APPENDIX 2

1.1 Marlborough Resource Management Context

1.1.1 RESOURCE MANAGEMENT PLAN STRATEGY

Local Government in New Zealand

Local government in New Zealand is organised through the Local Government Act 2002. It provides the general framework for local authorities. These are defined as either regional authorities or territorial authorities (at s21 (1)). There are a number of unitary authorities (see Schedule 2 LGA). The Marlborough District Council is a unitary authority. It has the functions of both a regional authority and a territorial authority.

The Council is obliged, amongst other matters, to prepare a Regional Policy Statement (RPS) pursuant to sections 59-62 of the Resource Management Act 1991 (RMA), and a District Plan pursuant to sections 72-77 of the RMA. Both of these documents are to be prepared in accordance with Schedule 1 of that Act. The Marlborough Growth & Development Strategy has identified a number of implications for both of these documents.

Broad requirement for RMA Plans

These Plans can be prepared as separate documents, such as is currently the case in Marlborough. However, pursuant to section 80(2) RMA they can be prepared as a single document:

> *"(2) A local authority may prepare, implement, and administer a document that meets the requirements of 2 or more of the following:*
> *(a) a regional policy statement:*
> *(b) a regional plan, including a regional coastal plan:*
> *(c) a district plan."*

Section 80(8) is also relevant:

> *"(8) A combined document prepared under this section must clearly identify—*
> *(a) the provisions of the document that are the regional policy statement, the regional plan, the regional coastal plan, or the district plan, as the case may be; and*
> *(b) the objectives, policies, and methods set out or described in the document that have the effect of being provisions of the regional policy statement; and*
> *(c) which local authority is responsible for observing, and enforcing the observance of, each provision of the document.*

It is recommended that the Council consider amalgamating the plans into a 'one plan' style of document to help streamline statutory Resource Management Plans in Marlborough. This would allow the Council to go through one notification and one hearings process. Notwithstanding this, it is recommended that the Council consider focusing the Regional Policy Statement towards setting out the resource management issues, vision, and rationale for the District. The District Plan could focus on the more detailed development-level objectives, policies, and methods.

Supplemental to this, it is recommended that the Council's statutory plans should look to emphasise only those matters actually required by the Resource Management Act. This means that in effect the District Plan should rely on, rather than repeat or re-phrase the rationales and explanations given in the Regional Policy Statement. Although there can be a temptation to 'explain' the big picture behind every plan and policy to communities, there seems to be an increasing push for documents to be succinct, streamlined and usable.

1.1.2 PURPOSE OF THE RESOURCE MANAGEMENT ACT 1991

The purpose of the RMA is described within Part II of the Act, sections 5-8. The main purpose of the Act is set out within section 5, but should be read in conjunction with the other sections in Part II. This part should be seen as the overarching agenda of all RMA plans prepared in Marlborough. Section 5 states:

> *"(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 wellbeing 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."*

1.1.3 REGIONAL POLICY STATEMENTS

Role of Regional Policy Statement

Section 59 of the RMA sets out the purpose of a Regional Policy Statement:

> *"The purpose of a regional policy statement is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region."*

Section 62 then sets out the matters to be included within a Regional Policy Statement:

> *"(1) A regional policy statement must state—*
> *(a) the significant resource management issues for the region; and*
> *(b) the resource management issues of significance to—*
> *(i) iwi authorities in the region; and*
> *(ii) the board of a foreshore and seabed reserve, to the extent that those issues relate to that reserve; and*
> *(c) the objectives sought to be achieved by the statement; and*

(d) the policies for those issues and objectives and an explanation of those policies; and
(e) the methods (excluding rules) used, or to be used, to implement the policies; and
(f) the principal reasons for adopting the objectives, policies, and methods of implementation set out in the statement; and
(g) the environmental results anticipated from implementation of those policies and methods; and
(h) the processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between regions; and
(i) the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land—
(i) to avoid or mitigate natural hazards or any group of hazards; and
(ii) to prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
(iii) to maintain indigenous biological diversity; and
(j) the procedures used to monitor the efficiency and effectiveness of the policies or methods contained in the statement; and
(k) any other information required for the purpose of the regional council's functions, powers, and duties under this Act.

(2) If no responsibilities are specified in the regional policy statement for functions described in subsection (1)(i)(i) or (ii), the regional council retains primary responsibility for the function in subsection (1)(i)(i) and the territorial authorities of the region retain primary responsibility for the function in subsection (1)(i)(ii).

(3) A regional policy statement must not be inconsistent with any water conservation order and must give effect to a national policy statement or New Zealand coastal policy statement."

Regional Policy Statement Cannot include Rules but can include any other Method

An RPS cannot include Rules. However, there are a significant number of other methods available which should be explored. Of particular note is the decision of the Court of Appeal in *Auckland Regional Council v North Shore City Council* [1995] 3 NZLR 18. In this decision the Court accepted the ARC's argument that a Metropolitan Urban Limit was not a Rule, despite that the method had an effect on land development which was similar to what a Rule may have had i.e. a prohibition on development in certain areas.

1.1.4 DISTRICT PLANS

Role of District Plan

Section 72 of the RMA 1991 sets out the purpose of a District Plan:

"The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act."

Section 75 then sets out the matters to be included within a District Plan:

"(1) A district plan must state—
(a) the objectives for the district; and
(b) the policies to implement the objectives; and
(c) the rules (if any) to implement the policies.

(2) A district plan may state—
(a) the significant resource management issues for the district; and
(b) the methods, other than rules, for implementing the policies for the district; and
(c) the principal reasons for adopting the policies and methods; and
(d) the environmental results expected from the policies and methods; and
(e) the procedures for monitoring the efficiency and effectiveness of the policies and methods; and
(f) the processes for dealing with issues that cross territorial authority boundaries; and
(g) the information to be included with an application for a resource consent; and
(h) any other information required for the purpose of the territorial authority's functions, powers, and duties under this Act.

(3) A district plan must give effect to—
(a) any national policy statement; and
(b) any New Zealand coastal policy statement; and
(c) any regional policy statement.

(4) A district plan must not be inconsistent with—
(a) a water conservation order; or
(b) a regional plan for any matter specified in section 30 (1).

(5) A district plan may incorporate material by reference under Part 3 of Schedule 1."

It is recommended that the Council largely ignore the optional inclusions provided for in s75(2), and focus on s75(1). This is on the assumption that the RPS can manage the function of explaining issues, rationales, and a broad strategy. However it is suggested that s75(2)(g) and s75(2)(h) do have a particular relevance.

District Plan can include Rules

Section 76 is also important. It critically authorises the inclusion of **rules** within a district plan:

"(1) A territorial authority may, for the purpose of—
(a) carrying out its functions under this Act; and
(b) achieving the objectives and policies of the plan,—
include rules in a district plan.
(2) Every such rule shall have the force and effect of a regulation in force under this Act but, to the extent

that any such rule is inconsistent with any such regulation, the regulation shall prevail.

(2A) Rules may be made under this section, for the protection of other property (as defined in section 7 of the Building Act 2004) from the effects of surface water, which require persons undertaking building work to achieve performance criteria additional to, or more restrictive than, those specified in the building code as defined in section 7 of the Building Act 2004.

(3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.

(3A) [Repealed]

(3B) [Repealed]

(4) A rule may—
- *(a) apply throughout a district or a part of a district:*
- *(b) make different provision for—*
  - *(i) different parts of the district; or*
  - *(ii) different classes of effects arising from an activity:*
- *(c) apply all the time or for stated periods or seasons:*
- *(d) be specific or general in its application:*
- *(e) require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan.*

(4A) However, a rule must not prohibit or restrict the felling, trimming, damaging, or removal of any tree or group of trees in an urban environment unless the tree or group of trees is—
- *(a) specifically identified in the plan; or*
- *(b) located within an area in the district that—*
  - *(i) Is a reserve (within the meaning of section*
  - *(ii) of the Reserves Act 1977); or*
  - *(ii) is subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.*

*(4B) In subsection (4A), **urban environment** means an allotment no greater than 4000 m²—*
- *(a) that is connected to a reticulated water supply system and a reticulated sewerage system; and*
- *(b) on which is a building used for industrial or commercial purposes, or a dwellinghouse.*

(5) A rule may exempt from its coverage an area or class of contaminated land if the rule—
- *(a) provides how the significant adverse effects on the environment that the hazardous substance has are to be remedied or mitigated; or*
- *(b) provides how the significant adverse effects on the environment that the hazardous substance is reasonably likely to have are to be avoided; or*
- *(c) treats the land as not contaminated for purposes stated in the rule."*

1.1.5 DISTRICT RULES

Section 77A authorises local authorities to include rules in their Plans which allocate an activity status to given activities:

"(1) A local authority may—
- *(a) categorise activities as belonging to one of the classes of activity described in subsection (2); and*
- *(b) make rules in its plan or proposed plan for each class of activity that apply—*
  - *(i) to each activity within the class; and*
  - *(ii) for the purposes of that plan or proposed plan; and*
- *(c) specify conditions in a plan or proposed plan, but only if the conditions relate to the matters described in section 108 or 220.*

(2) An activity may be—
- *(a) a permitted activity; or*
- *(b) a controlled activity; or*
- *(c) a restricted discretionary activity; or*
- *(d) a discretionary activity; or*
- *(e) a non-complying activity; or*
- *(f) a prohibited activity.*

(3) Subsection (1)(b) is subject to section 77B."

