

IN THE MATTER OF

The Resource Management Act 1991

AND

IN THE MATTER OF

Proposed Plan Change 72 to the
Wairau/Awatere Resource
Management Plan

SECTION 42A REPORT

INTRODUCTION

1. My name is Paul Whyte and I hold the qualification of Bachelor of Town Planning from Auckland University. I am a full member of the New Zealand Planning Institute. I have practiced in the field of resource management and planning since 1984 primarily working for both local government and planning consultants in Dunedin and Christchurch. Currently I am Senior Planner (Associate) in the Christchurch office of Beca Ltd.
2. This report has been commissioned by Marlborough District Council (MDC) in accordance with Section 42A of the Resource Management Act 1991 (RMA) and relates to Proposed Plan Change 72 to the Wairau/Awatere Resource Management Plan (WARMP). The plan change was initiated by MDC and relates to development at Marlborough Ridge. The plan change was publicly notified on 3 July 2014.
3. This report covers the following matters
 - The proposed plan change
 - Submissions
 - Statutory framework
 - Assessment of issues
 - Statutory assessment
 - Conclusion
 - Recommendation

THE PROPOSED PLAN CHANGE

4. The Plan Change 72 document (Section 32 report) summarises the intent of the plan change on page 3 where it states:

“The purpose of the plan change is to address issues that have arisen in respect of the Marlborough Ridge Zone. The zone applies to a predominantly residential development located approximately 5km south west of Blenheim off New Renwick Road.

It is apparent that the development that has occurred on the site does not in many respects reflect the original intention of the zone. In addition a number of the zone provisions are difficult to interpret and administer. Accordingly it is proposed to delete the existing Marlborough Ridge Zone in its entirety and replace it with existing WARMP Residential Township, Rural 4, Conservation and Local Recreation zones including some minor amendments to the rules.”
5. The Plan Change document on page 6 identifies a number of specific issues in respect of the operation of the zone including:
 - There has not been any development of hotel or related facilities such as conference centres, cafes, bars, recreation centres etc. which was anticipated when the zone was introduced in 1997.

- Rural residential development with a one hectare average has not occurred as envisaged by Objective 1.5.
 - Design themes and landscaping plans have not been always been implemented.
 - Comprehensive development in the manner envisaged has not occurred.
 - While provision is made for medium to low density development this has not necessarily resulted in a variety of opportunities or been coordinated.
6. The Plan Change document on page 6 notes that the zone is reaching its maximum development potential and it is highly unlikely the activities which are provided for in the zone provisions but not yet built will be realised because of a lack of market demand and available space.
7. The Plan Change document also indicates on page 7 that it is apparent that difficulties arise in respect of the existing provisions of the Zone as follows:
- The Development Plan is difficult to interpret in terms of boundaries and areas of activity.
 - The southern part of the Development Plan does not have a notation.
 - Uncertainty of the location of different activities having regard to the zone provisions and Development Plan.
 - There are no rural residential areas identified on the Development Plan despite reference to them in the text
 - Areas specified in the Development Plan for particular purposes have been developed for alternative purposes. In this respect the “Hotel Complex” and “Recreation (Village Green) have largely been developed for residential purposes and the rural area at the front of the site for large lot residential development.
 - There is no “overview landscaping plan” included in the Zone provisions notwithstanding a reference to one in the Zone provisions.
 - Incorrect reference to Zone provisions and a lack of integration of the Zone provisions.
 - There are no rules relating to regional matters and the status of these activities is unclear.
8. The plan change document goes onto say that given the failure of the Zone to achieve its desired outcomes and the somewhat confusing provisions it is proposed to amend the WARMF to enable better administration and to retain the integrity of the WARMF. Accordingly it is proposed to delete what has become an inappropriate zoning and replace it with zone provisions which better reflect development on the site.
9. The essential components of Plan Change 72 are as follows:
- Delete the existing Appendix K Marlborough Ridge Zone in its entirety.
 - Amend the relevant planning maps by deleting the Marlborough Ridge Zone and replace it with a Township Residential Zone, a Rural 4 Zone, a Conservation Zone and a Local Recreation Zone. These various zones generally reflect the existing development on the site with the Township Residential Zone applying to the existing built up and subdivided residential

