's requests but it stands by its original submission.

[178] The S32 Report by MDC says this: '*In terms of equity, while other intensive land uses are not captured, it is apparent that the only other significant intensive land use, viticulture, does not involve the significant discharge of nutrients. If necessary, other land uses can be added at a later date*.'[58]

[179] That conclusion does not sit too comfortably with what is stated in MDC's Introduction to the S32 Report as follows: '*The impacts of discharges from rural land use intensification present one of the most serious freshwater management challenges in New Zealand. Contaminants, such as nitrogen and phosphorous, in non-point discharges are of particular concern. Typically these nutrients are derived from animal effluent and fertiliser applications that discharge to water from run off, drainage, and leaching'*.[59]

[180] In our opinion, while we agree water quality in the Marlborough District is an issue for <u>all</u> land intensive based activities, we consider:

[56] *Andrew Day* v *Manawatu-Wanganui Regional Council*, Part 5, paras 5-17 and 5-77.
[57] See *Re an Application by Vivid Holdings Ltd* (1999).
[58] MDC Section 32 Report at para 9, 12.
[59] Ibid; para 1, 1.

- procedural fairness requires that all intensive land use sectors require notification/involvement at the outset,
- Fish and Game did not provide any suggestions as to how expanding these plan changes to all intensive land use activities might be achieved; there is a serious lack of evidence before us to extend the plan changes to cover other uses at this point in time; we consider that to re-notify in the circumstances now is unreasonable, particularly as detailed evidence on nitrogen and phosphorous was squarely before the Environment Court in the One Plan and is not here,
- MDC has already put in place a programme that will produce nutrient limits by 2024 – not just from dairying, but all land use sectors,
- there are already considerable initiatives being carried out by Dairy NZ, the MDC, and the milk companies such as Fonterra, all of which have begun measures to lower nutrients across the dairying sector,
- a move to include all land use activities should be approached in an orderly and measured way,[60]
- plan reviews are foreshadowed by MDC in the near future; they are a more constructive and fairer way to achieve the outcome Fish and Game wish for at this point in time.

**Decision**

[181] We find there should be no amendments to the relevant provisions relating only to 'New Dairy Farms'.

**DISCRETIONARY OR RESTRICTED DISCRETIONARY ACTIVITY?**

Rule 30.4.1 WARMP and Rule 36.4 MSRMP

[182] The Director General of Conservation supports the Discretionary Activity Rule as it is consistent with issues raised in the RMA, NZCPS, NPSFWM, and the MRPS. He approves the fact *that a discretionary activity* (status) *allows the MDC to fully consider the environmental effects of these*

[60] *Andrew Day and Others* v *Manawatu-Wanganui Regional Council,* [2012] NZEnvC, Part 5 – Surface Water Quality Non-Point Source Discharges, para 5.76 (although referring to a s293 process relevant only on appeal).

*activities*.[61] Fish and Game agree on the status of the activity, as does Mr Whyte in his S42A Report.

[183] On the subject of a permitted activity, MDC advised that the Top of the South Iwi would not support non-notification of new dairy farms.

[184] Federated Farmers, as noted, did not want the Plan Changes at all, believing they will not be effective in safeguarding water quality or achieving an improvement where it is demonstrated that farming is having an adverse effect. As Mr Barnett points out in his statement to the hearing, they support the Accord whereby environmental standards will be required for new dairy farms as a condition of supply. He itemises these requirements for any new dairy farms as follows:

- effluent systems to be compliant with relevant regional rules 365 days per year;
- culverts or bridges for all animal races that cross a drain or waterway;
- permanent stock exclusion from all waterways and drains wider than one metre and deeper than 30 cm;
- a nutrient management plan;
- a riparian management plan to be in place before milking commences (from 31 May 2015 onwards).[62]

[185] If it is decided that MDC proceed with the Plan Changes, Federated Farmers seeks that new dairy conversions are controlled through a rule with lesser activity status than discretionary – preferably permitted, giving far more certainty as required standards and enabling development, while giving a suitable level of control – thus promoting sustainable management.

[186] Mr Barnett considers a lesser activity status would also provide the opportunity to structure conditions to be as consistent as possible with conditions of supply under the Accord, thus avoiding excessive regulation, doubling up, or confusion with other regulatory requirements. Mrs Parkes and Mrs Langford both advised similarly in the oral discussion that took place at the hearing.

[187] The Woolleys, in their submission, require new dairy farming to be a conditional activity[63] subject only to Fonterra rules and Dairy NZ best practice.

[61] DOC Submission, para 7.
[62] Statement, para 9.

**Discussion**

[188] Mr Whyte in his report pointed out that the Woolley's requirement to have new dairy farms treated as a conditional activity is no longer available under the RMA 1991. Its equivalent under the Act is a discretionary activity, and accordingly it appears the submitters are supporting this class of activity as are the Plan Changes. Their suggested conditions however, are uncertain and depend on third parties, such as Fonterra and Dairy NZ, and may be ultra vires.[64]

[189] Mr Whyte in the S42A Report identifies that compliance with the Accord essentially means relying on a voluntary approach and is likely to be difficult for MDC to monitor, while the permitted activity option results in even less control.[65] We have already addressed this issue.

[190] The MDC evaluated requiring resource consents for new dairy farms as a controlled activity but, in assessing 'Effectiveness' under s32, it concluded that such an activity is reasonably effective, but effectiveness in achieving objectives is reduced by inability to refuse consent. And in assessing 'Efficiency' under the same provision, the Council concluded it too was reasonably efficient but efficiency was reduced by inability to refuse consent if its rules were not achieved.[66]

[191] Under Schedule I Clause 10(2)(b)(ii) a local authority (in this case the Commissioners under delegated authority) may give a decision on a plan change on 'any other matter' relevant to the proposed plan arising from submissions. In this case, restricted activity status emerged as a possible solution to the Farmers' concerns.

[192] We looked therefore very closely at deciding whether a restricted activity status for new dairy farms and new dairy conversions might be available. We initially looked at restrictions only relating to matters such as:

- avoidance of cattle entering waterbodies and drains,
- nitrogen and phosphorous discharge,
- riparian planting and buffer protection of waterbodies and drains,
- management plans (farm, water, riparian, and nutrients).

[63] Submission #6 Relief, para 1.
[64] Section 42A Report, para 10.
[65] Section 42A Report, para 10, p9.
[66] Marlborough District Council, S32 Report, para 7, p11.

[193] Commissioner Beech was particularly interested in approving a Restricted Discretionary status for new dairy farming because any application would be non-notified. He felt that a MDC restricted consent process (with no third party involvement) would effectively achieve the objectives of the Plan Changes 27 and 62, as the District Plans clearly encompass requirements concerning all acknowledged environmental impacts.

[194] The MDC has a general power of notification as a discretion in deciding whether or not to notify an application for a resource consent for an activity, s95A(1)RMA. Under s95A(2), despite the discretion in s95A(1), a consent authority must publicly notify the application if it decides the activity will have, or is likely to have, adverse effects that are more than minor. A 'restricted discretionary activity' would require that the MDC's power to decline consent and impose conditions would be restricted to the matters to which the discretion only refers (such as those above). But that does not stop notification of a restricted discretionary activity. Third parties, who may have an interest, may be notified if the activity adversely affects them and those effects are more than minor, and as long as the focus is on the matters to which the discretion refers: see s95E(1) and (2)(b).

[195] When we looked closely at the scheme of the Plan Changes, we note they are linked into the General Assessment Criteria for Discretionary and Non-Complying Activities and are identified in the Appendix to the Notification Documents[67]. Notification provisions apply here too, and if new dairying meets requirements as a discretionary activity, applications will not need to be notified.

[196] However, the criteria noted above take the requirements for new dairying slightly wider than the potentially restricted uses above.