It is recommended that the Council consider the use of conditions on Permitted Activities. These usually manifest as requirements which must be met for an activity to be considered as a Permitted Activity (such as compliance with various development controls). This can be a particularly effective way of ensuring that the significant amount of development that escapes Council scrutiny will still be designed and undertaken in a way which will promote sustainable outcomes.

Section 77B in turn outlines specific matters which apply to Controlled and Restricted Discretionary Activities:

"(1) Subsection (2) applies if a local authority makes a rule in its plan or proposed plan classifying an activity as a controlled activity.

(2) The local authority must specify in the rule the matters over which it has reserved control in relation to the activity.

(3) Subsection (4) applies if a local authority makes a rule in its plan or proposed plan classifying an activity as a restricted discretionary activity.

(4) The local authority must specify in the rule the matters over which it has restricted its discretion in relation to the activity."

Section 87A identifies the types of activities relevant under the Resource Management Act 1991:

"(1) If an activity is described in this Act, regulations (including any national environmental standard),

*a plan, or a proposed plan as a **permitted activity**, a resource consent is not required for the activity if it complies with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.*

*(2) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a **controlled activity**, a resource consent is required for the activity and—*

(a) the consent authority must grant a resource consent (except if section 106 applies); and

(b) the consent authority's power to impose conditions on the resource consent is restricted to the matters over which control is reserved (whether in its plan or proposed plan, a national environmental standard, or otherwise); and

(c) the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

*(3) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a **restricted discretionary activity**, a resource consent is required for the activity and—*

(a) the consent authority's power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted (whether in its plan or proposed plan, a national environmental standard, or otherwise); and

(b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

*(4) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a **discretionary activity**, a resource consent is required for the activity and—*

(a) the consent authority may decline the consent or grant the consent with or without conditions; and

(b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

*(5) If an activity is described in this Act, regulations (including a national environmental standard), a plan, or a proposed plan as a **non-complying activity**, a resource consent is required for the activity and the consent authority may—*

(a) decline the consent; or

(b) grant the consent, with or without conditions, but only if the consent authority is satisfied that the requirements of section 104D are met and the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

*(6) If an activity is described in this Act, regulations (including a national environmental standard), a plan, or a proposed plan as a **prohibited activity**,—*

(a) no application for a resource consent may be made for the activity; and

(b) the consent authority must not grant a consent for it."

The power to use such rules is critical, given that in section 9 of the Act the presumption of development rights over the use of land is given to individuals. Regional and District Plans can therefore only take rights away through Plans, and administer this through having rules that trigger a requirement for land use consent. Section 9 states:

"(1) No person may use land in a manner that contravenes a national environmental standard unless the use—

(a) is expressly allowed by a resource consent; or

(b) is allowed by section 10; or

(c) is an activity allowed by section 10A; or

(d) is an activity allowed by section 20A.

(2) No person may use land in a manner that contravenes a regional rule unless the use—

(a) is expressly allowed by a resource consent; or

(b) is an activity allowed by section 20A.

(3) No person may use land in a manner that contravenes a district rule unless the use—

(a) is expressly allowed by a resource consent; or

(b) is allowed by section 10; or

(c) is an activity allowed by section 10A.

(4) No person may contravene section 176, 178, 193, or 194 unless the person obtains the prior written consent of the requiring authority or the heritage protection authority.

(5) This section applies to overflying by aircraft only to the extent to which noise emission controls for airports have been prescribed by a national environmental standard or set by a territorial authority.

(6) This section does not apply to use of the coastal marine area."

A related section is section 11. This section focuses on subdivision, which in the RMA is not considered to be a use of land for the purposes of s9. In contrast to s9, s11 reverses the presumption of rights, this time in favour of territorial authorities. Subdivision can only occur if rules within a District Plan allow it. In this sense, the Council must use rules over subdivision to grant rights to individuals. Section 11 states:

"(1) No person may subdivide land, within the meaning of section 218, unless the subdivision is—

(a) both, first, expressly allowed by a national environmental standard, a rule in a district plan as well as a rule in a proposed district plan for the same district (if there is one), or a resource consent and, second, shown on one of the following:

*(i) a survey plan, as defined in paragraph (a) (i) of the definition of **survey plan** in section 2(1), deposited under Part 10 by the Registrar-General of Land; or*

*(ii) a survey plan, as defined in paragraph (a) (ii) of the definition of **survey plan** in section 2(1), approved as described in section 228 by the Chief Surveyor; or*

*(iii) a survey plan, as defined in paragraph (b) of the definition of **survey plan** in section 2 (1), deposited under Part 10 by the Registrar-General of Land; or*

(b) effected by the acquisition, taking, transfer, or disposal of part of an allotment under the Public Works Act 1981 (except that, in the case of the disposition of land under the Public Works Act 1981, each existing separate parcel of land shall, unless otherwise provided by that Act, be disposed of without further division of that parcel of land); or

(c) effected by the establishment, change, or cancellation of a reserve under section 338 of the Te Ture Whenua Maori Act 1993; or

(ca) effected by a transfer under section 23 of the State-Owned Enterprises Act 1986 or a resumption under section 27D of that Act; or

(cb) effected by any vesting in or transfer or gift of any land to the Crown or any local authority or administering body (as defined in section 2 of the Reserves Act 1977) for the purposes (other than administrative purposes) of the Conservation Act 1987 or any other Act specified in Schedule 1 to that Act; or

(cc) effected by transfer or gift of any land to the New Zealand Historic Places Trust or the Queen Elizabeth the Second National Trust for the purposes of the Historic Places Act 1993 or the Queen Elizabeth the Second National Trust Act 1977; or

(d) effected by any transfer, exchange, or other disposition of land made by an order under subpart 3 of Part 6 of the Property Law Act 2007 (which relates to the granting of access to landlocked land).

(2) Subsection (1) does not apply in respect of Maori land within the meaning of the Te Ture Whenua Maori Act 1993 unless that Act otherwise provides."

Sections 9 and 11 also need to be used subject to section 85 RMA. That section describes the principle of reasonable use. Rules within plans must enable the reasonable use of land. Section 85 states:

"(1) An interest in land shall be deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for in this Act.

(2) Notwithstanding subsection (1), any person having an interest in land to which any provision or proposed provision of a plan or proposed plan applies, and who considers that the provision or proposed provision would render that interest in land incapable of reasonable use, may challenge that provision or proposed provision on those grounds—

(a) in a submission made under Part 1 of the First Schedule in respect of a proposed plan or change to a plan; or

(b) in an application to change a plan made under clause 21 of Schedule 1.

(3) Where, having regard to Part 3 (including the effect of section 9(3)) and the effect of subsection (1), the Environment Court determines that a provision or proposed provision of a plan or a proposed plan renders any land incapable of reasonable use, and places an unfair and unreasonable burden on any person having an interest in the land, the Court, on application by any such person to change a plan made under clause 21 of Schedule 1, may—

(a) in the case of a plan or proposed plan (other than a regional coastal plan), direct the local authority to modify, delete, or replace the provision; and

(b) in the case of a regional coastal plan, report its findings to the applicant, the regional council concerned, and the Minister of Conservation, which report may include a direction to the regional council to modify, delete, or replace the provision.

(4) Any direction given or report made under subsection (3) shall have effect under this Act as if it were made or given under clause 15 of Schedule 1.

*(5) In subsections (2) and (3), a **provision of a plan or proposed plan** does not include a designation or a heritage order or a requirement for a designation or heritage order.*

*(6) In subsections (2) and (3), the term **reasonable use**, in relation to any land, includes the use or potential use of the land for any activity whose actual or potential effects on any aspect of the environment or on any person other than the applicant would not be significant.*

(7) Nothing in subsection (3) limits the powers of the Environment Court under clause 15 of Schedule 1 on an appeal under clause 14."

