

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

EnvC

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

IN THE MATTER of an appeal under Clause 14, Schedule 1 of the RMA

BETWEEN **TIMBERLINK NEW ZEALAND LIMITED** a duly incorporated company having its registered office at The Business Advisory Group Limited, Level 13, 34 Shortland Street, Auckland, 1010 , New Zealand

Appellant

AND **MARLBOROUGH DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL
Dated this 4th day of May 2020**

**GASCOIGNE WICKS
LAWYERS
BLLENHEIM**

Solicitor: Quentin A M Davies and Joshua S
Marshall
(jmarshall@gwlaw.co.nz | qdavies@gwlaw.co.nz)

Appellant's Solicitor
79 High Street
PO Box 2
BLLENHEIM 7240
Tel: 03 578 4229
Fax: 03 578 4080

Notice of Appeal to Environment Court against decision on a proposed Plan

Clause 14(1) of Schedule 1, Resource Management Act 1991

To: The Registrar
Environment Court
Christchurch

Name of Appellant and Decision Maker

- 1 Timberlink New Zealand Limited (“Timberlink”), of Auckland, appeals against part of the decision of the Marlborough District Council (“MDC”) on the proposed Marlborough Environment Plan (“MEP”).
- 2 Timberlink made a submission on the MEP.

Trade Competition

- 3 Timberlink is not a trade competitor for the purposes of s 308D of the Act.

Date of Decision appealed against

- 4 The reasons for the decision were released from 21 February 2020 and the tracked changes decision version of the Plan was released on 3 March 2020.

Date on which Notice of Decision was received by Appellant

- 5 Timberlink received notice of the decision on 21 February and 3 March 2020.

The Decision

- 6 The parts of the decision that Timberlink is appealing is:

Floodway Zone on Storage Land

- (a) The extent of mapping of the Floodway Zone and adjacent Industrial 2 Zone now shown on maps 19 and 20 of the 5,000 scale maps in Volume 4 (previously maps 13 and 14).

Discharges within Spray Booths

- (b) Rule 12.3.9 (previously rule 12.3.8) and its sub-rules in Volume 2 which regulates the amount of coating material sprayed within an enclosed booth. It also provides for emissions to be extracted from a spray booth and imposes restrictions on that extraction.

Reasons for the Appeal

7 The reasons for the appeal are as follows:

Floodway Zoning on Storage Land

- (a) The area of land marked “A” in the attached Schedule A (“Storage Land”) in the Floodway Zone (currently leased from the MDC) is currently used for storage incidental to Timberlink’s industrial activity in the adjacent Industrial 2 zone.
- (b) The land, according to Lidar data obtained by the Marlborough District Council, is at the height above sea level of houses across the river and is at the same height as adjoining industrial land.
- (c) This area of land should be zoned Industrial 2 to reflect its current use. Alternatively, the land should be zoned in a schedule in Appendix 16 of Volume 3 to allow as a permitted activities “storage of timber and associated uses” (as described in the lease) which are currently carried out in this area.

Discharges within Spray Booths

- (d) The RMA regulates discharges of contaminants into the environment. Discharges within an enclosed industrial site such as a paint shop is not a discharge to the environment which the MEP may regulate; it may only regulate the effects emanating into the atmosphere (e.g. contaminants, sound or appearance).
- (e) The rules should, however, put rules on what may be vented to the atmosphere. Such an approach would be consistent with the RMA’s principle of sustainable management as the rules would then regulate an effect on the environment.
- (f) Regulation of how much coating may be sprayed does not have a direct relationship to the effects on the environment. The rule fails to recognise how the effects of spraying will be managed and avoided.
- (g) Note that, the decision doesn’t appear to address this appeal point.

Relief Sought

8 The Appellant seeks the following relief:

- (a) With respect to the Floodway zoning issue:

- (i) Amend the zoning of the Storage Land to Industrial 2 zone;
 - (ii) Alternatively a map change identifying the Storage Land as a scheduled area with a corresponding schedule in Appendix 16 of Volume 3. That schedule to specify that those activities permitted in the Industrial 2 zone are permitted in the scheduled area but limited to the “storage of timber and associated uses”.
- (b) With respect to the issue of discharges within spray booths:
- (i) Amendments to the relevant rules set out in Schedule B to this notice;
 - (ii) Alternatively a map change mapping the area marked “B” in the attached Schedule A (“Paint Shop”) as a scheduled area with a corresponding schedule in Appendix 16 of Volume 3. That schedule to specify that those variations to the rules in Schedule B apply.
- (c) Any necessary consequential amendments; or
- (d) Other equivalent relief.

Attached Documents

9 The following documents are **attached** to this notice:

- (a) A copy of Timberlink’s submission (at Schedule C);
- (b) A copy of the relevant parts of the decision (at Schedule D); and
- (c) A list of names and addresses of persons to be served with a copy of this notice (at Schedule E).



Quentin A M Davies and Joshua S Marshall
Solicitor for the Appellant

Address for service of the Appellant

Gascoigne Wicks, 79 High Street, Blenheim 7201.