[197] Our purpose here is not to address environmental impacts from past and present dairy operations in other parts of New Zealand. It is to focus on the Marlborough environment that exists now, and the MDC has, along with the issues outlined in the Plan Changes, identified other issues under the General Assessment Criteria in both Plans that it considers will contribute to the overall sustainable management of the District's natural and physical resources, and into which it has slotted these proposed Plan Changes. These (inter alia) include:

- protection of significant indigenous vegetation and habitat of indigenous fauna,

[67] See Schedule 5: 36.4.1 General Assessment Criteria MSRMP, 33.4.2 General Assessment Criteria WARMP, for Discretionary Activities.

- the character of the surrounding area,
- the inhibition or disadvantage of existing activities,
- amenity issues,
- adverse effects on roading/traffic,
- efficient use and development of the area, having regard to Marlborough's versatility.

[198] Consideration of Part 2 RMA is also required under s87A RMA Classes of Activities, whether or not new dairying is a discretionary or restricted discretionary activity. These criteria provide for an assessment for new dairy farms to be made not only in respect of s5(1) RMA (the sustainable management of natural and physical resources), but also the s5(2) definition, which means managing the use, development, and protection of the natural and physical resources in a way, or at a rate, that enables the people and communities of Marlborough to provide for their social, economic, and cultural wellbeing.[68]

[199] Consideration must also be given to the more specific s6 and s7 provisions where they apply, as they do here, namely to:

- recognise and provide for the nationally important issue - the preservation of the natural character of the coastal marine area, lakes, rivers, wetlands, and their margins, s6(a),
- assist in the protection of areas of significant indigenous vegetation and fauna, s6(b),
- endorse the exercise of the ethic of stewardship by both the MDC and the dairy industry, s7(aa),
- ensure the efficient use and development of natural resources, s7(b),
- maintain the District's amenity values, s7(c),
- recognise the importance of the intrinsic values of ecosystems, s7(d),
- protect any finite characteristics of natural and physical resources, s7(g),
- protect the habitat of trout and salmon, s7(h),
- have regard to the effects of climate change, s7(i).

[200] In these contexts, because of the multi-faceted nature of the water and other resources in Marlborough, we consider the Rules that provide for new dairying as a Discretionary Activity

[68] See Schedule 6.

empower the MDC to better achieve the related objectives and policies of the two Plans (and relevant Appendices) and the provisions of Part 2 RMA. And in this, we support those who approved the Plan Changes in the context of a Discretionary Activity, namely DOC, Fish and Game, Mr Whyte in the S42A Report, and the MDC itself.

**Decision**

[201] There is no amendment to the Rules describing the activity status for new dairy farming as a Discretionary Activity.

**DECISION SUMMARY**[69]

[202] The decisions reached by the Hearing Committee include the following major points:

**The Plan Changes**

[203] Plan Changes 62 and 27 are accepted with amended provisions as set out in Schedule 2 to this decision.

**Introduction and Issues**

[204] The terms 'coastal water quality' and 'wetlands' are added to Introduction 11.1, and 'coastal water and wetlands' are added to Issue 11.2 MSRMP.

[205] The term 'water resources' is amended to include 'coastal waters': Issue 12.2.1.4 WARMP

[206] The phrase 'dairy farm effluent run off' is amended to 'dairy farm run off', with the deletion of the word 'effluent', Issue 12.2.1.4 WARMP.

**Objectives and Policies**

[207] The term 'new dairy farm' is retained without amendment 12.2.2.3.6 WARMP and 11.3.1.10 MSRMP.

[208] Policies 12.2.2.3.7 and 12.4.2.3.7 WARMP, and 11.3.1.11 MSRMP are amended as follows:

- first paragraph: 'including fencing, bridges, or culverts' added to 'measures'.

[69] See Clause 10, First Schedule, Resource Management Act 1991

- (a) ‘bed of any river, lake or wetland’ to include ‘stream, creek, wetland, significant ephemeral stream, or any drain’.
- (b) ‘including a river, lake or wetland or any drain’ amended to ‘including a river, lake, stream, creek, wetland, significant ephemeral stream, or any drain to intercept the run-off of contaminants from grazed pasture, with reference to:
    i. Appendix J Water Quality Classifications WARMP and Appendix H Water Classifications MSRMP.
    ii. Appendix A Values Associated with Freshwater Sources and Appendix Q locations in Schedule of Water Bodies for Riparian Purposes WARMP; and Appendix I standards, locations, and setbacks in Schedule of Water Bodies for Riparian Purposes MSRMP.
- (c) retain as notified.
- (d) retain as notified.
- (e) retain as notified except that Water Quality Management Plans are to be ‘required’ as are Nutrient Management Plans: Rules 12.2.3 WARMP and 11.4 MSRMP.

**Rules**

[209] Rule 30.4.1 WARMP and Rule 36.4 MSRMP, the term ‘new dairy farming’ and the activity as ‘Discretionary’, are retained without amendment.

**Methods of Implementation**

**Management Plans**

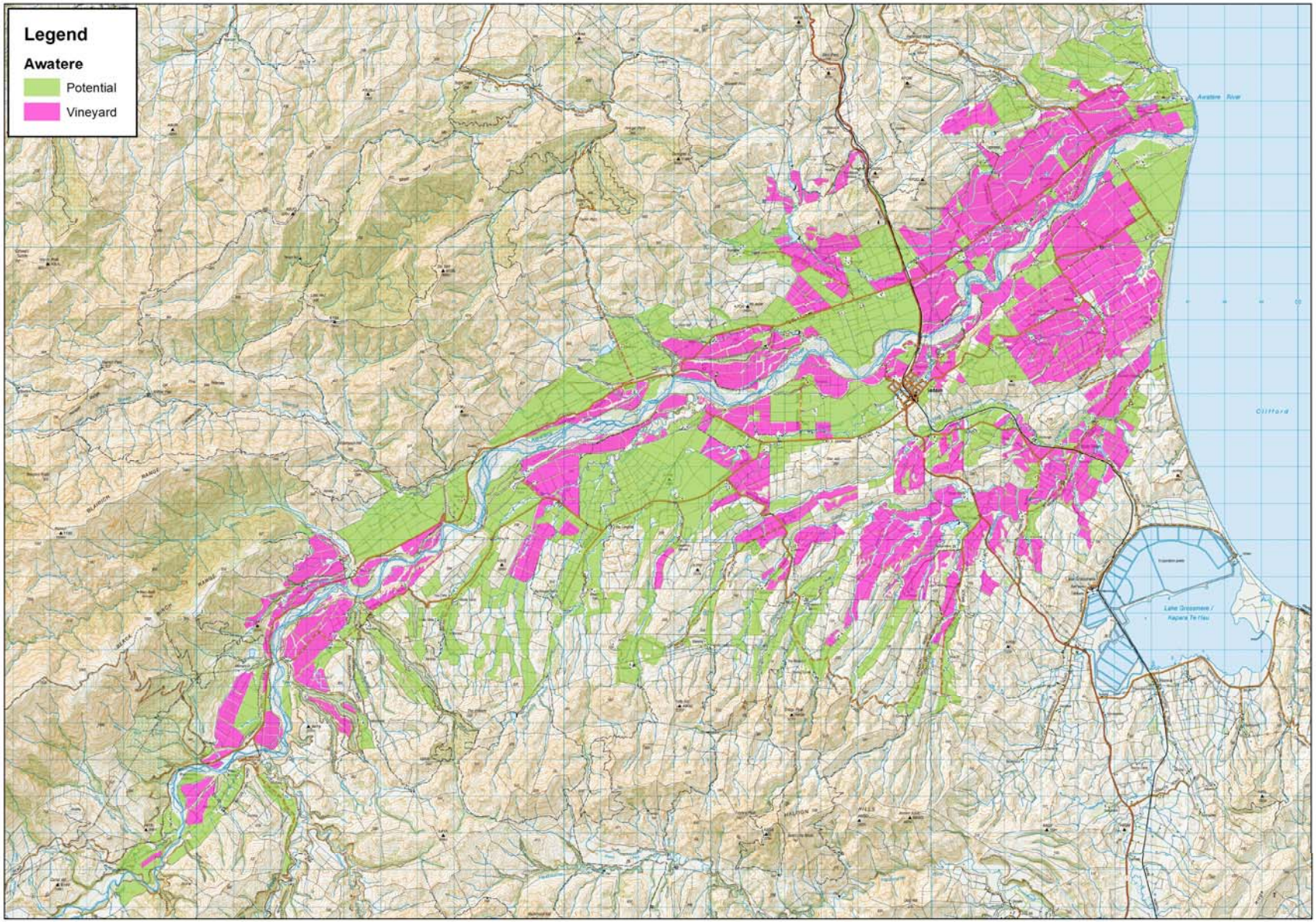
[210] The phrase ‘effects on water quality resulting from dairy farming will be avoided or sufficiently mitigated’ in the first and second paragraphs, is amended to ‘avoided, remedied, or sufficiently mitigated’.