The term 'reasonable use' does not stop the use of rules within Plans from soundly apportioning development rights across a District based on a sound policy rationale. See the decision of the Environment Court in *St Lukes Group Limited v North Shore City Council* [2001] 9 NZRMA 412 where the Council's 'centres-based' strategy was affirmed. However, rules should be based on an understanding of the range of activities which could occur

on land without resulting in significant actual or potential effects.

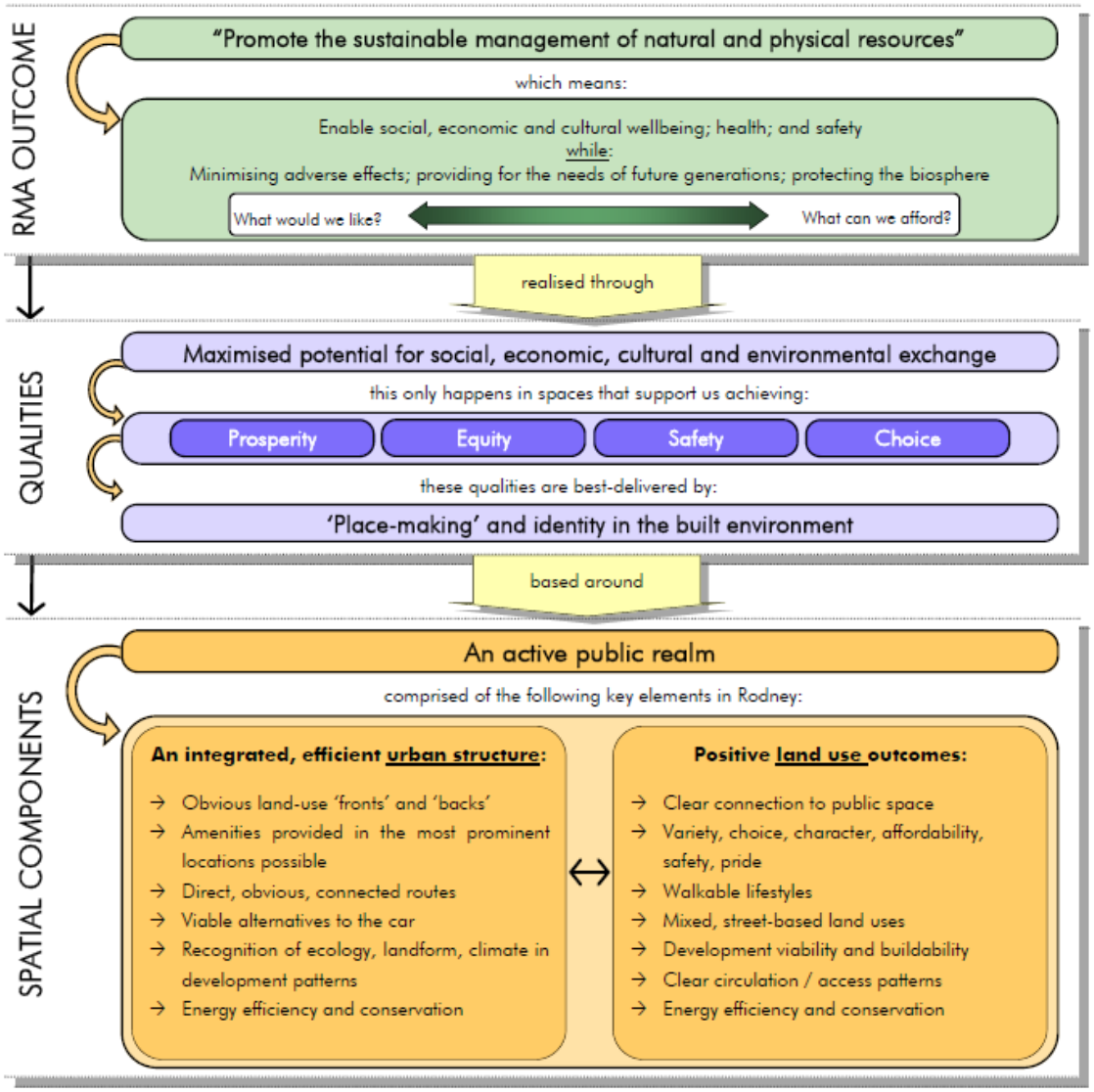
Urbanismplus Ltd prepared The Development Design Guide 2007, for Rodney District Council. This guideline was acknowledged by the recent Royal Commission on Auckland Governance, 2009, as a useful example of how social wellbeing objectives can be integrated into spatial and resource management planning. In that guideline the relationship between the Resource Management Act and physical or spatial networks was connected (**Figure 1**).

It is proposed that such an outcomes-focussed perspective could form something of a starting point for how the Marlborough Council could build a new strategic approach into its Resource Management Plans.

Another implication is that the Council could have a clearly logical rationale underpinning why the removal (use of land) or provision (subdivision) of rights is in each case a reasonable resource management action. In this respect, the provisions of section 32 become relevant. This section governs, in the preparation of Resource Management Plans, the consideration of alternative instruments. This is conventionally focused on a technical process due to the historical wording of the Act, which was interpreted to justify economic cost benefit analyses.

Current practice has broadened the analysis, in conjunction with statutory clarification of the section, to support a more general consideration of how to overall most appropriately achieve the purpose of the Act. The Council should consider the section 32 requirement as a key opportunity to set out and justify its rationale why, for the purposes of sections 85, 9, and 11, its preferred provisions are also reasonable. Section 32 states:

> *"(1) In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal policy statement is notified under section 48, or a*



ABOVE: Figure 1 - The connection between the RMA 1991 and the built environment. Source: Rodney District Council Development Design Guide, 2007.

regulation is made, an evaluation must be carried out by—

(a) the Minister, for a national policy statement or a national environmental standard; or

(b) the Minister of Conservation, for the New Zealand coastal policy statement; or

(c) the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Schedule 1); or

(d) the person who made the request, for plan changes that have been requested and the request accepted under clause 25(2)(b) of the Schedule 1.

(2) A further evaluation must also be made by—

(a) a local authority before making a decision under clause 10 or clause 29(4) of the Schedule 1; and

(b) the relevant Minister before issuing a national policy statement or New Zealand coastal policy statement.

(3) An evaluation must examine—

(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and

(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

(3A) This subsection applies to a rule that imposes a greater prohibition or restriction on an activity to which a national environmental standard applies than any prohibition or restriction in the standard. The evaluation of such a rule must examine whether the prohibition or restriction it imposes is justified in the circumstances of the region or district.

(4) For the purposes of the examinations referred to in subsections (3) and (3A), an evaluation must take into account—

(a) the benefits and costs of policies, rules, or other methods; and

(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

(5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.

(6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made."

1.2 Marlborough Resource Management Response

1.2.1 A GENERAL RULES STRATEGY FOR MARLBOROUGH

Use s11 RMA to Carefully Manage Urban Structure through Subdivision

The Council should consider the implications of these sections in the preparation of its Plans. It would seem that the RMA intends for Councils to be guarded and restrictive in allowing subdivision, which in many respects enframes the urban structure, patterns, and networks within which subsequent activity will occur. The use of land within subdivisions is then intended to be more permissive once the bigger picture has been carefully set. This is of course oversimplified, and there are many practical examples where careful scrutiny of land use proposals is warranted. More intensive housing developments also often reverse the development sequence by requiring a land use consent first and a subdivision in parallel or later.

However, most District Plans in the country are notable in that they generally apply sections 9 and 11 in reverse. Subdivision is almost always an activity which requires resource consent, but it is often provided for as either a Controlled or Restricted Discretionary Activity. In many districts Plan criteria and convention equates this to an almost formulaic engineering-based consideration of technical matters. Subsequent land uses are then often provided for needing Restricted Discretionary or full Discretionary consent. There are many examples where despite this theoretical power, a poor land use outcome, if actually the best available outcome on a badly designed site, cannot realistically be refused consent. This leads to many negative outcomes being approved largely due to the wrong types of scrutiny being applied at the wrong parts of the process.