Telephone: 03 578 4229

E-mail: jmarshall@gwlaw.co.nz and qdavies@gwlaw.co.nz

Contact person: Josh Marshall and Quentin Davies, Solicitors

Note to appellant

You may appeal only if—

you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and

in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

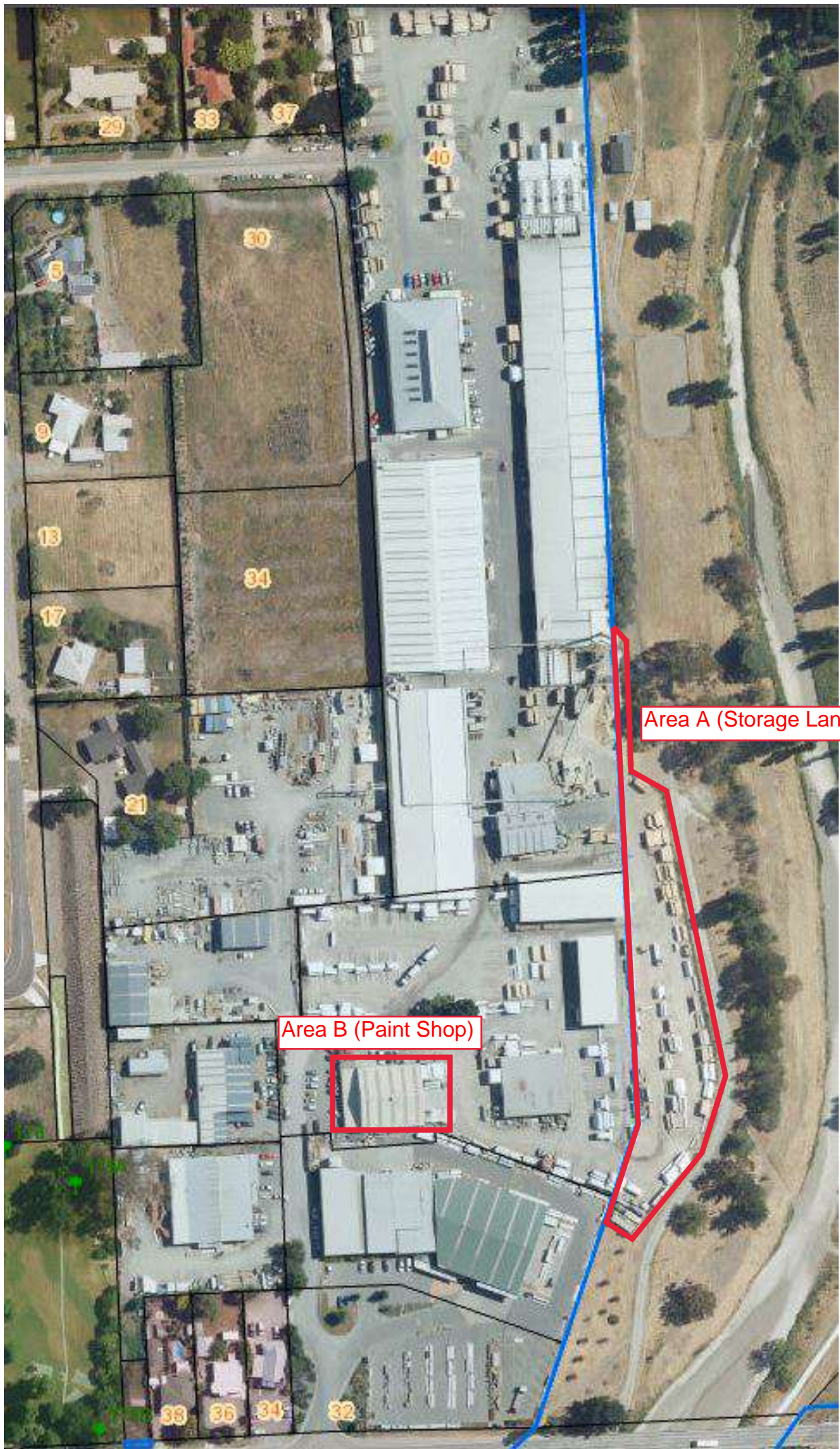
You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

If this appeal is being served on you in hardcopy, the copy of this notice served on you does not attach a copy of the appellant's submission or part of the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.



Area A (Storage Land)

Area B (Paint Shop)



Schedule B

12.3.9. Discharge of contaminants to air from the application of coating materials (including paints and powders) through spray application undertaken within an enclosed booth located in the Industrial 2 Zone.

12.3.9.1. The coating material must not contain any di-isocyanates.

~~12.3.9.2. The total amount of coating material sprayed on the property must not exceed 10 litres per hour.~~

~~12.3.9.3.~~12.3.9.2. The spray booth must be fitted with an air extraction system which vertically discharges all contaminants requiring discharge and exhaust air through an emission stack.

~~12.3.9.4.~~12.3.9.3. The emission stack must be a height of at least 2m above the ridgeline of the roof of a building, land or other substantial structure within a radius, from the stack, of 35m.

~~12.3.9.5.~~12.3.9.4. The discharge must be directed vertically into the air and must not be impeded by an obstruction above the stack which decreases the vertical efflux velocity.

~~12.3.9.6.~~12.3.9.5. The discharge must not cause noxious, dangerous, offensive or objectionable odour, dust, particulate, smoke, ash, or visible emissions to the extent that it causes an adverse effect at or beyond the boundary of the premises property where the activity takes place.



Submission on the Proposed Marlborough Environment Plan



**MARLBOROUGH
DISTRICT COUNCIL**

Submissions close 1 September 2016

ISO 9001
Document Number:
EAF0005-C11726

1. Submitter Details

Full Name	<input type="text"/>		
Organisation (if applicable)	<input type="text" value="Timberlink New Zealand Limited"/>		
Contact Person (if applicable)	<input type="text" value="Roman Spiers"/>		
Postal Address	<input type="text" value="Timberlink New Zealand Limited"/>		
	<input type="text" value="P.O. Box 295 #"/>		
	<input type="text" value="Blenheim"/>	Post Code	<input type="text" value="7201"/>
Contact Details	Email Address: <input type="text" value="roman.spiers@timberlink.co.nz"/>		
	Phone: [Daytime] <input type="text" value="03 5206240"/>	Phone: [Mobile]	<input type="text"/>
Address for Service	<input type="text" value="Smart Alliances Limited"/>		
(if different from above)	<input type="text" value="PO Box 546"/>		
	<input type="text" value="Blenheim 7200"/>	Post Code	<input type="text" value="7240"/>
Signature (of submitter or person authorised to sign on behalf of submitter)	<input type="text" value="Roman Spiers"/>	Date	<input type="text" value="01.09.2016"/>

Subject to the Resource Management Act 1991 (RMA), all information contained in a submission including the name and address of the submitter, will be made publicly available. Submitters have the right to access and correct personal information.