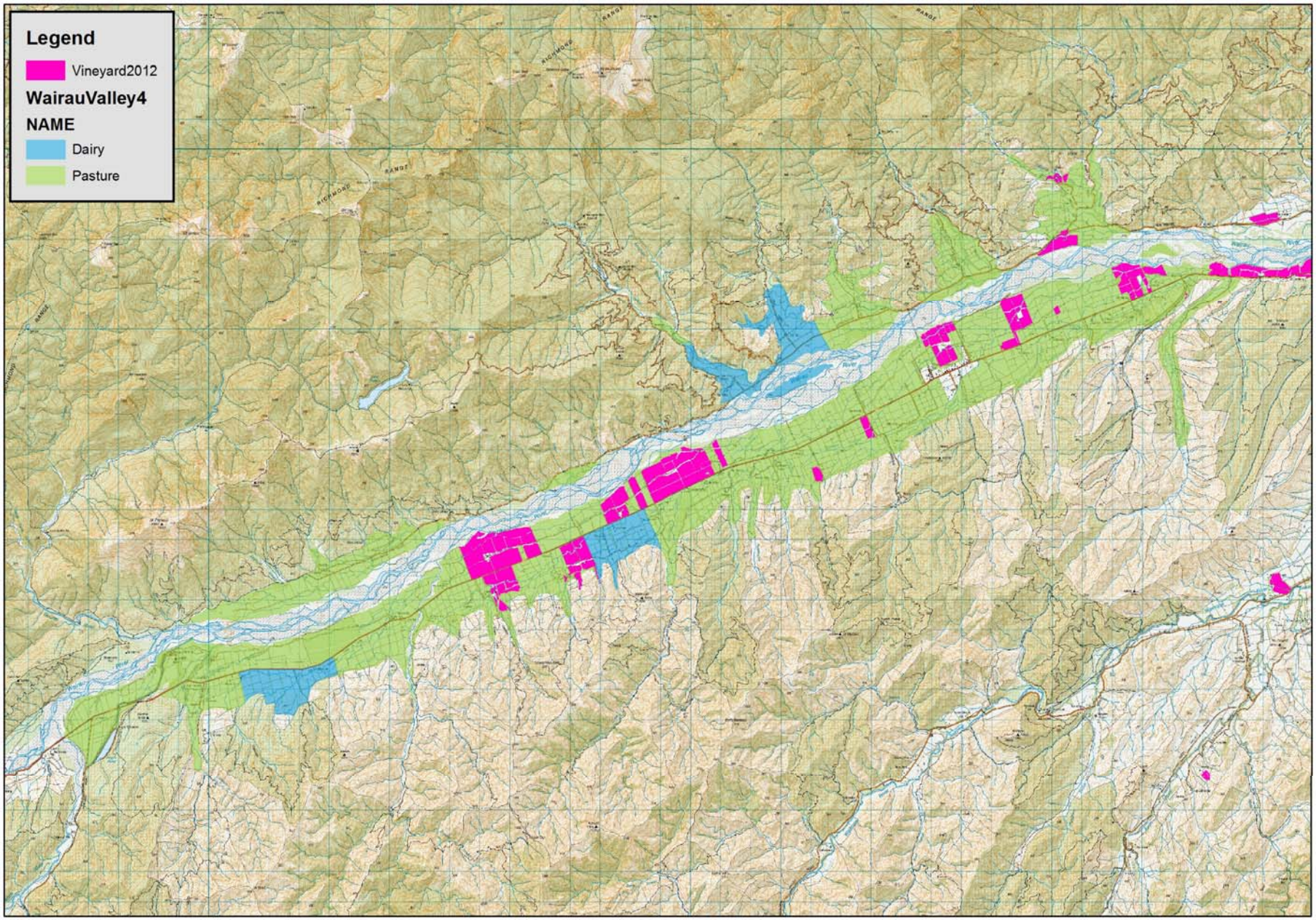
[211] Water Quality Management Plans are amended to be ‘required’.

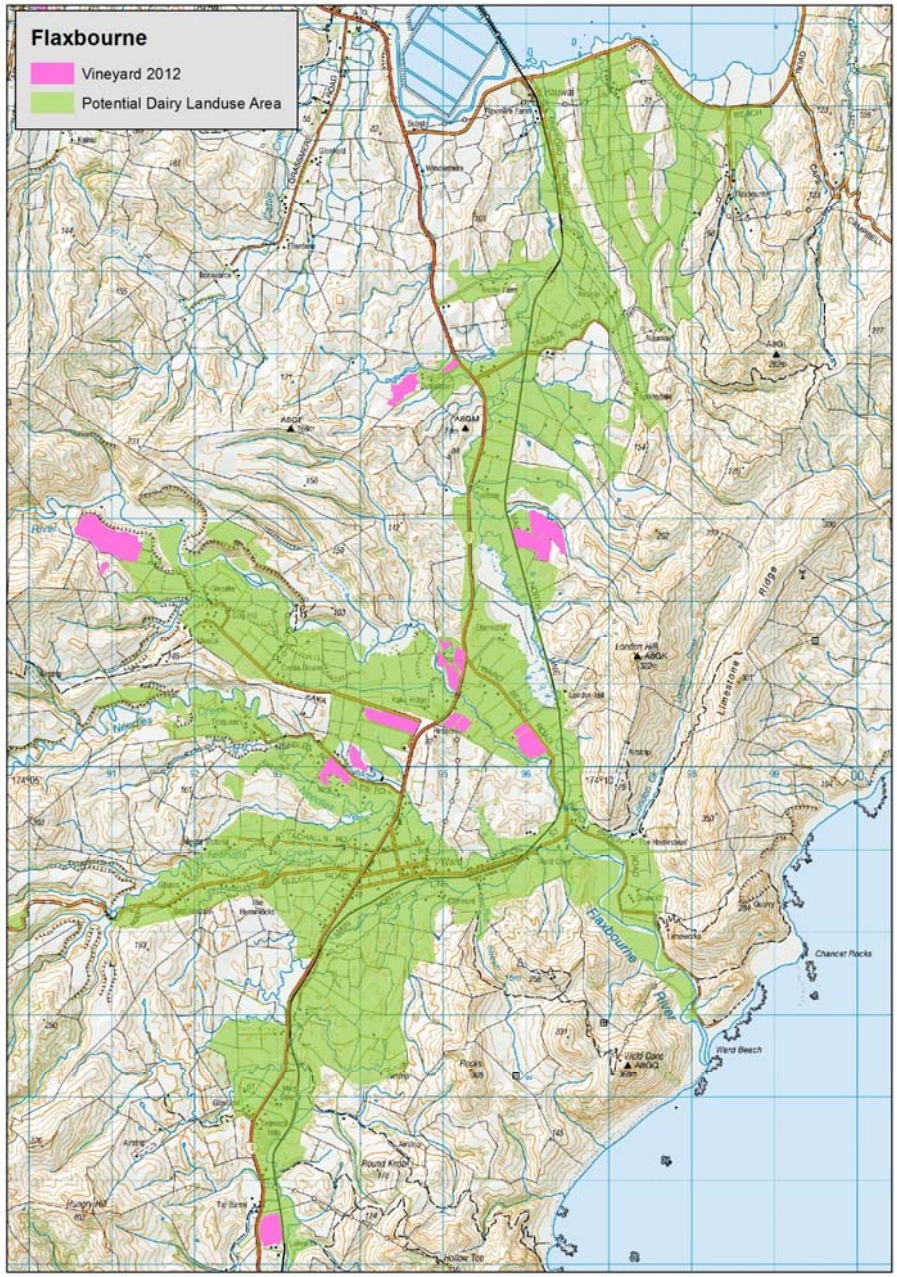
[212] ‘Overseer®’ remains the accredited nutrient adviser in the second paragraph.