For Marlborough, a general strategy is proposed whereby subdivision (other than minor boundary alignments and such forth) should become an outright Discretionary activity based on a full range of urban structure, planning, and design criteria, with traditional engineering and servicing issues appropriately treated as secondary concerns to be addressed. This could include, as appropriate, provision to consider the likelihood of future land uses being able to develop in a way that is consistent with the strategy recommended to achieve more sustainable outcomes. This would contribute to the establishment of more coherent built environments within the district. Indicatively, the issues which could be included in such criteria include:

→ Urban Structure

- → street connectivity and accessibility for pedestrians and cyclists on streets or well-fronted routes;
- → whether the activities needed to meet people's daily needs can be accessed other than by car;
- → whether the development will lead to more or less than average vehicle kilometres travelled;
- → whether the road layout has been designed to minimise inefficient movement by all modes;

- → whether cul-de-sacs and other disconnections, and rear lots are justified by an environmental constraint such as topography or existing development (i.e. infill);
- → whether subdivisions are laid out to 'add' to a settlement rather than be exclusive of it;
- → whether the long-term maintenance burden of all infrastructure in the subdivision is equitable to the existing community;
- → whether the layout proposed provides for clear privacy between people and sites;
- → whether subdivisions will reflect natural and heritage characteristics, landscape views and values, and energy efficiency;
- → whether reserves and other amenities are located at prominent, highly visible locations which are well fronted by other activities;
- → whether lot sizes and densities have been based around the landform and urban amenities rather than a generic size indiscriminately laid over the land; and
- → whether the configuration of lots, blocks, and activities have been designed to minimise nuisances between users and activities.

→ Site Design

- → Whether lots have been designed such that structures and activities can result which:
  - → deliver clear privacy for users;
  - → deliver good opportunities for solar access;
  - → active frontages to public spaces and streets;
  - → high standards of amenity for all users of the environment; and
  - → minimise both spatial ambiguity in ownership, and opportunities for crime to occur.
- → Whether lots are of a practical, useable dimension, which takes into account compatible co-location of activities on adjoining sites.

In many plans it is difficult to reach an overall view on what multiple criteria actually mean in practice. It is recommended that within the District Plan itself, diagrams be provided which help make key criteria unambiguous. If there were still problems in practice, the Council could then explore a specific guideline or similar which explained how multiple criteria could be reconciled on problematic sites.

1.2.2 IMPLICATIONS OF THE MARLBOROUGH GROWTH & DEVELOPMENT STRATEGY FOR THE REGIONAL POLICY STATEMENT

As stated earlier, it is recommended that the Council consider preparing one combined resource management plan for the Regional Policy Statement, (Regional Plan), and District Plan. In respect of the Regional Policy Statement, the following issues have been raised:

Framing the Issues

There is a critical need for the RPS to articulate the fundamental resource management issues related to the development of the District. These notably include:

- → the need to leverage from growth;
- → the need to maximise social and economic opportunities; and
- → the need to conserve environmental amenities.

Unlike some other Districts, Marlborough is anticipated to see only modest growth in coming decades. Given the increasing mobility of capital and labour, and the heightened role of competition between other Districts and settlements, it is critical that this growth is planned to ensure the greatest benefits for the District are obtained , in both the short and long terms. Historical development patterns have sometimes been inefficient. Lessons can be learned from other settlements around the Country which have often grown in ways that have worsened these inefficiencies over time rather than addressed them. A major driver of the Marlborough Growth & Development Strategy has been to come to terms with the costs, benefits, efficiencies, and inefficiencies likely to result from different types of development, in different locations, in different sequences. This included consideration of impacts on the public and private sectors, specifically relating to affordable housing.

Growth Must Bring Tangible Benefits

The single most critical resource management issue facing the District relates to how it will remain affordable, attractive, efficient, and prosperous. Growth must be managed to ensure that the community is better off as a result of that growth. International research has identified that communities which just assume that any kind of growth will deliver benefits have seen, over time, significant additional costs borne by the community that were not directly acknowledged up front. These have often manifested as expensive inefficiencies such as congestion, and more expensive measures to continually alleviate them. Therefore, a strategy based on maximising growth and growth-related benefits while minimising growth-related costs should be pursued.

A major well-being issue for the District will be in ensuring the community can provide for its own well-being while maintaining an expanding number of activities within its settlements. An increasingly significant problem is affordability, and in particular intergenerational affordability. As settlements become bigger, their operating and other costs have tended to increase at a faster rate except when they are managed to ensure greater efficiencies are delivered. The community cannot continue to lose productive soils permanently to urban development, pay to maintain highly inefficient and unsustainable infrastructure networks, or rely on central government to continue subsidising bigger strategic and arterial road networks just so people can meet their basic daily needs.

In short, historical development patterns in most New Zealand settlements have relied on several lifestyle subsidies, often unacknowledged and often taken from the environment as resources or future generations as debt or deferred payment. As a necessary part of engaging with the ethic of responsibly promoting sustainable management, the Council could determine

that such practices must change. A new RPS could signal a change in the way the use and development of resources is approached, such that the full impacts of lifestyle decisions are brought into the open. Through this approach, the Council could expect the community to approach development issues in an honest, transparent and ultimately reasoned manner.

Environmental Amenities
Another of Marlborough's headline resource management issues will be the ongoing viability of agricultural industry and the ability of the soil resource to be readily accessible into the future. Protecting this land from inappropriate development, which would often also bring with it other urban inefficiencies, would seem to be an immediate priority for the Council to consider.

Key Recommendations
Improving social and economic wellbeing in the District will be challenging. Due to the particular growth dynamics facing the District, it will be important that growth is leveraged from to induce the maximum number of economic and social benefits. In conjunction with the importance of the District's scarce soil and environmental resources, this should lead the Council to adopt a compact settlement approach to meet its duties under the Resource Management Act 1991. This approach is often criticised as driving up land prices and inequities. Such arguments are almost always ideological rather than evidence-driven. The Council should not place faith in them without clear evidential corroboration based on district-specific facts.
The key benefits of such a strategy are considered to include that:

- → agglomeration, convenience, and proximity between activities, in high quality settings, will ensure that multiplier benefits and opportunities for one activity to stimulate others will occur. This strategy will ensure that every possible activity that could enjoy viability can occur, even to the point of an additional local corner store or speciality, niche retailer;
- → opportunities for people to meet their daily needs without the energy intensive and increasingly expensive reliance on automobiles will be maximised. This will also have an equity benefit on the elderly and young who are less able to use vehicles in meeting their daily needs;
- → New Zealand has an internationally high ecological footprint, based in a large part on energy use and transport patterns (37% of energy use in New Zealand is in surface transport - see Ministry of Economic Development, 2006, '*New Zealand's Energy Outlook to 2030'*, Wellington: MED, p 10 – 11). Changing the way people connect their daily need activities together will have one of the single biggest positive impacts on environmental sustainability within the District. There will also be affordability benefits from enabling people to minimise their car use;
- → the greatest possible amount of productive soils and high amenity landscapes will be retained for present and future generations;
- → the greatest opportunity for affordability for individuals and the community will eventuate; and
- → while Development Contributions under the Local Government Act 2002 allow the Council to require the capital costs of growth-related infrastructure to be recovered from those causing that growth (developers and new residents), on-going maintenance costs - always greater in the long term than up front capital costs - still fall on the general community. Long term maintenance cost and debt burdens on infrastructure and services will be minimised for the community when connections per km of service are maximised, and the overall length of service kms are minimised.

The approach proposed is based on a significant body of substantiated local and international research into sustainable urban settlements. This has emphasised the need to ensure that towns are efficient, effective, equitable, and ecological in enabling wellbeing for people and communities.

1.2.3 GIVING EFFECT TO THIS STRATEGY IN THE RPS

To help give effect to such a resource management strategy, the following notable methods are proposed:

1.) RURAL ZONE
It is recommended that the Council consider recasting the rural zones around urban areas as Rural Industry (or similar) zones. These should emphasise that although sometimes idyllic-looking, these are ultimately industrial areas which are critical to the long-term wellbeing of the District. Any non-economic use of these areas should be discouraged and otherwise carefully managed to avoid reverse sensitivity effects. All development within these areas should demonstrate a primary economic agricultural activity on the land (excluding the economic development effect of general construction activity such as a new residential subdivision). No purely residential activities should be provided for. As a guide, a 2-4ha minimum lot size is something of a New Zealand benchmark, however in many cases the evidence would suggest that even a 4ha lot has proven difficult to make agriculturally productive i.e. the primary activity has been residential. Such outcomes will not promote sustainable management in the District.