2. Trade Competition

Could you gain an advantage in trade competition in making this submission? Yes No

If you answered yes, please note that there are restrictions on your ability to make a submission. Refer to Clause 6(4) of the First Schedule of the RMA for further information.

3. Council Hearing

Do you wish to be heard in support of your submission? Yes No

If you answered 'Yes' to being heard, would you be prepared to consider presenting a joint case with others who have made a similar submission? Yes No

4. Return Submission to:

Attention Planning Technician
Marlborough District Council
PO Box 443
Blenheim 7240

Fax: 03 520 7496

Email: mep@marlborough.govt.nz

For Office Use
Submission No:

5. The specific parts of the Proposed Plan (Volume, Chapter and Provision No.) the submission relates to are as follows:

Refer to attached.

Continue on a separate sheet if necessary

6. My submission is: (state the nature of your submission whether you support or oppose (In full or in part) specific provisions)

Refer to Attached.

Continue on a separate sheet if necessary

7. The decision I seek from Council is: (where amendments are sought, provide details of what changes you would like to see)

Refer to attached.

Continue on a separate sheet if necessary

Timberlink New Zealand Limited

Submissions to Marlborough Environment Plan

Full Name

Timberlink New Zealand Limited

Organisation (if applicable)

Timberlink New Zealand Limited

Contact Person (if applicable)

