

Environment Committee Meeting

24 November 2022

This Report relates to Item **11** in the Agenda

“Section 32 Report – Variation 4 – Road Stopping”

Proposed Marlborough Environment Plan

Proposed Variation. 4: Road Stopping

Report prepared by Louise Walker to fulfil the requirements of Section 32 of the Resource Management Act 1991

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INTRODUCTION

1. A landowner may apply for a road stopping on legal unformed road which adjoins their property.
2. Section 342 Local Government Act 1974 provides for the stopping and closing of roads. Schedule 10 of the Act lists the conditions a council must comply with to undertake the road stopping. The road stopping is publicly advertised, relevant signage erected at the site and information made available for inspection at Council offices. The road stopping is reported to the Assets and Services Committee for their approval. If no objections are received then a public notice is issued declaring the road stopped and the land can be sold and in some cases amalgamated into the adjoining land.
3. Once the road designation is lifted the area is left without a specified zoning.
4. This report sets out the evaluation behind the Marlborough District Council's (the Council) decision to change the proposed Marlborough Environment Plan (the pMEP) to apply zoning to areas where road stopping has been completed.

SECTION 32 REQUIREMENTS

5. In notifying any change to the Plan, the Council has a duty under Section 32 of the Resource Management Act 1991 (RMA) to evaluate a number of matters.
6. The Section 32 process of the RMA assists in ensuring that good environmental outcomes are achieved, plan provisions are targeted at achieving the purpose of the RMA by the most appropriate methods, there is sound policy analysis to base decisions and for reassessing whether the chosen provisions are necessary and appropriate once they are in use. An evaluation under Section 32 has to be carried out before the Council publicly notifies the proposed change. A Section 32 evaluation must examine the extent to which each objective, policy, rule and method is the most efficient and effective and/or appropriate way to achieve the purpose of this Act. It must also take into account the benefits and costs of policies, rules, or other methods, and the risk of acting or not acting.

STRUCTURE OF THIS REPORT

7. This report is structured as follows.
 - Part A:** Background to the request for road stopping requests and consultation.
 - Part B:** A summary of the legislative framework, within which resource and environmental issues are currently managed.
 - Part C:** An evaluation under Section 32, as required under the RMA, of the actual changes to the Plan.

Attached: Maps identifying areas for rezoning

PART A: BACKGROUND AND CONSULTATION

Background

8. Road stopping can occur when a section of road is no longer considered necessary for that purpose. The road stopping process removes the public road status and designation status, leaving the land unzoned. The unzoned land means that there is no regulatory management of land use which could result in inappropriate activity and subsequent outcomes. It is more effective (and efficient) to have a regulatory framework apply to the land in order to provide certainty to the landowner as to what can occur on land as a permitted activity and apply management where necessary to other activities.
9. The variation process considers what zoning is most appropriate for the now unzoned land.
10. Declarations of Road Stopping, pursuant to Section 342 of the Local Government Act 1974, have been provided for the following sites:
 - 2282 Queen Charlotte Drive : Section 1 SO 488337, 0.0080ha (Attachment 1)
 - 62 Alma Street: Section 1 SO 502937, 0.0012ha (Attachment 2)
 - 7 Herbert Street: Section 1 SO 516964 , 0.0039ha (Attachment 3)
11. Maps showing the areas to be rezoned are attached as identified in brackets above.
12. The roading network forms a non-site-specific designation in the pMEP. The roading designation is listed in the pMEP under Volume 3, Appendix 14. The designation covers all unzoned land that is road reserve.
13. At all the listed sites, once the designation has been removed, it leaves the subject land unzoned. The purpose of this Section 32 report is to consider whether the land should be zoned and, if so, what zoning would be most suitable for each of these areas.

Consultation

14. The landowners were party to the road stopping process which amalgamated the section of road with their land parcel.
15. Following an assessment of the sites to be rezoned, and considering the size, location and ownership of the land it was determined that no additional consultation would be required.
16. Consultation with iwi authorities on variations 2, 3 and 4 were held concurrently. Iwi were invited to participate at two hui, the first held on 17 August 2022 and the second on 30 August 2022.
17. Letters were sent to the relevant crown ministers. None sought additional consultation on the variation prior to notification.

PART B: LEGISLATIVE FRAMEWORK

Purpose of the Resource Management Act

18. The purpose of the Resource Management Act 1991 (RMA) is to promote the sustainable management of natural and physical resources. Sustainable management means:

“managing the use, development and protection of natural and physical resources in such a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.”*

19. In achieving the purpose of sustainable management, the Council must have regard to a number of principles set out in the RMA. These include recognition and provision for a number of matters of national importance described in Section 6 of the RMA. The Council must also have particular regard to matters such as amenity and heritage values, kaitiakitanga, quality of the environment, and ecosystem values (Section 7) and take into account the principles of the Treaty of Waitangi (Section 8).
20. The RMA enables the use and development of resources as long as such use does not adversely affect the environment in a way that impacts the foreseeable needs of future generations, the life supporting capacity of ecosystems or other users or the environment. This is the concept of “sustainability” which the RMA promotes as its overriding purpose.