2.) URBAN / RURAL INTERFACE
It is recommended that the Council dismiss the concept of 'rural residential' development; the two terms should be seen as diametrically opposed, as it is in effect 'industrial residential'. However, several areas have been semi-developed or otherwise earmarked for some form of 'lifestyle' residential development. It would not be reasonable to remove these arrangements where investments and planning has been undertaken. In these locations a focus should be on mitigating the extent of such development, looking to maximise the agricultural viability of land (such as through clustering habitable structures). It should otherwise look to manage reverse sensitivity effects by minimising development (unit quantities) and looking to pull structures away from their outer / rural boundaries. Into the very long term future, such areas may also come under a logical pressure for intensification. New rural residential development could

be required to demonstrate convenient intensification into the future can be accommodated.

Example Vehicle Kilometres Travelled

It is important to recognise the effects of out-of-town residential developments. Some of these could be understood by way of comparing Vehicle Kilometres Travelled (VKT) per type of development.

calculation:

- → It is assumed that an average detached house generates 5 return journeys per weekday of which 4 to town (8 trips);
- → Every 10 units located over 1 km from the external perimeter of town will therefore result in 80 VKT per day (additional when compared to a cluster of 10 units on the edge of town);
- → There are 260 weekdays per year, when subtracting 20 days annual leave and 11 public holidays this leaves 229 weekdays;
- → 10 units at 1km from the periphery therefore generate 229*80= 18,320 VKT per year, which equates to 366,400 VKT over 20 years;
- → With $0.30/ km for vehicle operating costs (VOC) this equates to $109,920 ($10,992 per household over 20 years) excl. GST and inflation correction;
- → 366,400 VKT also equates to 165 tonnes of CO_2 emitted per 10 units over 20 years;
- → For example 50 units at 7km from the edge of town means multiplying these figures by 5*7=35. Which leads to:
    - → 12,824,000 VKT;
    - → $3,847,200 VOC; and
    - → 5775 tonnes of CO_2 emissions

    ...more than those VKT, costs and emissions generated by the same 50 units if they were located on the edge of town.

It should be noted that this calculation is based on rough assumptions for household size, behavioural patterns, vehicle size, efficiency, and cleanliness etc. It is however based on current New Zealand standards. Key assumptions for this conservative calculation include $0.30/ km VOC obtained from the 2002 EEM (private vehicles in low speed 30-50 km/h use) and corrected for 2007. CO_2 emissions calculated pursuant to LTNZ's (now NZTA) Economic Evaluation Model of VOC*0.0015.

3.) URBAN DEVELOPMENT

Specific Objectives and Policies should be developed to address a general urban development strategy. Critical issues relate to achieving quality, liveability, and affordability in housing. This has implications for intensification and new green field development.

In respect of green field development:

- → locations for new growth should be selected on a range of criteria, including how to most effectively and efficiently 'plug in' to existing settlements, facilities, networks, and constraints;
- → 'road design' should be discarded in favour of 'street design', which emphasises appropriate travel speeds, amenity, and pedestrian rather than vehicle prominence;
- → a range of densities and types should be required corresponding to appropriate locations within a broader structure (for example, higher densities should locate on passenger transport routes or near public amenities like reserves);
- → development should be based on a 'build out' from day one to ensure quality living conditions can be comprehensively planned rather than via incremental infill over time which has tended to erode neighbourhood quality in most instances; and
- → urban design principles should be integrated into development controls and consent considerations. Historically, this has been limited to superficial visual and aesthetic considerations. These should be expanded particularly around the interface of public and private-feeling space. Rear lots and rear spaces should be avoided in new development areas given the detrimental impact they have on privacy and amenity. Emphasis should be on establishing a clearly legible, easily navigable urban structure with clear spatial ownership boundaries maintained i.e. where people clearly know what is public, and what is private.

There are a number of implications for intensification within the existing urban area as well:

- → infill often brings with it opportunity costs - sometimes including less privacy and less amenity. These must be avoided if infill is to deliver attractive, quality outcomes especially for neighbours;
- → a critical issue is how to achieve intensification while maintaining amenities for neighbours and site users. Specific controls on the conditions in which different levels of intensification are appropriate should be developed for the District Plan;
- → intensification should not occur anywhere, but in locations which can contribute to more sustainable lifestyles. These include around open space amenities, or access to services by a convenient walk or passenger transport;
- → there is a need to considerably change development controls relative to building design, size, and minor units / family flats;
- → a key area of interest relates to the fundamental character of residential areas through the separation between structures. Ensuring intensification can occur without making residents feel that they are crammed in against each other will be necessary; and
- → specific opportunities to improve affordability should be pursued as a priority.

4.) LANDSCAPE AND ENVIRONMENTAL VALUES

In the District a crucial amenity issue is the principle of settlements locating on the plains, enclosed by the dramatic presence of hills around them. This is a core value of the District and one element that helps make the settlements within it have a legitimate uniqueness and identity. Managing this, and the distinct identity of each community, will be important as the population grows.

This means that in protecting the long-term viability of soils, development should not be pushed into the iconic hills. The presence of roads, lights, and structures in these landscapes would have a significant effect on the

District's character irrespective of densities achieved. The landscape would simply cease to have any legitimate naturalness to it; it would become a transitory or fully modified one.

Related to this are the impacts of providing for widespread development in such isolated and sparse locations. Inevitably such outcomes would be car-based, requiring energy intensive and polluting behaviour to be usable. This behaviour has been acknowledged as environmentally unsustainable, and should not be encouraged especially if more sustainable alternatives, such as suitable intensification and planned growth around a more compact model, are viable. The community should take a dim view of developments which will expose it to larger than necessary long-term infrastructure maintenance costs.

Lastly, at the more detailed level, there would be merit in the Council considering whether to impose specific landscape response provisions within its District Plan. Such that in the planning of new development over time, urban structure responds to landscape and views through the orientation and provision of viewshafts, block design, and the like.

5.) NEW BUSINESS DEVELOPMENT

Over time new land for business development will be required, based on careful analysis of economic development trends. Opportunities for the District to improve its economy should be taken in ways that reinforce social and environmental goals for the District.

A key challenge for business land is that it must often have a good strategic location, be mostly flat, and be of a low value which allows large lots and sometimes modest-value activities to occur. The problem with this is that these very characteristics often make the land attractive to land uses other than were planned for, including residential development, large format retail, and other intensive commercial activities, which can have detrimental impacts on the ability of land areas to actually perform the function they were intended to.

Business activities are extremely location and context sensitive. The Council should take a particularly restrictive approach to activities other than those which are sought and are being provided for from locating in identified business development areas. It must also take care to ensure that it does not unintentionally undermine its own main activity hubs, notably the Blenheim centre.

1.2.4 IMPLICATIONS OF THE MARLBOROUGH GROWTH & DEVELOPMENT STRATEGY FOR THE DISTRICT PLAN

As stated earlier, it is recommended that the Council consider preparing one combined resource management plan for the Regional Policy Statement, (Regional Plan), and District Plan. In respect of the District Plan, the following issues have been raised:

SUSTAINABLE MANAGEMENT OF URBAN DEVELOPMENT

Outcome-based Policy Framework Needed

The District Plan should focus on articulating the spatial, physical, and resource use implications of the preferred settlement strategy for the District.

Objectives and policies should be as detailed and specific as possible, focussing on describing the outcomes and conditions sought. Generic repetition of phrases or words that are already set out within the RMA (and which must therefore be complied with anyway) are not constructive. Many District Plans can be rightly criticised for not actually establishing a clear or understandable vision for development through its policy framework. Many objectives and policies instead rely on ambiguous 'avoid remedy, or mitigate' arguments. This can create a significant backfire at the resource consent stage. For example, Non Complying Activities must pass through one of two gateways before approval can be considered. The legislature clearly considered that a consideration of effects was to be different from a consideration of objectives and policies. The problem with objectives and policies which do not actually perform their function, and instead emphasise effects, means that there is in effect only one gateway for non complying activities - if effects are minor, then by default the policy framework is complied with. This approach also allows different interest groups to interpret whatever they want from a policy framework, creating patently unrealistic expectations which only creates further tensions in the process. Because of the lack of overall vision, it also reduces the consideration of effects to immediate neighbours and an over-reliance on both immediate visual / physical effects and nuisances. Rules can become seen as the only defining benchmark of what is being sought. In many respects this defeats the purpose of having an effects-based regime where people can demonstrate that an alternative to a Rule will better meet a desired outcome.

Such approaches can only be seen as a considerable lost opportunity for Districts to 'set the agenda' in Resource Management.

Particular attention should be given to articulating the amenity and character sought in different locations so that the resource consent process can have a clear target for discussion between participants. Ultimately, the policy framework should be seen as a description of what sustainable management actually means in different contexts / zones, so that development proposals can be more readily assessed against whether they are appropriate. Perhaps ironically, this will also better help identify whether they will have effects which are positive, benign, or adverse, and to what degree.