development; the Rural 4 Zone applying to those parts of the Marlborough Ridge Zone which are used for rural activities such as viticulture and grazing; the Conservation Zone applying to a lake and wetland area on the western boundary established as part of the original development; and the Local Recreation Zone applying to a small reserve (Lot 44 comprising .3485ha) created as part of a recent subdivision.

- Apply the existing Township Zone and Subdivision rules to Marlborough Ridge subject to a number of amendments which have the effect of:

- Making subdivision a non-complying activity.

The Plan Change document indicates this is because further subdivision detracts from the existing amenities established by the density of development and because of water supply and sewage constraints of the existing mains that serve the site.

- Allowing only one dwelling per certificate of title.

The Plan Change document indicates this is in order to retain existing amenities.

- Making family flats a discretionary activity.

The Plan Change document indicates this is in order to retain the one dwelling per Certificate of Title in the first instance.

- THE EXISTING ENVIRONMENT

10. As the name implies, Marlborough Ridge is an elevated site located on the foothills of the Wither Hills located approximately 5km south west of Blenheim. Since the inception of the zone the following development has been undertaken:

- Subdivision of approximately 150 lots for residential and rural residential purposes. Approximately 100 of these lots range in area from 800m² to 2,200m² and the remainder from 3,000m² to 3,500m². The lots generally have single unit dwellings constructed on them. The site has reached its subdivision potential with the site subdivided or resource consents issued for subdivision. It is estimated there are approximately 40-50 vacant consented sites available for building.
- The establishment of the conservation area including the lake and wetland on the western boundary.
- The establishment of viticulture at the front of the site.
- The balance of the site has continued to be grazed by stock and contains an existing dwelling.

SUBMISSIONS

11. The Plan Change was notified on 3 July 2014 with submissions closing on 14 August 2014. A summary of submissions was notified on 4 September 2014 and further submissions closed on 18 September 2014.

12. Five submissions were received to the plan change as follows:

- R and D Lofthouse, JA O'Brien, P Grigg, and CA Grigg support the Plan Change provided no further subdivision of existing residential sections is allowed; the one dwelling per title provision is retained; and "homestays" do not become permitted activities.
- The New Zealand Defence Force (NZDF) submit that the Woodbourne Airbase draws its water supply from an on site bore and wishes to protect this water supply from the effects of urban development. Accordingly the NZDF supports the proposed method of implementation (Chapter 11.2.3), the proposed non-complying status for subdivision in the Township Residential Zone, and the activity status for single dwelling houses and a family flat. The NZDF request that Rule 33.1.7.2.6 be amended to clarify that on site sewage disposal is not allowed.

13. No further submissions were received to the original submissions.

STATUTORY FRAMEWORK

14. Section 72 of the RMA states the purpose of a plan change is to assist a local authority to carry out its functions in order to achieve the purpose of the RMA. Section 74(1) states Council shall change a district plan in accordance with its functions under Section 31 of the Act, Part 2 of the Act, Section 32 of the Act and any regulations (although it is acknowledged MDC is a unitary authority and the WARMP is a combined plan and therefore regional functions may also be relevant).
15. In changing a plan, regard must be had to any strategies prepared under other Acts (section 74(2)(b) of the Act) and effect must be given to national policy statements and a regional policy statement (Section 75(3) of the Act).
16. Clauses 1-10 of the First Schedule to the RMA set out the process for the processing of Council plan changes. Under Clause 10 a local authority must give a decision on the provisions and matters raised in submissions and whether to accept or reject submissions and further submissions.

ASSESSMENT OF ISSUES

17. The submissions raise the following issues which are discussed below.

Further Subdivision and one dwelling per Certificate of Title.