Marlborough District Council Responsibilities

21. The Marlborough District Council is a unitary authority that has the functions, powers and duties under the RMA of both a district council and a regional council. Its functions are set out in sections 30 and 31 of the RMA.
22. The Marlborough District Council is also the roading authority for local purpose roads.

Proposed Marlborough Environment Plan

23. The Council's unitary authority status creates an obligation to prepare a regional policy statement, coastal plan, a district plan and such other regional plans as are necessary to promote the sustainable management of natural and physical resources. Due to its unitary authority status the Council has taken the opportunity to integrate the management of the resources of all of Marlborough into one document.

24. The proposed plan was publicly notified on 19 May 2016. After the receipt of submissions and the proceeding hearing process, the Hearing Panel issued its decision on 21 February 2020. The plan is currently in the early stages of the appeal process. Based on the current plan status, any provisions that are not under appeal can be treated as operative, otherwise consideration is deferred to the operative plans. In the three instances of road stopping which this report covers, no appeals have been lodged relating to these sites or adjoining land.
25. Policy 9.1.16 of the PMEP provides direction for road stopping and when it should be considered appropriate.

Policy 9.1.16 – In considering an application to stop any unformed legal road, the Marlborough District Council shall consider the following:

(a) current and future level of use, including whether the unformed legal road is: - the sole or most convenient means of access to any existing lot(s) that is public land or feature (for example, a river or the coast); or - used as a walkway or to access conservation land;

(b) opportunities for future use, including whether the unformed legal road will be needed: - to service future residential, commercial, industrial or primary production developments; or - in the future, to connect existing roads;

(c) alternative uses of the land, including its current or potential value for amenity or conservation functions, e.g. walkway, utilities corridor, esplanade strip or access way to features such as a river or the coast;

(d) whether there is alternative and practical existing public access to the same end point of the unformed legal road; and (e) whether acceptable alternative access can be provided to offset the stopping of the unformed legal road.

26. Although these matters would have been considered at the time of the road stopping request application, retrospective consideration also shows that none of the road stopping requests have frustrated the policy.
27. There is little in the way of objectives, policies or rules that specifically determine zoning of such small parcels of land other than the overriding obligation for zoning to enable activities to occur in appropriate locations.
28. Each of the road stopping locations were assessed on an individual basis before concluding that the prevailing issues were the same for each and could be addressed in one principal report.
29. The road stopping was confirmed pursuant to Section 342 of the Local Government Act 1974 the land was amalgamated with the adjacent land parcel. The unzoned pieces of land are indistinct from the adjoining land. Further, on several of the sites, structures have been erected that straddle the boundary of the amalgamated lots.

PART C: SECTION 32 EVALUATION

30. The Section 32 process must be transparent and well documented, with all assumptions and decisions justified. This helps to ensure that:
- Good environmental outcomes are achieved.
 - Plan provisions are targeted at achieving the purpose of the RMA by the most appropriate methods.
 - Councillors and other decision makers have sound policy analysis on which to base their decisions about resource management issues.
 - A sound basis is provided for reassessing whether the chosen provisions are necessary and appropriate once they are in use and the environmental outcomes become apparent.
31. As the Section 32 is only evaluating the amendment to zoning there is no requirement to amend the objectives, policies and/or rules and therefore no assessment is offered.

Policy 4.1.1 consideration

Policy 4.1.1 Recognise the rights of resource users by only intervening in the use of land where it is justified to protect the environment.

32. Due to the minimal size and environmental impact of the areas to be rezoned, there are few provisions that can be considered relevant for assessment. However, Policy 4.1.1 does offer strong direction for the rights of resource users when protection of the environment is not justified. For the land users (and in this case landowners), intervention would be a disparate zoning of land which would limit their activity. In all three instances, there is little to no environmental justification for intervention in terms of rezoning land contrarily to the land to which it has been amalgamated, such an act could frustrate this policy.

Summary of advice from iwi authorities

33. No additional advice was received from iwi authorities.

Evaluation of Options

34. The Council considered the following three options for addressing the issue:

- Option 1: Status Quo/Do Nothing – sites remain unzoned.
- Option 2: Zoning of land consistent with adjacent/amalgamated property
 - 2282 Queen Charlotte Drive – Coastal Living Zone
 - 62 Alma Street – Urban Residential 2 Zone
 - 7 Herbert Street – Industrial 1 Zone
- Option 3: Alternative zoning options

35. The following table assesses the costs and benefits of the three options.

Option 1: Status Quo/Do Nothing.