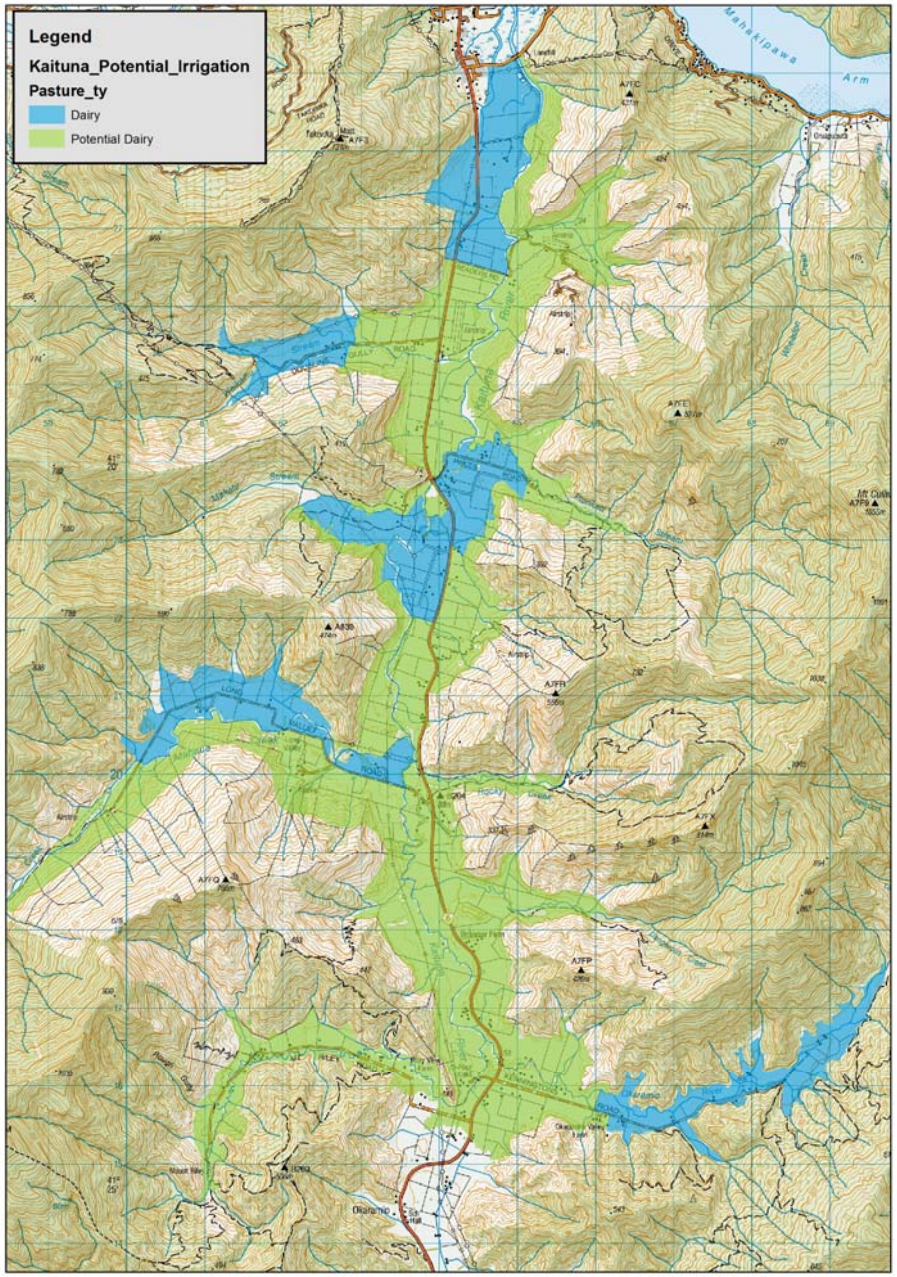
# Schedule One – Maps

Areas with Potential for Dairy Farming




Legend
Vineyard2012
WairauValley4
NAME
Dairy
Pasture


Flaxbourne
Vineyard 2012
Potential Dairy Landuse Area
Flaxbourne River
Ward Beach
Chancel Rocks
Limestone Ridge
London Hill
Round Knob
Hollow Top


Legend
Kaituna_Potential_Irrigation
Pasture_ty
Dairy
Potential Dairy
Mahakipawa Arm
Mt Owen
Blairmore

**SCHEDULE TWO: PLAN CHANGE PROVISIONS**

**NEW DAIRY FARM PLAN CHANGE – PROVISIONS**

[original Plan Change Provisions document attached with amendments made in editing mode]

The text in blue shows the plan changes as notified. The text in red show the changes made as a result of the decisions on the submissions.

# NEW DAIRY FARM PLAN CHANGE - PROVISIONS

# Wairau/Awatere Resource Management Plan

Volume 1, Chapter 12 - Rural Environments – Issues, Objectives and Policies

## 12.2 Wairau Plain

### 12.2.1 Issue

**Recognising and providing for the dynamic inter-relationships between land, water and people.**

- Safeguarding of water resources;

#### 12.2.1.4 Safeguarding water resources

Water resources, ~~both~~ ground, ~~and~~ surface, and coastal waters, are vulnerable to contamination from various activities undertaken on land or on the surface of lakes and rivers. Sources of contamination may include dairy farm ~~effluent~~ run off; septic tank effluent disposal; waste disposal from wineries; offal and refuse pits; mining operations; roading and tracking; spray or fertiliser application; or discharge of inadequately treated urban sewage.

### 12.2.2 Objectives and Policies

#### 12.2.2.3 Objective

**To maintain or enhance…..the quality of surface, ~~and~~ ground and coastal water.**

12.2.2.3.6 [New Policy]

Require land use consent for the establishment and operation of any new dairy farm.

12.2.2.3.7 [New Policy]

Approve land use consent applications for new dairy farms where the proposed farming would have no more than minor adverse effects on ground~~water~~, ~~or~~ surface ~~water~~, ~~quality~~, and coastal water quality or wetland. A land use consent application must identify the risks of new dairy farming and provide measures to address those risks, including as a minimum:

(a) Measures, including fences, bridges, or culverts, to prevent stock entering onto, or passing across, the bed of any river, stream, creek, lake, ~~or~~ wetland, or significant ephemeral stream, and any drain;

(b) Provision of an appropriate, non-grazed, buffer along the margins of any water body, including a river, stream, creek, lake, ~~or~~ wetland, or significant ephemeral stream, and any drain, to intercept the runoff of contaminants from grazed pasture, with reference to Appendices A, J and Q;

(c) Provision for storage of dairy effluent, with all storage ponds sufficiently sized to enable deferral of application to land until soil conditions are such that surface runoff and/or drainage do not occur;

(d) Demonstration of appropriate separation distances between effluent storage ponds and any surface waterbodies to ensure contamination of water does not occur (including during flood events);

(e) A nutrient management plan that includes nutrient inputs from dairy effluent, animal discharges, fertiliser, and any other nutrient input.