18. The submitters support the Plan Change provided no further subdivision of existing residential sections is allowed and the one dwelling per title provision is retained. The Plan Change requires that any subdivision at Marlborough Ridge and the erection of more than one dwelling per title is a non-complying activity (Rule 28.4.2 and Rule 33.1.1 respectively). Accordingly the submissions are satisfied and in my view the proposed relevant provisions are appropriate. This is because the provisions retain the existing amenities of the area established by the density of development and because of water supply and sewage constraints of the existing mains that serve the site.
19. Retention of these provisions and the other related ones will ensure that the Marlborough Ridge development will not adversely affect the water supply bore at Woodbourne Airbase. The NZDF have sought clarification on proposed Rule 33.1.7.2 which states "Rule 33.1.7.2 does not apply to Marlborough Ridge." The

NZDF state the rule could be interpreted as meaning on site sewage disposal could be allowed at Marlborough Ridge without conditions.

20. I agree that the rule as drafted may leave some doubt as to its interpretation. To remove this doubt I consider the rule should be amended by the following;

Rule 33.1.7.2 **On site sewage disposal at Marlborough Ridge (Township Residential Zone) is not a permitted activity.** ~~does not apply to Marlborough Ridge~~

This means that any application for on site sewage disposal is a non –complying activity in terms of Rule 33.5.1.

Homestays

21. A number of submitters oppose ‘homestays’ as permitted activities and state that such activities should require resource consent as required by the current Marlborough Ridge Zone. In this respect, the proposed Plan Change allows homestays as permitted activities provided it is limited to not more than 5 visitors (Rule 33.1.1-second bullet point) while the Marlborough Ridge Zone essentially requires these activities to obtain resource consent as a non-complying activity.
22. The definition of “Homestay” in the WARMP is the “use of an existing residential unit for visitor accommodation for commercial gain.” Homestays are permitted activities in the Urban Residential 1 and 2 zones as well as the existing Township Residential Zone in the WARMP.
23. The submissions state that activities such as “homestays ...could have a negative impact on the limited availability of these resources at Marlborough Ridge”. The submitters should clarify this statement at the hearing as its meaning is not entirely clear. There may be concern in respect of the effect of homestays on existing amenities in terms of noise, vehicle movements etc.
24. I note homestays are permitted in other urban areas of the district which indicates a community acceptance of this type of activity. There are also controls in place in respect of bulk and location, noise and parking for homestays. In addition, “home occupations” which are similar to homestays in that they are a non residential activity in an existing residential unit, are permitted in the Marlborough Ridge Zone.
25. At this stage it is considered that that the provision relating to homestays should remain unchanged but the Commissioners may reconsider this matter having heard from the submitters on their particular concerns at the hearing.

STATUTORY ASSESSMENT

26. Having regard to the matters raised in submissions and the provisions of the plan change I am of the view that the plan change is able to meet the relevant statutory tests as set out below.

Section 32

27. In terms of Section 32 of the RMA I concur with the evaluation undertaken that the proposed Plan Change to rezone the site is considered the most appropriate in achieving the purpose of the RMA. This is because the existing provisions are redundant due to the type of development that has occurred since the inception of the Marlborough Ridge Zone and difficulties in interpretation of the provisions.

28. I agree that the proposed plan change provisions are consistent with relevant existing objectives and policies relating to Urban Environments, Rural Environments and Subdivision and Development and Open Space/Recreation and as such can be assumed to meet the purpose of the RMA.
29. It is efficient and effective to utilise the existing provisions of the WARMP, subject to the proposed amendments, which will protect the existing amenities of Marlborough Ridge and not compromise reticulated water and sewer capacity. At this stage I do not consider it necessary to exclude “homestays” to protect amenities.
30. I also concur that the plan change is generally neutral in terms of providing or reducing economic growth or employment given the existing built up nature of Marlborough Ridge. This conclusion is applicable to any management tool applied to the plan change area.
31. In terms of the proposed amendment to Rule 33.1.7.2 suggested in my report, I do not consider this alters the original Section 32 evaluation in terms of Section 32AA of the RMA, as it provides clarification in respect of protecting the natural resources of the district.