Romon Spiers

Postal Address

Timberlink New Zealand Limited

PO Box 295, Blenheim 7201

Contact Details

Timberlink New Zealand Limited

PO Box 295, Blenheim 7201

C/- Romon Spiers

Ph: 03 520 6240

Email: romon.spiers@timberlinknz.co.nz

Address for Service

Smart Alliances Limited

PO Box 546

Blenheim 7240

C/- Mark Batchelor

Ph: 03 579 6211

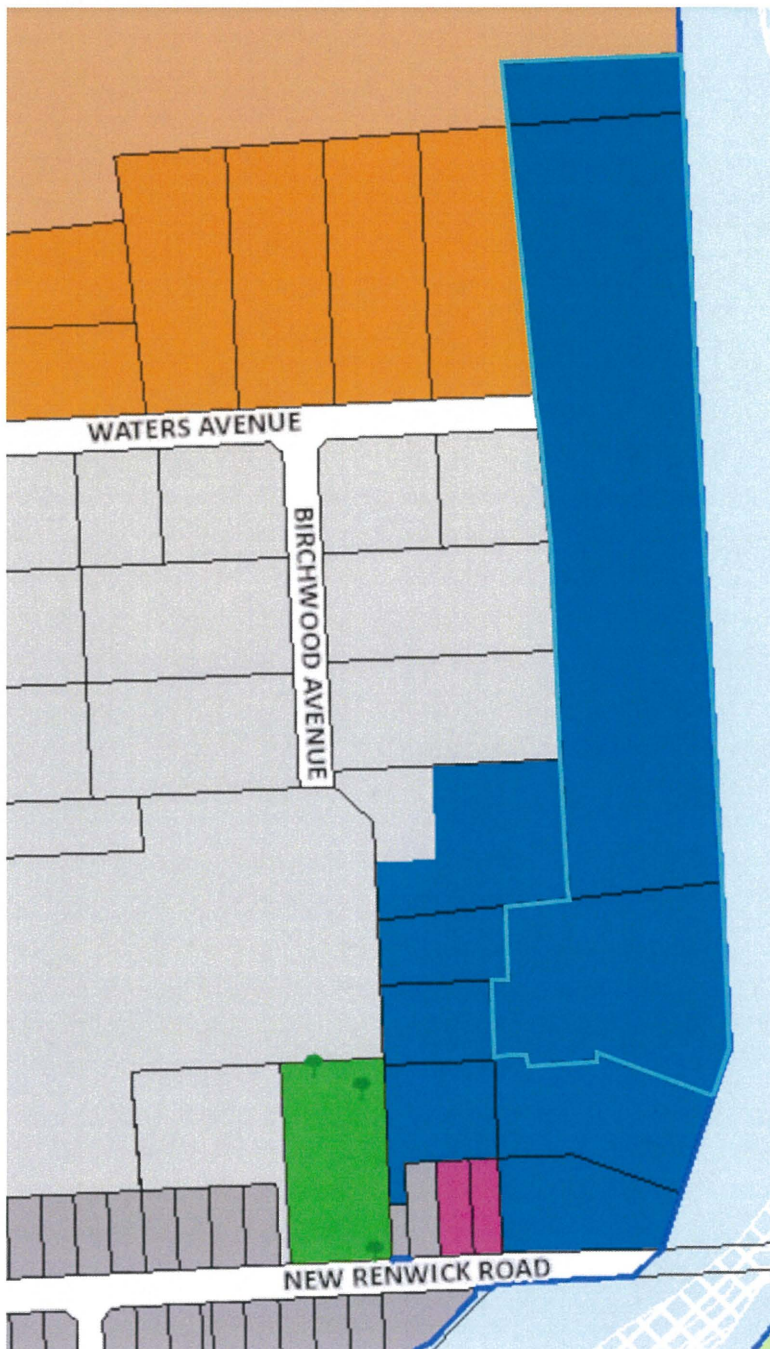
Email: mark@smartalliances.co.nz

5. The specific parts of the Proposed Plan (Volume, Chapter and Provision No.) the submission relates to are as follows:

MAPS

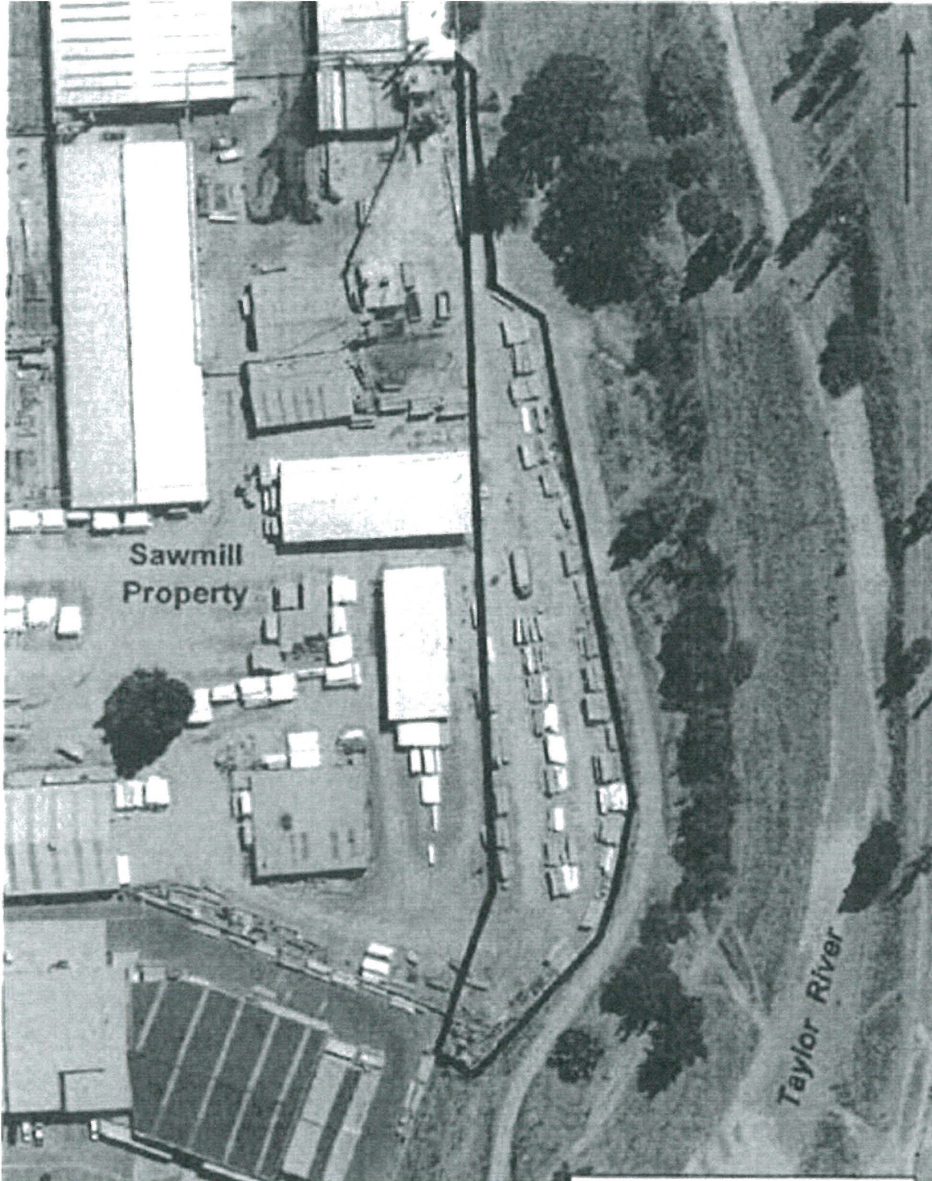
Zoning Map 13;

The Urban Residential 3 Zone placed on the land between Birchwood Avenue and the Industrial land zoned Industrial 2 in both the WARMP and the proposed MEP to the east that is occupied by the Timberlink NZ Ltd sawmill and a range of other industrial and commercial activities within the same area.



Zoning Map 14;

The 'Floodway Zone' applied to a strip of land adjoining the eastern boundary of the sawmill site that has been leased to the sawmill by the Council for use as part of the sawmill with the legal description of Sec 232 Omaka DIST.



RULES

Rule 12.2.1.4 Building Setback

Requirement for a building or structure to be located a minimum of 6m back from a boundary with urban residential zones.

12.2.1.4 A building or structure (except a fence) must be set back a minimum of 6m from the boundary of any property zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3, except for Lots 16 to 20 DP 348832 and Lot 2 DP 352510 for which the setback must be a minimum of 3m.

Rule 12.2.1.5 Fencing

Requirement for the height of a fence to be no more than 2m when adjoining urban residential zones.

12.2.1.5. The height of a fence, or any part of a fence, on land adjoining a property zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3, or fronting Grove Road, Sinclair Street, Main Street, Nelson Street or Middle Renwick Road must not exceed 2m.

Rule 12.2.1.7 Connection to Public Sewer

Requirement for connection to a Council operated sewerage system.

12.2.1.7. A building or structure in which human effluent will be created must connect to, and dispose of its effluent into, a Council operated sewerage system designed for that purpose, if the system is within 30m of the property boundary or 60m of the closest building.

Rule 12.2.2.3 Noise

Requiring compliance with prescribed noise levels at the boundary and also within the zone.