Specific Implications for Development Controls

RURAL INDUSTRY

- → gear objectives and policies towards industry and agricultural use characteristics rather than just a passive open space / visual consideration. Emphasise the importance of economic productivity and potential;
- → make it much harder to establish any activities that are not primarily focused on agricultural production;
- → write clear and directive policies to avoid reverse sensitivity issues by explicitly anticipating rural

industry, noise, and so on. Make it clear that residential is not an appropriate use, and that residential amenities can not usually be provided. It may also be appropriate to explicitly state that the Council will prioritise the needs of business and economic uses over residential amenity when tensions arise;

- In areas identified for rural-residential or as transitional areas, require development plans to show how future intensification could be logically facilitated. indicatively:
  - lots close to Blenheim should be no smaller than 4,000m² unless it has a road frontage, in which case lots to 2,000m² could be possible;
  - lots further away from Blenheim (i.e. more than 1km) should be in the order of 10,000m² minimum;
  - all lots larger than 2,000m² should include in development applications plans showing how future intensification to 600m² lots could logically occur including future or 'paper' roads;
  - all lot plans should include a building platform; and
  - no new rural residential or lifestyle development should be provided for around the smaller townships.

INFRASTRUCTURE AND COMMUNITY ASSET EQUITY

- introduce a new type of resource management consideration including the long term maintenance issues and costs relating to overall service networks. Establish it via objective / policies as a critical intergenerational wellbeing issue, and as a key assessment criteria for all subdivision and development applications outside of an identified or zoned area for new development or intensification;
- require developments that are not in preferred locations to provide clear analysis of impacts on long term networks and costs for the community, including how these will be avoided, remedied, or mitigated, as an information requirement;
- require all applications which will increase the community costs of infrastructure into the long term, beyond that which will occur from development in preferred locations, to be fully notified;
- signal clearly through the policy framework that applications which transfer excessive long-term costs onto the community are unlikely to promote sustainable management or be approved; and
- require all developments which include new open spaces or reserves to identify the likely maintenance costs which will result, and demonstrate how the density, orientation, and configuration of lots and activities will promote the greatest possible use of these expensive amenities relative to those costs.

PLANNED GROWTH IN NEW AREAS

- identify growth areas and provide rules that enable mixed development and quality outcomes. The emphasis should be on buffering and appropriate co-location between activities rather than on land use homogeneity;
- provide concept / structure plans in the District Plan for future growth areas to set out the basic pattern and requirements;
- set out new expectations for roads and movement networks:
  - connected street networks required, cul de sacs no longer than 75m length, and no more than 15% of total roads;
  - no pedestrian-only linkages unless a street demonstrably cannot be provided;
  - emphasis on shared mode streets rather than on car-dominated roads:
    - 30-40km/h design speeds for local roads;
    - use of traffic calming and visual cues;
    - street trees and reduced width carriageways;
    - emphasis on pedestrian and cycle amenity;
  - require analysis on the % of daily needs which can be accessed by lots without the use of car as an information requirement. Indicatively:
    - access to employment: up to 1,000m walk;
    - access to primary school: up to 600m walk;
    - access to other schools including tertiary: up to 1,000m walk;
    - access to bus stop: up to 400m walk;
    - access to local shops and other services: up to 800m walk;
    - access to local open space: up to 400m walk preferably 200m walk;
    - access to district or regionally significant open space: up to 800m walk.
  - emphasis on delivering integrated streets that create active frontages with land uses and promote safety and activity for pedestrians:
    - require garages to be set back from the street at least 1.0m behind the front face of the dwelling;
    - emphasis should be on the front door and 'house' as seen from the street, not on the 'garage';
    - front doors should be immediately obvious and prominent in the design;
    - outdoor living spaces should be located preferably at the rear, or if necessary at the side. These spaces are not appropriate in front of a house;
    - front fences should be controlled to 1.0m maximum height;
    - dwellings should be able to build to within 3m of a street; and
    - a primary living space (kitchen / dining / lounge / family rooms) should face the street with a clear glazed connection of at least 1m²;
- set out new approaches to density and land use mix;
  - provide minimum densities for residential development. A target of at least 15hh/ha net can usually be achieved (this is similar to the density that can exist in in-filled suburban areas);
  - provide an average lot size to be complied with subject to minimums;
  - look to associate density with housing type and lot size. Indicatively:

- → fully 'suburban' detached houses struggle to meet user amenity expectations on less than around 350m² per lot;
- → semi-detached / town houses or compact-detached houses struggle to meet user amenity expectations on less than around 250m² per lot;
- → terraced houses which have vehicular access from streets struggle to meet user amenity expectations on less than 150m² per lot;
- → terraced houses accessed from a back lane struggle to meet user amenity expectations on less than 100m² per lot;
- → apartments should be used when density exceeds 1:100m²; and
- → these sizes are based on the assumption that in new development areas the ability to comprehensively plan sites together allows for nuisances and conflicts between neighbouring sites to be managed in the design.

→ policies emphasising variety and affordability should be prominent;

→ a range of non-residential activities should be enabled in residential areas provided that they look and behave similar to a residential house, and are located where people can walk to them rather than just drive to them. They should also only occur in detached houses with an exclusive vehicle access. Such activities should be restricted between the operating hours of 8:00am - 6:00pm to maintain adjacent amenities. Activities which rely on more than one van-equivalent of loading per week should be avoided. As should those which would result in an intensity of no more than 1 person per 75m² of site area at any one time (i.e. a site of

→ 350m² could have 4 people at any one time; a site of 1,000m² could have 13 people at any one time);

→ identify basic rules over urban structure:
  - → open spaces and facilities / amenities must be located in prominent locations with direct street access and land use frontage;
  - → provide higher densities around PT routes / shops / open spaces etc., and lower densities in purely residential areas or area of topographical constraint;
  - → residential blocks should be no greater than 120m x 60m to promote walkability and permeability;
  - → rear lots should be avoided unless they cannot be avoided;
  - → blocks should aim to deliver east-west oriented lots facing north-south facing streets. This delivers lots most able to deliver good street frontage and good solar access;
  - → south-facing lots on an east-west street should be designed to be narrower and deeper as outdoor living space can locate immediately behind the unit;
  - → north-facing lots on an east-west street should be designed to be wider and shorter as outdoor living space may need to locate to the side of the unit.

INTENSIFICATION IN EXISTING URBAN AREAS

There are considered to be three key issues relating to residential infill and intensification:

1. <u>Connectivity to adjacent neighbourhood</u>:
   - → proximity to amenities.
2. <u>Site integrity</u>:
   - → site size and shape;
   - → outdoor living and service areas;
   - → visual outlook and separation between activities / sites; and
   - → overall intensity and character of the neighbourhood.
3. <u>Building quality</u>:
   - → visual and acoustic privacy;
   - → natural surveillance and coordination of public / private space; and
   - → solar access and passive energy efficiency.

Intensification only makes sense where it can add to overall sustainability, rather than simply transfer one problem to somewhere else in the system (i.e. by replacing infrastructure inefficiencies with a loss of local amenity or privacy). Intensification should indicatively occur only when:

→ the location will mean any loss of on-site amenity will be mitigated by other amenities, such as:
  - → along the river; and
  - → within a convenient walk or preferably within close proximity to three or at least two of public open space; education; passenger transport services; employment; religious; or local shops / service activities;

→ the amenity of adjacent lots will be maintained - particularly through the avoidance of privacy and overlooking effects.

Intensification to date has resulted in the identification of several shortcomings. These primarily relate to a loss of character and amenity related to very large buildings resulting on very small lots. This creates a sense of overdevelopment, as well as undermining one of the key characteristics of a suburban environment - very private and safe feeling lots free from overlooking by neighbours, and defined by detached, unique buildings separated by ample open space.

Smaller lots can however help reduce the impacts of affordability problems, and still contribute effectively to local character. The key issue seems to be in matching development intensity to site size. There is also a critical issue to be resolved around minor units / granny flats for dependent relatives, and second households for rental income.

Over the medium to long term, intensification within settlements and especially Blenheim should be supported, however only in conjunction with significant

improvements in quality. It is likely that the imposition of additional restrictions and controls may in the short term reduce the amount of intensification which occurs,. However, over time it is envisaged that with suitable promotion and market buy in on the back of high amenity outcomes (and changes for smaller households), this will notably increase.