## 12.2.3 Methods of Implementation

### Rules

Rural activities with the potential to cause significant adverse effects such as dairy farming, factory farming and intensive livestock farming are provided for as Discretionary Activities.

### Management Plans

Water Quality Management Plans will be ~~encouraged~~ required as a means of demonstrating on an ongoing basis that any adverse effects on water quality resulting from dairy farming will be avoided, remedied, or sufficiently mitigated. They provide the ability to consider all farm management practices that have the potential to adversely affect surface water and groundwater and manage these risks in an integrated way. This also enables the dairy farmer to progressively plan farm upgrades based on priority or, in the case of new farms, at the time of establishment. Water Quality Management Plans can be used to support applications for land use consent to convert the use of land to dairying.

Nutrient Management Plans will be required as a means to demonstrate how nutrient inputs associated with dairy farming are to be managed to ensure any adverse effects on water quality will be avoided, remedied, or mitigated. Nutrient Management Plans should be written documents that incorporating a nutrient budget developed by an accredited nutrient adviser using OVERSEER® or similar, that describes how the major plant nutrients (nitrogen, phosphorus, sulphur and potassium, and any other of importance to specialist crops) will be managed, including all sources of nutrient, for example discharges from farm dairy effluent systems, animal discharges, atmospheric nitrogen fixation.

[Explanation]

*Management Plans as part of resource consents for new dairy farm conversions will enable rural land to be used in such a way as to avoid adverse effects on water quality, while providing farmers the flexibility to manage their activity in a manner best suited to achieving the outcomes they are seeking.*

# 12.4 General Rural

## 12.4.1 Issue

**The sustainable management of the extensive land areas given over to rural land uses below 1000 metres and not part of the intensively developed land of the lower Wairau Plain.**

The Plan seeks to enable a wide range of appropriate activities to establish in the General Rural area, subject to standards and controls to avoid or mitigate adverse effects on vegetation and soil resources, landscape and amenity values, and water quality.

## 12.4.2 Objectives and Policies

### 12.4.2.3 Objective

**Manage the land resource and associated waste discharges in such a way as to protect….surface, ~~and~~ ground, and coastal water quality….(consistent with the human consumption of groundwater and fish from surface waters)….and the maintenance of the natural….values of the water resources and their associated ecosystems.**

12.4.2.3.6 [New Policy]

Require land use consent for the establishment and operation of any new dairy farm.

12.4.2.3.7 [New Policy]

Approve land use consent applications for new dairy farms where the proposed farming would have no more than minor adverse effects on groundwater ~~, or~~ surface ~~water quality~~, and coastal water quality, or wetland. A land use consent application must identify the risks of new dairy farming and provide measures to address those risks, including as a minimum:

(a) Measures, including fencing, bridges, or culverts, to prevent stock entering onto, or passing across, the bed of any river, stream, creek, lake, ~~or~~ wetland, or significant ephemeral stream, and any drain;

(b) Provision of an appropriate, non-grazed, buffer along the margins of any water body, including a river, stream, creek, lake, ~~or~~ wetland, or significant ephemeral stream, and any drain, to intercept the runoff of contaminants from grazed pasture, with reference to Appendices A, J and Q;

(c) Provision for storage of dairy effluent, with all storage ponds sufficiently sized to enable deferral of application to land until soil conditions are such that surface runoff and/or drainage do not occur;

(d) Demonstration of appropriate separation distances between effluent storage ponds and any surface waterbodies to ensure contamination of water does not occur (including during flood events);

(e) A nutrient management plan that includes nutrient inputs from dairy effluent, animal discharges, fertiliser, and any other nutrient input.

## 12.4.3 Methods of Implementation

### Management Plans

Water Quality Management Plans will be ~~encouraged~~ required as a means of demonstrating on an ongoing basis that any adverse effects on water quality resulting from dairy farming will be avoided, remedied, or sufficiently mitigated. They provide the ability to consider all farm management practices that have the potential to adversely affect surface water and groundwater and manage these risks in an integrated way. This also enables the dairy farmer to progressively plan farm upgrades based on priority or, in the case of new farms, at the time of establishment. Water Quality Management Plans can be used to support applications for land use consent to convert the use of land to dairying.

Nutrient Management Plans will be required as a means to demonstrate how nutrient inputs associated with dairy farming are to be managed to ensure any adverse effects on water quality will be avoided, remedied, or mitigated. Nutrient Management Plans should be written documents that incorporating a nutrient budget developed by an accredited nutrient adviser using OVERSEER® or similar, that describes how the major plant nutrients (nitrogen, phosphorus, sulphur and potassium, and any other of importance to specialist crops) will be managed, including all sources of nutrient, for example discharges from farm dairy effluent systems, animal discharges, atmospheric nitrogen fixation.

## 12.9 Anticipated Environmental Results

- Environmentally sound farming practices based on:
  - Strategies avoiding, remedying, and mitigating adverse effects of land use activities on water quality;

# Wairau/Awatere Resource Management Plan

Volume 2, Chapter 30 – Rural 3 and 4 Zones – Rules, Assessment Criteria, Conditions

## 30.4 Discretionary Activities

**30.4.1** Application must be made for a resource consent for a Discretionary Activity for the following:

- New dairy farming.

### 30.4.3 Particular Standards and Criteria Applicable to Listed Discretionary Activities

The criteria specified for any particular discretionary activity as listed below shall be considered in addition to the General Assessment Criteria set out in Rule 30.4.2.

#### 30.4.3.12 New Dairy Farms

**30.4.3.12.1 Standards**

New dairy farm activities should be established in such a manner to ensure that no surface, ~~and~~ ground~~water~~, and coastal water quality, or wetland, is adversely affected by the operation of the dairy farm.

**30.4.3.12.2 Assessment Criteria**

(a) The extent to which the proposed dairy farming operation is consistent with the policies for new dairy farms in this Plan.

**FARMING** means a land based activity, having as its primary purpose the commercial production and sale (other than from a rural selling place) of any livestock, milk or vegetative matter except as excluded below and unless the context otherwise requires, includes the cultivation and reshaping of land necessary and appropriate to normal agricultural activity. For the purposes of the Plan farming does not include intensive farming, commercial forestry and in the case of vegetative matter, does not include the processing of farm produce beyond cutting, cleaning, grading, chilling, freezing, packaging and storage of produce grown on the farming unit.

**NEW DAIRY FARMING** means a land based activity, having as its primary purpose the farming of dairy cattle for milk production, and related activities on land converted for that purpose after the date of the public notification of the Resource Management Plan Change 62, but does not include any increase in the area or intensity of an existing dairy farming operation that is undertaken without any additional dairy shed.

# Marlborough Sounds Resource Management Plan

Volume 1, Chapter 11 - Rural Environments – Issues, Objectives and Policies

## 11.1 Introduction

Resource use in the rural environment may result in:

- Changes to surface, ~~and~~ ground~~water~~, and coastal water quality, and wetlands;

## 11.2 Issue

**The adverse effects on resources from activities in the rural environment.**

Dairying farming has the potential to have significant adverse effects on the quality of surface, ~~and~~ groundwater, and coastal water resources, and wetlands. These effects can be avoided, remedied or mitigated by using environmentally sound farming practices that include strategies to manage the effects of dairy farming on water quality.

## 11.3 Objectives and Policies

### 11.3.1 Objective

**Sustainable management of rural resources and integrated resource use to….avoid, remedy or mitigate adverse effects of activities.**

11.3.1.10 [New Policy]

Require land use consent for the establishment and operation of any new dairy farm.