Standards for the Industrial 2 Zone only:

12.2.2.3. An activity must not cause noise that exceeds the following limits at the zone boundary or within the zone:

At any time 75 dBA LAeq 85dB LAFmax

Rule 12.2.2.4 Noise

Requiring industrial activities within an industrial zone that adjoins several urban residential zones to comply with noise standards that are significantly lower than those specified for the industrial zone.

Standards for both Industrial 1 and 2 Zones:

12.2.2.4. An activity must not cause noise that exceeds the following limits at or within any adjacent land zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3, or within the notional boundary of a dwelling in any adjacent zone (except Industrial 1 or 2 Zones):

7.00 am to 10.00 pm 50 dBA LAeq

10.00 pm to 7.00 am 40 dBA LAeq 70dB LAFmax

Exception: Where Lots 16 to 20 DP 348832 and Lot 2 DP 352510 adjoin

Urban Residential 2 Zone, the noise limits for Industrial 1 in 12.2.2.1 and 12.2.2.2 apply.

Rule 12.2.3.3 Use of external lighting

Requiring light spill into adjoining Industrial zoned properties to not exceed 10 Lux at a distance of 2m inside the property boundary.

12.2.3.3. Light spill onto an adjoining site that is zoned Urban Residential 1, Urban Residential 2 (including Greenfields), Urban Residential 3, Industrial 1 or Industrial 2 must not exceed 2.5 Lux spill (horizontal and vertical).

Rule 12.2.4.1 Storage of goods outdoors

Requiring outdoor storage of materials to be no closer than 3m from the boundary of any zone and requiring storage to be set back 6m from the boundary with any property zoned Urban Residential 3 and to be screened by a solid wall or close boarded fence with a minimum height of 2m.

12.2.4.1. An outdoor storage area must not be located within:

(a) 3m of a road boundary;

(b) 3m of the boundary of any property within a different zone, unless the other zone is Industrial 1, Industrial 2, Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3;

(d) 6m of the boundary of any property zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3.

Rule 12.2.4.2 Storage of goods outdoors

Requiring outdoor storage to be screened from public view and from urban residential zones.

12.2.4.2. An outdoor storage area must be screened from public view and must be screened from any property zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3 by a solid wall or close boarded fence with a minimum height of 2m, except that this standard does not apply to the storage of goods outdoors on Lots 16 to 20 DP 348832 and Lot 2 DP 352510.

Rule 12.2.8 Dust from any process vent or stack

Placing standardised limits on the particulate discharge rate and size.

12.2.8.2. The particulate discharge rate from any air pollution control equipment and dust collection system must not exceed 250mg/m³ at any time, corrected to 0°C, 1 atmosphere pressure, dry gas basis.

12.2.8.3. Dust particles must not exceed 0.05mm size in any direction.

Rule 12.3.8 Discharges from spray booths

Placing standardised limitations on discharges and activities generating the discharges

12.3.8. Discharge of contaminants to air from the application of coating materials (including paints and powders) through spray application undertaken within an enclosed booth located in the Industrial 2 Zone.

12.3.8.1. The coating material must not contain any di-isocyanates.

12.3.8.2. The total amount of coating material sprayed on the property must not exceed 10 litres per hour.

12.3.8.3. The spray booth must be fitted with an air extraction system which vertically discharges all contaminants and exhaust air through an emission stack.

12.3.8.4. The emission stack must be a height of at least 2m above the ridgeline of the roof of a building, land or other substantial structure within a radius, from the stack, of 35m.

12.3.8.5. The discharge must be directed vertically into the air and must not be impeded by an obstruction above the stack which decreases the vertical efflux velocity, below that which would occur in the absence of such obstruction.

12.3.8.6. The discharge must be through a filtration system that removes at least 95% of particulate matter from the discharge.

Rule 12.5 Prohibited Activities

Prohibitions on a number of discharges.

12.5.3. From 9 June 2017 the discharge of contaminants into air within the Blenheim Airshed from the burning of solid fuel in an enclosed wood, coal or other burner (except a pellet burner) that has been installed for more than 15 years.

12.5.7. Discharge of contaminants into air arising from the burning of any of the following materials: (a) wood having a moisture content of more than 25% dry weight;

OBJECTIVES AND POLICIES

Objective 12.2

This objective is supported by a number of policies (12.2.1 and 12.2.2) that describe the desired qualities of residential areas which all relate to the activities within them and their locations. They do not include consideration of implications of planning decisions on the location of residential zones on other activities.

Objective 12.2 – A high standard of amenity for residential development and attractive residential areas makes the urban environment a place where people want to live.

Policy 12.5.6

Policy 12.5.6 prescribes a range of characteristics to be maintained in Industrial zoning practices which is contrary to the circumstances of the sawmill.

Policy 12.5.6 – Maintain the following characteristics within areas zoned for heavier industrial activities located near Blenheim:

(a) Location outside the urban area of Blenheim.

6. My submission is: (state the nature of your submission whether you support or oppose (in full or in part) specific provisions)

TIMBERLINK New Zealand LTD

Timberlink has mills throughout New Zealand and Australia.

The Blenheim mill employs over 80 people (including all staff who were previously employed by the prior owner, Flight Timbers). Economic contribution to the region resulting from the mill's operation is estimated at in excess of \$60m directly to Marlborough pa¹.

The Blenheim mill processes a high proportion of pruned, high-grade log which it manufactures into high-grade appearance and decorative products. Other products produced include structural timber, laminated and finger jointed posts and mouldings, decking boards and industrial grade timber.

The site operates over a 6 hectare area. It has a sawline engineered to recover the best quality material possible from each log, a modern preservative treatment plant and a lamination and finger jointing facility.