Key issues to be resolved via rules and supported by objectives and policies include:

YIELD / INTENSITY

- → on a single 'base' lot of around 800m², no more than two units should be provided for. This should be clearly known as 'infill' development;
- → once a site size of 1,600m² / two 'base' lots has been amalgamated, development should be referred to as 'integrated residential development'. As a general rule:
  - → two 'base' lots (i.e. around 1,600m²) may provide up to 6 units which meet urban amenity expectations, or a net of three units per base lot;
  - → three 'base' lots (i.e. around 2,400m²) may provide up to 12 units which meet urban amenity expectations, or a net of four units per base lot;
  - → the rationale for these yields is based on design tests, and that as site area increases, there is a greater ability to use design to minimise nuisance and amenity conflicts on and between sites.

URBAN AMENITY

Existing lot sizes in the Urban Residential 1 and 2 zones are not entirely supported. In the Urban residential 1 zone, in addition to the controls, a minimum site area (exclusive of access strip) of 250m² should be required if a detached unit is to be provided. If the unit is to be attached to an existing unit on the site, then a minimum site area (exclusive of access strip) of 200m² should be required. These zones should also be supplemented with key additional amenity controls:

- → as a result of infill, on resultant <u>front</u> lots (whether an existing, re-located, or new structure):
  - → outdoor living spaces should not be located in front of the unit;
  - → except for unmodified existing structures, front doors should be clearly face the street, and the glazing of a primary living space (minimum 1m²) should face the street;
  - → garaging should not be located in front of the dwelling unit; and
  - → outdoor living space and main living areas should be conveniently connected, and receive good solar access (a minimum of three continuous hours of sunlight between the hours of 10:00am - 4:00pm as measured on June 21 is an indicative guide).
- → as a result of infill, on resultant <u>rear</u> lots (almost always a new or re-located structure):
  - → a minimum 3.0m setback on all boundaries at the ground level (except for party walls / common boundaries). This will help maintain a character of separation between buildings and avoid adverse character effects of buildings seeming to have been 'crammed in';
  - → a minimum 5.0m setback on all boundaries at the first or second floor levels (except for party walls / common boundaries). This will help maintain amenity and visual privacy on adjacent sites and avoid adverse amenity effects of people in a suburban setting losing their sense of privacy on their own properties by feeling overlooked on all sides;
  - → outdoor living space and main living areas should be conveniently connected, and receive good solar access (a minimum of three continuous hours of sunlight between the hours of 10:00am - 4:00pm as measured on June 21 is an indicative guide);
  - → particular consent criteria should relate to large areas of glazing and balconies associated with primary living rooms on the first level, to minimise visual overlooking into adjacent outdoor living spaces on neighbouring properties;
- → for all units on sites less than 500m²;
  - → a service court with a minimum area of 15m² / minimum dimension of 2m should be required;
  - → all units should have an area of visual outlook whereby the main area of glazing for the main living room is unimpeded by buildings for a minimum distance of 6.0m measures perpendicular to the window. The outlook, area can include streets and public spaces; and
  - → where two windows on adjacent units face each other (either parallel or within 45° of parallel) and are within 15m of each other, then:
    - → from 15m and beyond, the windows may be directly opposite each other;
    - → from 10m to 15m, the windows must have no greater than 50% overlap measured from centre to centre;
    - → from 5m to 10m, the windows must have no greater than 25% overlap measured from centre to centre; and
    - → within 5m separation, the windows must have no overlap.

AFFORDABLE HOUSING / FAMILY FLATS

There are considered to be two levers for the Council to consider:

1. Facilitating general affordability in the District; and
2. Directly helping people get into a first home / obtain housing suitable for one or two-person households other than a full suburban home with section.

As with many other districts, family flats have proven problematic, especially when detached structures are developed and then non-complying subdivision applications follow, which are difficult to refuse and then allow for a range of unintended effects to eventuate. These relate to site intensity and use differences between one or two dependent relatives to a separate household, including traffic generation, parking, and manoeuvring.

However, care must be taken to ensure that affordability and housing choice is not unnecessarily stifled. The existence of an existing dwelling a site and the costs required to move or replace it may discourage intensification due to cost. The key issues are considered to relate to managing the integrity of suburbs and residential areas, from minor units then becoming undersized freehold sites, then being further developed. To manage this, the following approach is proposed:

- re-define family flats to only include households smaller than 50m² / 2 bedrooms, which are self-contained within the primary unit (this could include an attached addition to a unit);
- stimulate a new housing market for minor household units, which can be attached or detached from the original unit on a site and subdivided but which are subject to specific controls; and
- for the purposes of all intensification whether via infill or integrated residential development, a family flat or minor household unit should count as one full unit i.e. it is not appropriate for a site to be in-filled into 2 units, and then for each unit to then look to establish a family flat. These options must be seen as alternative intensification opportunities which can only occur on a 'base' site of around 800m², and certainly no less than around 600m².

For family flats:

- it should be a permitted activity for people to rent out family flats if the flat is less than 30m², contains only 1 bedroom, and one parking space can be provided on the site without blocking car parking associated with the primary unit or locating in the front of the primary unit;
- family flats should include a separate service court of at least 10m² area with a minimum dimension of 2m, and an outdoor living space of at least 20m² area with a minimum dimension of 4m; and
- one parking space should be required for family flats.

For minor household units:

- a minimum lot size of 150m² (exclusive of any access strip) should be required, able to accommodate a circle of 13m in diameter;
- ground floor and first floor boundary setbacks should be required as identified previously for infill (3m ground floor / 5m first floor excluding party walls / common boundaries);
- an outdoor living space of a minimum 30m² should be provided with a minimum dimension of 5m;
- A service court with a minimum area of 10m² and a minimum dimension of 2m should be required;
- the main living room should be provided at the ground level;
- specific requirements are critically required on floor area and building bulk and mass:
  - ground floor area greater than 70m² (including garage) should be outright prohibited;
  - total floor area greater than 100m² (including garage) should be outright prohibited;
  - units should be no more than two levels;
  - units should have no more than two bedrooms;
  - such lots should be required to have notices imposed on certificates of title acknowledging that the unit is a minor household unit and is subject to a maximum of 100m² floor area (including garaging);
- the rationale behind this is that it will provide for a 'second chance' for sites to intensify where an existing dwelling precludes a fuller infill situation from occurring. It may also give rise to a specific market of affordable households, which may help build market support for intensification within the urban area (it would indeed create a new housing market for small households, starter families, and the like).

NEW BUSINESS / INDUSTRIAL DEVELOPMENT

Specific controls for business development are recommended:

- large format retail should be an outright prohibited activity except for specific areas identified as appropriate. Full plan changes, which allow for a holistic probation of all issues and policy implications should be preferred to the more administrative land use consent process;
- live/work units and any residential in business areas should be subject to particular scrutiny;
- assessment criteria for development within identified industrial areas should include intensity controls focusing on trip generation, customers per day, employee density to ensure these area remain large lot / low value;
- all business development should be subject to design controls over:
  - streetscape character and building entrances;
  - loading and servicing to the rear or side rather than the front;
  - landscaping;
  - parking to the side and rear rather than the front.
- in the main urban areas, greater flexibility should be made for neighbourhood retailing (less than 100m² GFA per unit). Location criteria should include corner sites and on the busiest roads, where overall viability will be highest;
- over-provide for retail and commercial development in the Blenheim CBD and neighbourhood centres.

CONSISTENT ADMINISTRATION

It is also recommended that the District Plan be structured so that the process itself becomes more resilient towards achieving positive outcomes. There are a number of local planning challenges in Marlborough (some are generic to every district), including:

- there will always be a limited pool of top-level practitioners in the District due to its size (such as lifestyle-driven experts etc.);
- many planners will only be around for a short while (18months - 3 years seems to be quite common);
- it is understood that some private-sector participants in Marlborough are not trained in urban planning or resource management; and
- there is a need for consistent, clear administration and quality control in development processes.

Ultimately and even with the best provisions in the country, poor outcomes may still occur due to breakdowns in the process. The Council should consider how to most effectively avoid these.

To this end, it is proposed that applications for consent could require particular information to be provided, in the form of application 'worksheets' for particular types of generic development. These could be promulgated as an 'other method' under s32 of the RMA. These worksheets could set out the issues which are typically of concern step by step, and require applicants to demonstrate how their proposal responds to the issues one by one. This would also have a parallel application in the assessment of applications i.e. the degree to which applicant responses to issues was successful in addressing the issue. It is envisaged that this approach will have a number of benefits:

- → helping improve the standard of resource management amongst practitioners (especially those professionals giving resource management advice who do not have any formal urban planning education);
- → helping educate and inform the community around the design process and what issues are important for different types of development;
- → make assessments of applications more consistent and less vulnerable to misjudgements by inexperienced practitioners;
- → make it easier for decision makers to understand how applications have come together and how they respond to identified issues; and
- → making it more likely that applications will be designed around the site, environment, and effects rather than just relying on rules.