11.3.1.11 [New Policy]

Approve land use consent applications for new dairy farms where the proposed farming would have no more than minor adverse effects on ground~~water~~, ~~or~~ surface ~~water quality~~, or coastal water quality, and wetlands. A land use consent application must identify the risks of new dairy farming and provide measures to address those risks, including as a minimum:

(a) Measures, including fences, bridges, culverts, to prevent stock entering onto, or passing across, the bed of any river, stream, creek, lake, ~~or~~ wetland, significant ephemeral stream, and any drain;

(b) Provision of an appropriate, non-grazed, buffer along the margins of any water body, including a river, stream, creek, lake, ~~or~~ wetland, significant ephemeral stream, and any drain, to intercept the runoff of contaminants from grazed pasture, with reference to Appendices H and I of the Plan;

(c) Provision for storage of dairy effluent, with all storage ponds sufficiently sized to enable deferral of application to land until soil conditions are such that surface runoff and/or drainage do not occur;

(d) Demonstration of appropriate separation distances between effluent storage ponds and any surface waterbodies to ensure contamination of water does not occur (including during flood events);

(e) A nutrient management plan that includes nutrient inputs from dairy effluent, animal discharges, fertiliser, and any other nutrient input.

[Explanation]

*The quality and quantity of the District's water resources are essential to the prosperity and pleasantness of the Marlborough Sounds, in terms of their life supporting capacity and availability for domestic and productive use.*

## 11.4 Methods of Implementation

### Management Plans

Water Quality Management Plans will be ~~encouraged~~ required as a means of demonstrating on an ongoing basis that any adverse effects on water quality resulting from dairy farming will be avoided, remedied, or sufficiently mitigated. They provide the ability to consider all farm management practices that have the potential to adversely affect surface water and groundwater and manage these risks in an integrated way. This also enables the dairy farmer to progressively plan farm upgrades based on priority or, in the case of new farms, at the time of establishment. Water Quality Management Plans can be used to support applications for land use consent to convert the use of land to dairying.

Nutrient Management Plans will be required as a means to demonstrate how nutrient inputs associated with dairy farming are to be managed to ensure any adverse effects on water quality will be avoided, remedied, or mitigated. Nutrient Management Plans should be written documents that incorporating a nutrient budget developed by an accredited nutrient adviser using OVERSEER® or similar, that describes how the major plant nutrients (nitrogen, phosphorus, sulphur and potassium, and any other of importance to specialist crops) will be managed, including all sources of nutrient, for example discharges from farm dairy effluent systems, animal discharges, atmospheric nitrogen fixation.

[Explanation]

*Management Plans as part of resource consents for new dairy farm conversions will enable rural land to be used in such a way as to avoid adverse effects on water quality, while providing farmers the flexibility to manage their activity in a manner best suited to achieving the outcomes they are seeking.*

## 36.4 Discretionary Activities

Application must be made for a Resource Consent for a Discretionary Activity for the following:

- New dairy farming.

### 36.4.3 Particular Criteria and Standards Applicable to Listed Discretionary Activities

The criteria specified for any particular Discretionary Activity as listed below shall be considered in addition to the general assessment criteria set out in Rule 36.4.2 above.

#### 36.4.3.15 New Dairy Farms

##### 36.4.3.15.1 Standards

New dairy farm activities should be established in such a manner to ensure that no surface, ~~and~~ ground~~water~~, and coastal water quality, and wetland is adversely affected by the operation of the dairy farm.

##### 36.4.3.15.2 Assessment Criteria

(b) The extent to which the proposed dairy farming operation is consistent with the policies for new dairy farms in this Plan.

**FARMING** means a land based activity, having as its primary purpose the commercial production and sale (other than from a rural selling place) of any livestock, milk or vegetative matter except as excluded below and unless the context otherwise requires, includes the cultivation and reshaping of land necessary and appropriate to normal agricultural activity. For the purposes of the Plan farming does not include intensive farming, commercial forestry and in the case of vegetative matter, does not include the processing of farm produce beyond cutting, cleaning, grading, chilling, freezing, packaging and storage of produce grown on the farming unit.

**NEW DAIRY FARMING** means a land based activity, having as its primary purpose the farming of dairy cattle for milk production, and related activities on land converted for that purpose after the date of the public notification of the Resource Management Plan Change 27, but does not include any increase in the area or intensity of an existing dairy farming operation that is undertaken without any additional dairy shed.

# Schedule Three: Freshwater Management Time Tables

**Staged Programme for Giving Effect to Policy A1 – National Policy Statement for Freshwater Management**

| Stage | Description | Date |
|---|---|---|
| **Stage 1: Interim water quality protection** | **Plan changes notified to require resource consent for the conversion of land to dairy farming.** | **21 December 2012** |
| | **Ongoing and progressive implementation of Council's Stormwater Strategy** | **N/A** |
| | **Implementation of the Farm Planning Service to assist existing dairy farmers to improve their environmental performance with respect to the effects of their activity on water quality. $27,000 allocated via the Long Term Plan over three years (2012/13, 2013/14, 2014/15).** | **Commenced 1 July 2012** |
| | **Ongoing state of the environment monitoring of physical, chemical, biological and macro-invertebrate to establish baseline conditions and detect trends in water quality.** | **N/A** |
| **Stage 2:** | **Technical investigations to collect, analyse and report data that will support the establishment of cumulative water quality limits on a catchment by catchment basis. The data will include land use information, data on the leaching and runoff of contaminants, the assimilative capacity of water bodies at different flows taking into account the values that the water bodies support. It is likely that modelling will also be required to establish cumulative limits.** | **1 July 2013 to 30 June 2023** |
| **Stage 3:** | **Preparation and notification of plan changes to introduce cumulative limits. If necessary, the plan changes will include methods and timeframes for managing water quality improvements if freshwater objectives not being met.** | **By 30 June 2024, but potentially progressively over this time period, on a catchment by catchment basis** |

**SCHEDULE FOUR: RELEVANT PLAN PROVISIONS MRPS, WARMP AND MSRMP**

Plan Changes 27 and 62 Relevant Plan Provisions - MRPS, WARMP and MSRMP

The following plan provisions which relate primarily to water quality and natural character are considered particularly relevant to Plan Changes 27 and 62.

**1. Marlborough Regional Policy Statement**

5.1.2 Objective-Freshwater quality

5.1.3 Policy-Runoff from land

5.1.5 Policies Point Source discharges

5.1.11 Policy-Habitat Disruption

5.1.13 Objective Natural Character and Amenity Values

5.1.14 Policies-Natural Character and Amenity Values

5.2.2 Objective Groundwater Quality

5.2.3 Policy Contaminants

5.2.6 Policy –Abstraction

5.3.2 Objective Coastal Water Quality

5.3.3 Policy-Runoff from land

5.3.7 Policy-"Point Source" Discharges

6.1.3 Policy - Avoid remedy or mitigate indigenous and ecosystem disruption from physical disturbance

7.1.9 Objective-Provision for Activities

7.1.10 Policy – Type, scale, and location of activities promoting the creation and maintenance of buffer zones (such as stream-banks or greenbelts)

7.1.12 Policy-Diversification

7.2.2 Objective-Sustainable Management of Water

7.2.8 Policy –Coastal Environment

8.1.2 Objective Visual character

8.1.6 Policy-Natural Character of the Coastal Environment

**2. Wairau Awatere Resource Management Plan**

Chapter 2 Tangata Whenua

Objective 1 Recognition and provision for the relationship of Maori to their culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga.

Policies 1.1-1.2

Chapter 4 Flora and Fauna

Objective 1 The protection and enhancement of freshwater and riparian ecosystems.

Policies 1.2-1.5, 1.12 and 1.14

Chapter 6 Freshwater

Objective 1 To provide for the taking, use, damming, and diversion of water in a manner which safeguards life-supporting capacity of resource.

Objective 2 To maintain, and where appropriate enhance, existing freshwater quality.

Policies 2.3, 2.3 and 2.5,

Objective 3 To protect and enhance the Mauri of fresh water resources which have very high or high value to iwi.

Policies 3.1-3.2

Chapter 9 Coastal Marine

Objective 1 Management of the effects of activities so that water quality in the coastal marine area, is maintained or enhanced to a quality, which enables the gathering or cultivating of shellfish for human consumption.