Timberlink has recently commenced a significant capital expenditure programme and is investing NZ\$10 million in the mill over a three year period. Deployment of this capital will add significantly to Timberlink's economic contribution to Marlborough for the period of deployment due to the use of local contractors, fabricators, accommodation providers etc. It is also expected to unlock additional mill output capacity, increasing Timberlink's contribution to the local economy above the current level of over \$60m pa. This will not only bring the mill up to date but is also expected a positive effect on the local community. This investment is concerned with improvements in the mills business and operational including environmental performance.

Over the years since the mill was established on the site, which was originally in the rural areas to the south west of Blenheim township, the urban areas of Blenheim have been steadily expanded towards the mill.

¹ Estimated using accepted economic multiplier techniques, eg Review of Studies of the Socio-Economic Impact of Forest Industries in Australia, FWPRDC 2003.

Despite a program of continuing improvements in environmental performance, this expansion has presented issues related to the sensitivity of the residential areas that have been extended towards and surrounding the mill.

Issues that have arisen in this regard are noise, lighting, traffic movement, and smoke emissions. Management of the mill are very well aware of these issues as they are in regular contact with neighbors about effects they may experience. This has been established in order to facilitate both understanding of what is concerning neighbours and quick response and understanding of where improvements are required. This has led to investment being directed into areas requiring attention as part of the upgrade program referred to above. Recent projects have included attention to managing discharges.

The company has a continuing program of improving environmental performance. This includes being available to neighbours by telephone and in person, which is being used to help understanding of the issues they are experiencing and developing methodologies to resolve the effects. The company continues to work to achieve a goal of reduced effects as the mill is intended to remain on the site for the foreseeable future and no plans exist to move it. The effectiveness of this is however not being assisted by decisions of the Council in the past to permit extension of sensitive land uses towards the mill including the zone change proposed in this instance.

This background makes it imperative for a cooperative relationship to be established between the community and the mill including the Council and the manner in which its land use development decisions affect and may be affected by the mill and vice versa.

A copy of the company's environmental sustainability policy is attached. This includes reference to the Resource Management Act and specific reference to achieving a balance between economic viability, social contribution and environmental responsibility which is described as being critical to achieving sustainability and maintaining a social license for the business.

This however does not only rely on the actions of the company in isolation from other influences in the environment. The actions of others also have an influence, which includes decisions in this instance by the Council that influences the company's ability to achieve these policies.

Planning Approach

The Timberlink sawmill which was previously known as Flight Timber has been on the site at Waters Avenue since the late 1950s when the site was in the countryside outside the Blenheim Township. Over the years Blenheim has grown in all directions. This has included in a southerly direction, including towards and around the mill.

In more recent times there has also been other relatively heavy and large scale industrial activities locating in the immediate vicinity.

Residential growth to the south has shown some encroachment arounds the mill, but tends to have oriented itself more towards the Wither Hills on the eastern side of Maxwells Road and Taylors Pass.

These characteristics have been in some regards, in response to the presence of the sawmill and other industry that has grown up and around the mill. The industrial development has been in response to this being a place where residential amenity values are to some extent affected by presence of the mill and other industry and sensitivity to the residential areas to the east and south east. The direction of residential growth has been influenced by other factors but including a desire to avoid location close to industrial activities including the mill.

Undoubtedly despite this, as is common in all towns, there has been some residential growth in this direction as a result of a range of factors, including availability of land through zoning and resource consenting or equivalent decisions.

During this time the mill has always been operating on the site while growth being directed towards it has increasingly exposed it and the residential areas directed towards it to increasing potential to adversely affect each other. This is evidenced by the sensitivities of the close and relatively recent residential areas being extended towards the locality being the source of inquiries and complaint and examination of the property prices and 'urban shape' around the wider mill environs.

Resource management or as previously described, town planning is quite capable of addressing this through locational decisions in response to these issues and has had that opportunity over the years and the present planning process for the Marlborough Environment Plan is one of these.

Part of the resource management or town planning process is to consider these matters and respond to them. This most commonly occurs through locational decisions presented by land zoning and development and performance standards applied to land, land uses and development. One of the matters these methods consider is the relationship between land uses and how to manage them so neither is adversely affected. In this case this is not being done by the proposals in the proposed plan. The approach being taken by the zoning and performance and development standards being proposed are attempting to produce the opposite result, that being a conflict.

The decision to extend more residential zoning in closer to the mill and the other industrial activities in the locality and the resultant application of significantly restrictive development and performance standards onto these businesses is causing this conflict. This will, as is evidenced in other parts of Blenheim and any other town or city, have potential for significant adverse effects on the success of both the businesses, the employees of them and the residents and the quality of their lives and values of their properties.

The present planning process the council is going through provides the opportunity to either exacerbate this outcome or avoid it. The proposals at present exacerbate the present issues and will cause a negative outcome.

MATTERS SUBJECT TO SUBMISSION

Maps and zoning

Maps 13 and 14

Placement of 'Urban Residential 3 Zone' onto the land that adjoins a site that has existing and is zoned to provide for continuing occupation by heavy industrial activities is unrealistic and unreasonable when considered with regard to the practicalities of achieving compatibility between activities in the two zones despite application of performance and development standards to the industrial zone.

This is also not a realistic approach to the realities that have been experienced in the particular locality of the Timberlink NZ Ltd sawmill and adjacent presently zoned Rural Residential Zone as described above and is not facilitating the sawmill improving its performance, it is making it more difficult.

This is also presenting the possibility for people who might come to live in the locality as a result of the zone to experience adverse effects. This outcome is also contrary to proposed residential policy and industrial policy in the proposed plan. Therefore the rules are not following the policy.

The protective methods prescribed will be ineffective and not able to be complied with therefore do not match with the practicalities of this immediate locality, particularly as the Plan proposes to continue the existing relationship by maintaining an industrial zone and the site is proposed and will continue to be operated as a saw mill with significant investment being made in its operations.