It is also suggested that to support this, notification of applications could be made on the basis of how well a proposal responded to design issues rather than on just what activity status was triggered, or how large the activity is.

This approach would essentially become a hybrid assessment criteria (made more specific and structured to have a step-by-step logic rather than just a mix of issues) and design guideline (showing diagrams, explaining what a successful outcome may look like).

Related to this, could be a requirement for applications to demonstrate why compliance with Rules is actually the best thing to do in the circumstance. Sometimes rule compliance is just an automatic consideration, and on some sites it doesn't actually lead to the best outcomes. The Plan should openly state that rules aren't always best depending on the uniqueness of each circumstance, and that planning for the best outcome should always be the goal. The key indicator of whether the rules are appropriate will be in whether illogical outcomes will result.

1.2.5 IMPLICATIONS OF THE MARLBOROUGH GROWTH & DEVELOPMENT STRATEGY FOR OTHER COUNCIL ACTIVITIES

It is lastly recommended that to support the compact settlement / urban efficiency / intensification strategy recommended, a number of policy reconciliations will be necessary across the Council. The most obvious relates to development contributions and residential development.

The Council Needs to Help Correct Existing Market Flaws

Urban development in New Zealand is largely led by the private sector. However, indications are that it would be incorrect to conclude that the market is solely responsible for resultant patterns. Over several decades, a pattern of clear public authority subsidies have been established which contribute to and indeed partially induce the observed market response of low density, largely car-based suburbs.

The most obvious of these relates to land transport, which is significantly subsidised by the public sector. While development contributions may help cover the portion of transport paid by the local authority, large central government subsidies remain. As a result, lower density development becomes more attractive and affordable to the market than would be the case if participants were actually meeting the full costs of their decisions. The Environment Court, in *Johns Road Horticulture Ltd v Christchurch City Council* [2008] YourEnvironment 165 observed on this issue that (para 64):

"There is therefore a general conflict between the free use of Canterbury's roads and the consolidation objectives of the City Plan and Change 1 to the RPS. But that is simply not mentioned either in the City Plan or the RPS: the free use of roads by cars, especially commuters' cars, is like the emperor's clothes in the fairy tale. That free use causes all sorts of unpredicted - or at least unaccounted for - economic effects."

To achieve a strategy of compact, efficient settlement the Council will need to engage as best it can to help correct the many market distortions that help make low density and car-based suburban type development more attractive than other housing types which do not enjoy the same degree of subsidy. For example, medium and high density units located and planned so that they do not require as much travel by car will often incur higher prices (land value) than new land at the periphery which has had its true costs reduced by the free road component that users will rely on. A common problem across New Zealand is that it can cost the same to buy a new house and section as it does to buy a much smaller CBD apartment.

Most rational people would choose the detached house – it seems to give them much more value for their money. Many of the negatives of low density housing are paid for by the public in the form of new and continually widened roads and car-based policies. The problem is that these policies are being increasingly identified as the antithesis of the sustainable city. In a 1999 publication which reported significant research across hundreds of international cities and their performance, Newman and Kenworthy concluded that (p 58-59):

"The economic analysis… suggests that something fundamental has gone wrong with our approach to cities when we plan them around automobiles. It is quite simply the biggest part of the sustainability agenda for cities to reverse these patterns and achieve an approach that reduces the environmental and social impacts of excessive automobile usage while simultaneously improving the city's economy."

…

The reality is that individual desires for mobility in a city where individualised locations are not subject to constraint will inevitably mean that traffic rises at exponential rates.

The mechanism for this is now obvious: if it is possible to travel faster, then people just travel farther in their average half-hour work journey. So the city spreads and traffic grows."

The Role of Development Contributions

Sound growth management and planning regulation are key tools to help shape the development and form of the District. However, it is only partially effective if not supported by tools that engage with property markets and the decisions made by individuals. The Development Contributions regime is a critical opportunity for the Council to help effect a market correction and help make a shift to intensification more realistically achievable. The current DC policy in effect establishes an internal subsidy within new developments, whereby those living in more sustainable outcomes pay a greater share of community facility costs than they actually generate, enjoyed by those developments, whereby those living in less sustainable outcomes enjoy more community facility use than they are paying for. This characteristic is common to almost every 'first generation' type of DC policy developed across the country.

Local and international research has conclusively shown that high density units (i.e. CBD apartments); medium density units (such as terraced housing or infill within a convenient walk of many amenities); and detached units (typical car-based suburban units); generate very different community facility demands from one another:

- → high density apartments generate between 2-4 vehicle trips per day; a typical detached house will generate around 9-10;
- → high density apartments generate significantly less stormwater runoff than a typical detached house with driveway and other impervious surface;
- → high density apartments generate significantly less water use demand than a typical detached house (especially in summer months) as irrigation is not required;
- → high density apartments generate less demand for new reserves;
- → demand for libraries and other facilities, and wastewater, is based on a per-person average, not a standardised household (there are no 2.5 person households in reality); and
- → medium density units generate demand between high density units and detached units.

Across all types of community infrastructure high density houses almost invariably lead to a more efficient use of existing networks rather than actual demand for new services. Related to this is the key limitation of development contributions – they can only address capital costs. Maintenance costs, always over time the greatest expense, ultimately sit with the community. If the Council accepts inefficient, poorly planned and unsustainable networks on the superficial basis that a developer is paying for it, may mean than in 50 – 100 years, it is paying a much higher maintenance and replacement bill than it would have needed to had it more proactively encouraged development patterns which will lead to a lower cumulative long term maintenance burden.

S101(3) LGA provides for the Council to take into account such benefits when developing its DC policy. Schedule 13 (2) is even more critical, as it requires the Council to demonstrably use a unit of demand which will equitably reflect the actual demand being created for community facilities between the population of new developments. In summary, the Council's current policy (and almost all others in the Country) may not currently comply with S13 (2) LGA given that any development of a high density unit in Blenheim will be required to pay for between 2 – 10 times as much community facility demand as is actually being generated. This overpayment can only be accepted as a subsidy for less sustainable lower density developments in the District. Ultimately the HUE as is currently being applied is an overstandardised and inequitable unit of demand.

Many Councils rely on a remission scheme to try to manage the most inequitable outcomes. However the remissions tool should be accepted as a blunt and ineffective means to resolve the underlying problem. With a remission, a high density apartment will still typically pay something near to the full value of their actual community facility demand. The general community will pay the rest. The problem is that that should have rightly been allocated to less sustainable development outcomes within the policy to begin with.

A Way Forward

The Council's current policy is commendable in that it identifies a number of different catchments for the settlements, accepting that demand for community facilities is not uniform across the District. It is recommended that the Council enhance this with a second filter within each catchment that takes into account the urban sustainability and community demand dynamics of at least the three key housing types. Realistic recognition of the significant inefficiencies of rural development could also be made, which in the current policy is by and large not made (other than in respect of the land transport activity). This could, depending on the desire of the Council to send accurate price signals, be further developed to take into account household size, as the other clear inequity in the Council's policy is that a one person household will pay the same as an eight person household, despite only generating 1/8th of the community facility demand.

This would result in an outcome whereby within each catchment, the least sustainable development outcomes would pay the greatest proportion of community facility costs. Not only is this a fair attribution of actual demand, it

will help correct market flaws that have been historically making the least sustainable built outcomes the most superficially affordable. It will help make higher density housing more attractive to the market through a direct price factor.

By way of example, in Blenheim (including the maximum $12,000.00 reserve contribution), a typical HUE will incur a development contribution of $26,924.00 + GST. There is a strong case to argue that the most that should be paid by an appropriately located intensification unit in Blenheim would be in the order of $11,078.90 + GST. This would be one other factor which would help establish market support for compact settlement and intensification over ongoing green field development.

The consequential impact of this approach should however not be seen as a one way street. Community facilities will have a fixed price. Reducing the amount paid by more efficient development outcomes in reflection of the true demand must be offset by a consequential increase to be paid by those units which are less efficient. However, such an increased charge should be seen as nothing more than the true costs and demand of those lifestyle choices, established on the basis of removing an inequitable and unreasonable subsidy being paid by more sustainable and efficient outcomes.