Section 72

32. Section 72 of the RMA states the purpose of a plan change is to assist authorities to carry out their functions in order to achieve the purpose of the Act. The functions of Council include “the integrated management of the effects, use and development of land and associated natural and physical resources of the district” (Section 31(1) (a)) and clearly this plan change will enable Council to undertake their functions.
33. Part 2 (Sections 5-8) sets out the purpose of the Act. In my view, the existing Marlborough Ridge Zone does not achieve sustainable management in terms of Section 5 given the resources of the zone have not been managed to enable social and economic well being in the manner envisaged by the zone provisions.
34. In terms of Section 6 of the RMA, the specific zoning of the wetland and lake for Conservation will better meet Section 6(a) in terms of the preservation of these waterbodies by the application of more relevant provisions. No other matters of national importance appear to be of particular relevance given the nature of the site.
35. I note other matters in Section 7 of the RMA have been had regard to. I agree that the plan change should enable a more efficient use and development of resources on the site (Section 7(b) while existing amenity values, ecosystems and the quality of the environment will at least be maintained (Sections 7(c), (d), and (f)).
36. In terms of Section 8 Iwi have not opposed the plan change.

Section 74

37. Section 74 (2) of the Act states regard is to be had to strategies prepared under other Acts. The most relevant strategy is Growing Marlborough adopted by Council in March 2013. The proposed rezoning is not in conflict with the growth strategy as the strategy did not envisage any further growth at Marlborough Ridge and the plan change effectively caps existing development.

Section 75

38. Section 75 (3) of the RMA states that a plan change shall give effect to any national policy statement and the regional policy statement. There are not any national policy statements that are considered particularly relevant.
39. The Marlborough Regional Policy Statement (RPS) was made operative in 1995. The RPS does not directly address the Marlborough Ridge site but I concur with the plan change document that the proposed plan change gives effect to the RPS by the following:
- It will enable the continuation of a particular lifestyle in Marlborough and the retention of amenities associated with that lifestyle (Objective 7.1.2).
 - Rural activities are assigned a rural zoning which will assist to retain productive capacity of soils (Objective 6.1.5).
 - The quality of life and amenity values will be protected by the proposed zoning and ensure adverse effects are avoided, remedied or mitigated. The residential activities are effectively “clustered” (Policy 7.1.10).
 - The site is serviced by reticulated services and controls are proposed to protect the investment in this infrastructure (Policy 7.1.21).

CONCLUSION

40. The existing Marlborough Ridge Zone is no longer appropriate given that the development that has evolved on the site no longer reflects the intent and detail of its provisions. It is also apparent that district plan administration of the zone creates difficulties.
41. I concur that in order to reflect development that has occurred and to enable easier administration of the area as well as retaining the integrity of the WARMP it is appropriate to rezone the site. Furthermore, utilisation of existing provisions of the WARMP, with amendments to reflect the characteristics of the site, is considered the most appropriate efficient and effective method to achieve the purpose of the RMA. The submissions received generally support the plan change except in respect of “homestays.”

RECOMMENDATION

I recommend that:

1. The submissions of R and D Lofthouse; JA O'Brien; P Grigg; and CA Grigg be accepted except in respect of “homestays”, and the submission of the New Zealand Defence Force is accepted.
2. Plan Change 72 be approved as publicly notified subject to the following amendment:

That proposed Rule 33.1.7.2.6 is amended by the following (shown as ~~striketrough~~ **bold underlining**).

Rule 33.1.7.2 **On site sewage disposal at Marlborough Ridge (Township Residential Zone) is not a permitted activity.** ~~does not apply to Marlborough Ridge.~~

24 October 2014