The proposed zoning is also exacerbating the existing situation caused by the Council deciding to extend residential zoning out towards the saw mill and rural residential towards its western boundary and now location of Urban Residential zoning adjoining it.

In this way the Council is causing the adverse effects it has been required to date and will increasingly become required to address if it proceeds with the zoning proposals in this area.

While the Council's past decisions in this regard have and will continue to cause adverse effects, it is the occupiers of the locality living with these effects and the sawmill that will have to pay the cost of addressing them in one way or another.

The 'green field' circumstances of the land adjacent to the sawmill site provides the basis for making a decision that will avoid this situation.

The Council's experience in this matter provides it with adequate background to learn not to continue this course of action.

The area outlined in black on Map 14, page 2, of approximately 4200m², is currently leased to Timberlink with "Type of Activity" specified in the lease agreement as "storage of timber

and associated uses". The area is currently zoned Floodway. The Council should rezone this Industrial 2 to reflect current and projected future usage.

Rules

Rule 12.2.1.4 – Building set back;

Requirement for a building or structure to be located a minimum of 6m back from a boundary with urban residential zones is too much of valuable site area for business properties to be effectively made unavailable for use and is the result of proposing to locate the proposed Urban Residential 3 Zone against the Industrial 2 zoned site of the sawmill. This also does not recognise that protection can alternatively and more effectively be achieved by screening and fencing than set back.

Rule 12.2.1.5 - Fencing;

Requirement for the height of a fence to be no more than 2m when adjoining urban residential zones does not recognise the effects and difficulties the proposal to locate the proposed Urban Residential 3 Zone onto the land against the Industrial 2 zoned site of the sawmill will cause. This proposal might result in a considerably higher fence or wall becoming required than provided for by the restriction to a height of 2m. This is significantly less than the height of the existing walls around the site erected for the purpose of protecting the surrounding properties.

Rule 12.2.1.7 – Human effluent

Requirement for connection to a Council operated sewerage system once the reticulation reaches a distance of'*30m of the property boundary or 60m of the closest building*'. does not provide for large sites on which the distances between the frontage or position of the sewer make connection impracticable.

Rule 12.2.2.3 - Noise

Requiring compliance with prescribed noise levels at the boundary and also within the zone, has the effect of requiring the noise standards to be complied with within a site as well, despite the noise at the boundary with an the adjoining site complying.

This is not practical, practicable or realistic when many industrial activities make higher noise levels within their properties and manage them so they comply on the boundaries. Noise rules are also concerned with inter-site effects, not effects within sites, particularly of a single activity, which is subject to management pursuant to health and safety regulations. and these rules are concerned with effects on adjacent land.

Rule 12.2.2.4 - Noise

Requiring industrial activities within an industrial zone that adjoins several urban residential zones to comply with noise standards that are significantly lower than those specified for the industrial zone is the result of the proposed Urban Residential 3 Zone being proposed to be placed on land adjoining the sawmill site.

The restrictions this will place on the effective and continuing practicable operations of the sawmill is a reverse sensitivity effect being caused by this proposal and contrary to the principles that apply to such matters.

The proposed noise levels are significantly reduced from the existing operative noise levels. These are not reasonable, realistic or practicable when related to the activities in the area, the requirements of an activity for which Industrial Zoning is provided and the nature of noise levels in the locality. The rezoning, as referred to above, exacerbates this.

Rule 12.2.3.3 - Use of external lighting

Requiring light spill into adjoining Industrially zoned properties to not exceed 10 Lux at a distance of 2m inside the property boundary when the adjoining property is an industrial activity is not necessary and there is little if any sensitivity between industrial properties in this regard.

There are no activities provided for in the Industrial 2 zone that are sensitive to this and those that might be are required to obtain resource consent which enables this to be managed at that time.

Rule 12.2.4.1 and 12.2.4.2 - Storage of goods outdoors

Requiring outdoor storage of materials to be no closer than 3m from the boundary of any zone and Rule 12.2.4.2 requiring storage to be set back 6m from the boundary with any property zoned Urban Residential and to be screened by a solid wall or close boarded fence with a minimum height of 2m results in a significant area on a site that is essentially sterilized from being used.

The set back is not required when screening that is also required is being used. Effective screening also makes use of the land within the setbacks possible without causing adverse effects on the adjoining properties.

This is exacerbated by the Council's proposed extension of the Urban Residential 3 Zone up to the boundaries of the sawmill site. If the land is kept in some alternative less sensitive zone, this issue will be reduced.

Rule 12.2.8 - Dust from any Process vent or stack

The proposed limits on the particulate discharge rate and size proposed in this rule results in the possibility of the discharge controls on the site possibly not being or being able to achieve compliance. It is not realistic or practicable to require all exhausts no matter how small to comply or with regard to what will cause nuisance. Small non-compliances or non-compliance from small or single pieces of equipment do not cause nuisance and therefore are acceptable and any such non-compliances in practice are not noticeable.

Rule 12.3.8 Discharges from spray booths

Placing standardized limitations on discharges and activities generating the discharges and particularly the limitation to the small amount of product permitted to be used does not recognise there are methodologies of avoiding, remedying and mitigating effects that enable

larger volumes of product to be used. A more effects based standard would provide for the actual requirements and provide for the protections desired by the limitations proposed in this rule. Limitation to 10 litres per day and requirement to remove 95% of particulates is not practicable or reasonable. Any requirement concerned with managing effects should limit gross emissions from stacks. The requirement proposed is well beyond what would cause any identifiable adverse effects from this type of operation. Use of more than 10 litres per day also does not automatically result in an adverse effect, this depends on the means by which effects are managed not how much substance is used. Prescription of a quality outcome rather than a quantity is more appropriate.