Policies 1.1, 1.2, 1.6, 1.7 1.8 and 1.9

Objective 1 To protect habitats, ecosystems and areas of significant conservation value within the coastal environment from the adverse effects of subdivision, use, development and discharges.

Policies 1.1, 1.2, and 1.4

Chapter 10 Natural Character

Objective 1 The preservation of the natural character of the coastal environment, wetlands, lakes and rivers and their margins and the protection of them from inappropriate subdivision, use and development.

Policies 1.1, 1.3, 1.4, 1.7 and 1.8.

Chapter 12 Rural Environments

Objective 3 To maintain or enhance the life supporting capacity of soils, and the quality of surface and groundwater (Wairau Plain)

Policies 3.1 - 3.3 and 3.5

Objective 3 Manage the land resource and associated waste discharges in such a way as to protect the life supporting capacity of the soils, and surface and groundwater quality and quantity (consistent with the human consumption of groundwater and fish from surface waters), water contact recreation, and the maintenance of the natural and scenic values of the water resources and their associated ecosystems (General).

Policies 3.1-3.5

Chapter 15 Discharge of Contaminants to land

Objective 1 To avoid, remedy or mitigate adverse environmental effects arising from the discharge of solid and liquid contaminants onto or into land.

Policies 1.1-1.3

Appendix A-Values Associated with Fresh Water Resources

Rules

(a) General Rules

Rule 27.1.9-27.1.12 Discharge of water or contaminants to water

-Discharges (generally point discharges) from specified activities to specified classes of water are permitted activities subject to conditions

Rule 27.1.13 Discharges to Groundwater

(b) Rural 3 and 4 Zones

Farming is a permitted activity subject to a number of standards including

Rule 30.1.8 Discharges

-Discharges from sewage, effluent, fertilizer, animal dip, agrichemicals, liquid wastes, solid waste and offal pits onto land generally permitted subject to conditions.

Appendix J Water Quality Classifications

Appendix Q Schedule of Water bodies for Riparian Management Purpose

**3. Marlborough Sounds Resource Management Plan**

Chapter 2 Natural character

Objective 1

The preservation of the natural character of the coastal environment, wetlands, lakes and rivers and their margins and the protection of them from inappropriate subdivision, use and development.

Policies 1.1-1.8

Chapter 3 Freshwater

Objective 1

Maintenance and enhancement of aquatic ecosystems and the management of the effects of activities on water quality in wetlands, lakes and rivers that enables:

a) Contact water recreation;

b) Food gathering; or

c) Cultural integrity.

Policies 1.2-1.7

Objective 1 Groundwater

Management of the effects of activities so that: the quality of groundwater is maintained, or where appropriate enhanced; and the quantity of groundwater is maintained at a level which will protect and sustain ecosystems.

Policies 1.1-1.3

Chapter 4 Indigenous Flora and Fauna

Objective 1 The protection of significant indigenous flora and fauna (and trout and salmon) and their habitats from the adverse effects of use and development.

Policies 1.1-1.2 and 1.6

Chapter 6 Tangata Whenua

Objective 1 Recognition and provision for the relationship of Marlborough's Maori to their culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga.

Policies 1.1-1.5

Chapter 9 Coastal Marine

Objective 1

Management of the effects of activities so that water quality in the coastal marine area is at a level which enables the gathering or cultivating of shellfish for human consumption (Class SG).

Policies 1.1-1.4 and 1.6 and 1.10

Chapter 11 Rural Environment

Objective 1Sustainable management of rural resources and integrated resource use to protect the character and amenity of rural areas and avoid, remedy or mitigate adverse effects of activities

Policy 1.1

Chapter 14 Discharge of Wastes to Land

Objectives and Policies

Objective 1

The treatment and disposal of human, rural and industrial liquid waste, including sewage sludge, in such a way that water and soil quality, land and water ecosystems and amenity values are not adversely affected.

Policies 1.1-1.2

Rules

(a)Rural Zones 1 and 2-Chapter 36

Farming is a permitted activity subject to a number of standards including

Rule 36.1.7 Discharges

-Discharges (generally point discharges) from sewage, dairy effluent, fertilizer, animal dips, agrichemicals,, solid waste and offal pits onto land generally permitted subject to conditions.

Discharges (generally point discharges) from specified activities

Rule 36.2.3 Discharges

-Discharges (generally point discharges) from intensive farms, piggeries, animal dips, winery processing onto land are controlled activities.

Appendix H Water Quality Classifications

Appendix I Schedule of Water bodies for Riparian Management Purpose

**SCHEDULE FIVE: GENERAL ASSESSMENT CRITERIA FOR DISCRETIONARY AND NON-COMPLYING ACTIVITIES**

**WARMP: 30.4.2 GENERAL ASSESSMENT CRITERIA** (pursuant to Sections 67(1)(k) and 75(1)(k) of the RMA 1991)
Any application for a Discretionary or Non-Complying Activity shall generally comply with the conditions for Permitted Activities. In addition they shall be considered in terms of the following assessment criteria. For some activities specific standards and criteria also apply.

**30.4.2.1 Matters Subject to Assessment**

**30.4.2.1.1** Any relevant objectives, policies and rules of this Plan.

**30.4.2.1.2** Any relevant policies of the New Zealand Coastal Policy Statement.

**30.4.2.1.3** Any relevant objectives, policies and methods of the Marlborough Regional Policy Statement.

**30.4.2.1.4** The likely effects of the proposal on the locality and wider community and in particular:

a) Whether the proposal will enhance or maintain the amenity values of the surrounding area;
b) Whether the proposal will inhibit or disadvantage existing activities;
c) Whether the proposal creates any demand for services or infrastructure at a cost to the wider community;
d) Whether the proposal contributes to the character of the surrounding area and helps maintain the cultural values of the community;
e) Whether the proposal has or may have any adverse effects on roading, traffic movement or road safety.

**30.4.2.1.5** The likely effects of the proposal on areas of landscape importance:

a) Any adverse effects of earthworks or tree planting.
b) The extent to which the activity is likely to have adverse effects on the character of indigenous ecosystems which contribute to natural landscape patterns.
c) The extent to which tree or shrub species to be planted will ameliorate any landscape effects.

**30.4.2.1.6** The likely effects of the proposal on significant nature conservation values, indigenous vegetation and habitats of indigenous fauna:

a) The degree of significance of a species or community of indigenous plants and animals at the specific locality of the proposed activity. In particular:

- The status of the particular species, whether it is rare, vulnerable or endangered in the District, or nationally.
- The general rate of decline of a particular species in the District, or nationally.
- The distinctive or uniqueness of a particular community, or group of communities of plants or animals, to the District, or nationally.
- The range or diversity of species in a particular plant or animal community.
- The importance of an area providing habitat to animals/birds.

b) The extent to which the activity threatens the indigenous plants or animals/birds identified at the site.
c) The extent to which the tree or shrub species have the potential for weed/wilding spread.
d) The extent to which the environment in and adjoining the site is sensitive to modification.
e) The degree to which the activity will adversely affect natural features geomorphological or geological sites.
f) The extent to which the vegetation is an integral part of, or enhances the landscape values and natural character of the locality.
g) The degree to which river, lake or wetland habitat is adversely affected through run-off and sedimentation caused by earthworks.
h) The degree to which fresh water habitat may be compromised by a decline in water yields due to tree plantings.
i) The extent of any alteration of a wetland and the subsequent loss of habitat.
j) The degree to which any increased nutrient levels of a lake or wetland may occur.
k) Possible alternative locations or methods for undertaking the activity.

**30.4.2.1.7** The likely effects of the proposal on the beds of and within rivers, lakes and wetlands and drainage channels:

a) The extent to which the activity may affect birdlife and the degree of significance a particular bird species has to the District.
b) The degree to which trout or salmon are adversely affected by disturbance to a riverbed, including the clearance of vegetation.
c) The degree to which public access would be restricted.
d) The degree to which access for channel maintenance would be restricted.
e) The extent to which the activity will result in a loss of natural character and any recreational values associated with the waterbody.
f) The degree to which any possible alternative locations or methods for undertaking the activity could occur.
g) The degree to which water quality is adversely affected.