Benefits/Advantages	Costs/Disadvantages
<ul style="list-style-type: none">• No further work required• Economic and cultural cost to Council and the community are minimal.	<ul style="list-style-type: none">• The provision framework to manage activities on the unzoned land is constrained to road and rail activities.• There is therefore no planning framework applied to manage land use on the land. This could result in poor environmental outcomes if inappropriate land use occurs on the site.• Land owners would have dual zoning imposed on their property and this could give rise to inconsistent management.

Summary: Although the status quo option is the least work intensive, having unzoned land would mean Council not fulfilling its function pursuant to s30 of the RMA, to control activities to ensure they do not detract from Part II matters.

Option 2: Zoning of land consistent with adjacent property

Benefits/Advantages	Costs/Disadvantages
<ul style="list-style-type: none">• The properties in which the land has been amalgamated would have one consistent zoning and therefore management applied.• Consideration of the zoning of the adjacent land has been recently assessed through a Schedule 1 process.• Is in alignment with the requirements of the RMA and the intention of the pMEP.• Economic and cultural cost to Council and the community are minimal.• Appropriate regulatory framework would apply to manage use of land at the site.	<ul style="list-style-type: none">• New zoning maps will need to be produced.• Cost of the Schedule 1 process.

Summary: To ensure ongoing management of land consistent with RMA practice providing the ability for Council to sustainably manage activities, this is the most suitable option. It also provides consistency and common sense to assist landowners to develop land in a manner consistent with MDC's planned outcomes.

Option 3: Alternative zoning options

The consideration of alternative zoning was as follows:

- 2282 Queen Charlotte Drive – Open Space Three
- 62 Alma Street – Open Space One
- 7 Herbert Street – Open Space Three

Benefits/Advantages	Costs/Disadvantages
<ul style="list-style-type: none"> • Attempts to satisfy the requirements of Section 6, Part II of the RMA through alternate means. • Economic and cultural cost to Council and the community are minimal. 	<ul style="list-style-type: none"> • The properties in which the land has been amalgamated would have two, inconsistent, zoning types applied. • None of the properties abut conservation or public access relevant zoning which would benefit the community. • Costs associated with a Schedule 1 process

Summary: In this option consideration was given to applying different zoning to the zoning of the adjacent land which could have had the potential to fulfil alternative purposes, particularly in regard to Section 6 RMA matters. For the Herbert Street and Alma Street locations there were no logical alternative options as the sites were surrounded by the same zoning as being proposed. The Queen Charlotte Drive site has an Open Space 3 zone almost adjacent to the land. However, the site was not contiguous with the zoning and little use would be gained from the inclusion as it does not offer additional access or other incentives in terms of providing for activity that would override the sites use under the Coastal Living Zone. Further, the site has an existing structure straddling the boundary and taking up close to 50% of the area therefore making the Coastal Living Zone more appropriate.

Preferred Option

36. Option 2 is considered the most effective and efficient means of achieving the purpose of the RMA. To reiterate the summary for the decision as provided above, this option is the most appropriate as it ensures ongoing management of land consistent with RMA practice providing the ability for Council to sustainably manage activities. It also provides consistency and common sense to assist land owners to develop land in a manner consistent with MDC's planned outcomes.

Effectiveness of Existing Plan Provisions

37. The incorporation of the new mapping changes do not require an assessment of the adequacy of the existing objectives and policies as these will not be impacted.
38. Changes to the pMEP, as recommended in this Section 32 would only require amendments of the maps in Volume 4 as follows:
 - (a) 2282 Queen Charlotte Drive:
 - (i) Map 74 – 1:10,000 scale
 - (ii) Map 138 – 1:40,000 scale
 - (b) 62 Alma Street:
 - (i) Map 53 – 1:5,000 scale
 - (ii) Map 158 – 1:40,000 scale
 - (c) 7 Herbert Street:
 - (i) Map 9 – 1:5,000 scale
 - (ii) Map 159 – 1:40,000 scale

Risk of Acting, or Not Acting, where there is Uncertain or Insufficient Information

39. The RMA requires the Council to evaluate 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.
40. The Council does not consider that it is acting in the absence of uncertain or insufficient information.
41. The extent of the changes are minor which further minimises the risk.
42. The opportunity provided by undertaking a Schedule 1 process provides an opportunity for adjoining landowners to make submissions, further reducing any residual risk.

CONCLUSION

43. Based on the assessment above, the overall conclusion is that the proposed variation better achieves the objectives of the proposed Marlborough Environment Plan than the existing zoning. It is also concluded that the benefits of the proposed variation outweigh the costs, which will be minimal.
44. The Council considers that the process it has gone through has assisted in reaching a point where the proposed variation to the Plan will ultimately achieve better outcomes for the community.

ATTACHMENTS

Attachment 1: 2282 Queen Charlotte Drive



Attachment 2: 62 Alma Street



ALMA STREET