**30.4.2.1.8** The likely effects of the proposal on riparian areas:

a) The degree to which the activity will restrict public access and enjoyment of the waterbody margin.
b) The degree to which the activity threatens indigenous plants or animals or their habitat identified in the waterbody beds and margins.
c) The degree of significance of indigenous plant or animal communities.
d) The extent of any alteration to a wetland and the subsequent loss of habitat.
e) The degree to which nutrient levels of a lake or wetland may be increased.
f) The extent to which fresh-water habitat, amenity, quality, or recreational values may be adversely affected through increased nutrient or sediment runoff.
g) The extent to which the natural character of the waterbody margin will be retained.
h) The extent to which the activity may impact on recreational values associated with the waterbody, including the amenity of that part of the river, stream, lake or wetland.

**30.4.2.1.9** In respect of natural hazards:

a) The likelihood of the proposed activity, including the addition to any residential unit, or other building, being threatened by flooding or ponding.

b) The quantity of assets that will be vulnerable to flooding, as a result of the establishment of the proposed activity.
c) The ability of buildings/structures to be relocated, and estimated cost.
d) The extent to which the construction of the building/structure will result in the increased vulnerability of other sites to flooding.
e) The expected depth of floodwater in an event of up to 1 in 100 year return period frequency, and whether this depth can be adequately coped with by specifying minimum floor levels.
f) The expected velocity of the floodwater and its potential to scour or directly remove objects.
g) Whether the proposed activity detrimentally affects the pattern of drainage water movement or water storage.
h) Whether proposed activity will result in accelerated erosion of the land or sediment or woody debris deposition in waterbodies.

**30.4.2.1.10** In terms of the discharge of contaminants and the use of hazardous substances that any proposal:

a) Does not create unacceptable risk to the community and includes any measures to prevent or mitigate against any impacts from hazards.
b) Does not involve the use of hazardous substances or hazardous installations such that there shall be any significant risk to the environment, locality or wider community.
c) Does not generate noise, dust fumes, smoke or odours which are likely to be noxious or dangerous to any occupier of an adjoining property.

**30.4.2.1.11** Whether the proposed activity is likely to have any effects on the physical and natural environment or community such that some form of financial contribution is necessary and should be imposed as a condition of consent. A financial contribution may be required in the following circumstances (except for a single dwellinghouse on one lot) or as otherwise required in the Plan where:

a) Any activity will lead to increased pressure on or demand for the use of any public reserve, facility(ies) or infrastructure including roads, walkways, refuse disposal systems.
b) Any activity is likely to impact negatively upon the development capability of any adjoining land.
c) Any activity leads or will lead to a situation where off-site effects can be mitigated, but unless required by condition of consent be at the cost of the Council.
d) Where the proposal will create a need for public works, services, reserves, or capital expenditure.

**30.4.2.1.12** In respect of Woodbourne Airport and the Omaka Aerodrome:

a) The effect any activity may have on the operational safety of aircraft.
b) The effect any activity may have on the 24 hour, 7 day operation capability of the airport.

**30.4.2.1.13** In respect of commercial activities:

a) Any potential adverse effects on the vibrancy and vitality of the Central Business Zone.
b) The size and characteristics of commercial activity.
c) Effects on the road network.
d) Effects on local and wider amenity values.

**MSRMP: 36.4.2 GENERAL MATTERS FOR ASSESSMENT**
In addition to any specific standards set out in Rule 36.4.3 the General Assessment Criteria set out in Rule 36.4.2 shall be applied to Discretionary and Non Complying Activities.

**36.4.2.1** Any relevant objectives, policies and rules of the Plan.

**36.4.2.2** Any relevant objectives, policies and rules of the New Zealand Coastal Policy Statement.

**36.4.2.3** Any relevant objectives, policies and rules of any policy, statement or plan having jurisdiction over the rural area prepared under the Resource Management Act.

**36.4.2.4** The requirements of section 104 of the Act.

**36.4.2.5** The assessment criteria for Controlled Activities in the rural zones where relevant.

**36.4.2.6** The likely effects of the proposal on:

**36.4.2.6.1** The locality and wider community and in particular:

a) Whether the proposal will enhance or maintain the amenity values of the surrounding area;
b) The efficient use and development of resources having regard to the versatility of the area;
c) Whether the proposal creates unreasonable demand for services or infrastructure at a cost to the wider community;
d) Whether the proposal contributes to the character of the surrounding area and helps maintain the cultural values of the community; and
e) Whether the proposal has any adverse effects on roading, traffic movement or road safety.

**36.4.2.6.2** The amenities of the area and in particular whether the proposal would:

a) Visually intrude on any significant ridgeline or significant landscape; and
b) Detract from any view or vista which contribute to the aesthetic coherence of a locality.

**36.4.2.6.3** Whether the proposal would:

• ensure the protection of significant indigenous vegetation and habitats of indigenous fauna; and
• avoid, remedy or mitigate adverse effects on terrestrial or marine ecosystems.
• Diminish the natural character of the locality, having regard to the natural character areas identified in Appendix Two, Volume One. Chapter 36 - Rural Zones One and Two 36 - 31

**36.4.2.6.4** Natural and physical resources so that any proposal:

a) Complements any building or other feature constructed by people in the locality which contributes to the character of the locality;
b) Maintains the future use potential of any renewable resource;
c) Should not have an adverse effect on the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga;
d) Does not have an adverse effect on any known historic place or archaeological site;
e) Provides for the efficient use and development of resources;

f) Avoids, remedies or mitigates adverse effects on water quality and quantity; and
g) Does not increase any risk from natural hazards.

**36.4.2.6.5** In terms of the discharge of contaminants and the use of hazardous substances that any proposal:

a) Does not create risk to the community and includes any measures to prevent or mitigate against any impacts from hazards;
b) Does not involve the use of hazardous substances or hazardous installations such that there shall be any risk to the environment, locality or wider community; and
c) Does not generate noise, dust, fumes, smoke or odours, which are likely to be noxious or dangerous to any occupier of an adjoining property.

**36.4.2.6.6** Whether the proposed land use activity or subdivision is likely to have any effects on the physical and natural environment or community such that some form of financial contribution is necessary and should be imposed as a condition of consent. A financial contribution may be required in the following circumstances (except for a single dwellinghouse on one lot) or as otherwise required in the Plan where:

a) Any activity will lead to increased pressure on or demand for the use of any public reserve, facilities or infrastructure including roads, walkways, refuse disposal systems;
b) Any activity is likely to impact negatively upon the development capability of any adjoining land in terms of sewage servicing capacity;
c) Any activity lends or will lend to a situation where off-site effects can be mitigated, but unless required by condition of consent be at the cost of the Council; and
d) Where the proposal will create a need for public works, services, reserves, or capital expenditure.

**SCHEDULE SIX: PART 2 MATTERS**

**5 Purpose**

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

**6 Matters of national importance**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

(f) the protection of historic heritage from inappropriate subdivision, use, and development:

(g) the protection of protected customary rights.

**7 Other matters**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(a) kaitiakitanga:

[(aa) the ethic of stewardship:]

(b) the efficient use and development of natural and physical resources:

[(ba) the efficiency of the end use of energy:]

(c) the maintenance and enhancement of amenity values:

(d) intrinsic values of ecosystems:

(e) *[Repealed]*

(f) maintenance and enhancement of the quality of the environment:

(g) any finite characteristics of natural and physical resources:

(h) the protection of the habitat of trout and salmon:
[(i) the effects of climate change:]
[(j) the benefits to be derived from the use and development of renewable energy.]

**8 Treaty of Waitangi**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).