Rule 12.5 Prohibited Activities

Prohibitions on a number of discharges including those prescribed in rules 12.5.3 and 12.5.7 do not recognise effects from discharges, do not recognise the practical requirements of many activities within the industrial zones and the possibly of managing and treating discharges to comply with prescribed air quality standards. This also does not recognise there are standards applicable to these activities that provide for management and avoidance of adverse effects through consent procedures. Requirement that plant be a maximum of 15 years old is prescriptive, not performance based. An older plant compliant with emissions requirements is still compliant, so age is of no relevance. If this rule is intended to be applied to domestic heating this should be stated in the rule.

Use of prohibitions to prevent application being lodged will have the effect of causing activities not to be able to operate with significant adverse social, cultural and economic adverse effects to the community.

Prescribing a prohibition when there are alternative effective means of addressing a matter is not a reasonable approach in such circumstances and does not accord with the principles established in regard to prohibited activities.

OBJECTIVES AND POLICIES

Objective 12.2

An additional policy is required to address effects from decisions related to extending provision for sensitive activities to be encouraged or facilitated to locate near or nearer to activities that could significantly adversely affect the amenities of the sensitive activities is contrary to established planning principles in this regard.

Policy 12.5.6 that prescribes the characteristics within heavier industrial areas including, (c) *Location outside the urban area of Blenheim* is not realistic in the circumstances of the sawmill.

Prescribing characteristics that do not match the reality of industrial activities being located within the urban areas and reinforcement of this by application of zones within the urban area on industrial sites is contrary to this reality and creates a conflict between policy and zoning and reality.

The policy also does not match the characteristics by reference to 'mainlining' when compared with the clause (a) describing these zones as being located outside the Blenheim urban area.

Objectives and policies related to activities for which resource consent is required and to extension of sensitive zones towards Industrial 2 zoned areas that present potential for sensitivity to the effects of Permitted Activities in the Industrial 2 zones would provide for this to be addressed in a practical manner rather than forcing the established industrial activities to have to respond despite not having been the instigators of the problem.

With regard to the external lighting and noise matters;

Objectives and policies should include recognition that there is a range of activities within and provided for either as Permitted Activities or requiring of resource consents within the industrial and business zones that present sensitivity to the effects commonly associated with industrial and business activities and premises and management of these effects through resource consent procedures is one of the means of addressing these sensitivities.

7. The decision I seek from Council is: (where amendments are sought, provide details of what changes you would like to see)

MAPS AND ZONING

Change the proposed Urban Residential 3 Zone to a less sensitive zone such as Business or Industrial 1.

Change the proposed Floodway Zone on Map 14 applying to the property currently leased to Timberlink to Industrial 2, reflecting current and anticipated future use of the property.

RULES

Rule 12.2.1.4 – Building set back

Remove this requirement in the instance of a fence, wall or some other form of screening established along the boundary.

Rule 12.2.1.5 - Fencing

Abandon the proposed Urban Residential Zone proposed to be placed on the adjoining land is an appropriate planning decisions in this circumstance. This would also result in no need for the restriction on fence height.

Rule 12.2.1.7 – Human effluent

Modify this requirement to provide for large sites to be exempt from the requirement in recognition that the sites are large enough to accommodate their own treatment in a similar manner as rural properties and in recognition of the prohibitive cost of connections in the circumstances of some large industrial properties.

Rule 12.2.2.3 - Noise

Modify the rules to remove the requirement for compliance within the site. If there is desire to address health and safety matters on sites, include reference to health and safety regulations as the basis for control.

Rule 12.2.2.4 - Noise

1. Abandon the proposed application of the Urban Residential Zone to the land adjoining the sawmill. Alternatively identify this site as one that is exempt from this standard as has been done for other existing activities that present similar circumstances.
2. Provide LAeq limits that result in the same or higher noise levels in view of the actual circumstances of this immediate locality and also provide for higher noise levels at times when the ambient noise levels are greater than these.

Rule 12.2.3.3 - Use of external lighting

Remove this rule in so far as it applies to light spill within the same zone and the same property or alter it to apply to non-industrial activities that may become subject to applications for resource consent for establishment in industrial zones to include protection from light spill.

Rule 12.2.4.1 and 12.2.4.2 - Storage of goods outdoors

Remove this standard or alter it to require screening on boundaries if storage is proposed to be located within 3m of the boundary. Remove the 6m set back. Abandon the proposed Urban Residential Zone proposal.

Rule 12.2.8 - Dust from any Process vent or stack

Amend the requirement to provide an alternative of compliance with the national air quality standards.

Rule 12.3.8 Discharges from spray booths

Amend the requirement to provide an alternative of compliance with the national air quality standards.

Rule 12.5 Prohibited Activities

Remove prohibitions on discharges relating to production activities such as that of the sawmill including those prescribed by rules 12.5.3 and 12.5.7 and classify them as either Discretionary Activities or provide a Non-Complying Activity category and include them in a Discretionary Category and also remove reference to age of plant.

OBJECTIVES AND POLICIES

Objective 12.2

An additional policy is required to address effects from decisions related to extending provision for sensitive activities to be encouraged or facilitated to locate near or nearer to activities that could significantly adversely affect the amenities of the sensitive activities is contrary to established planning principles in this regard.

Policy 12.5.6 be changed to include an additional clause or other modification with the effect of recognising existing areas zoned for heavier industrial activities located within or close to Blenheim as a result of historical consequence.

Add a policy concerned with recognising the effects of extending or providing for extension of sensitive activities or areas by way of subdivision, zoning, development or resource consents towards relatively 'high effects' activities or areas. That policy should prescribe that decisions to do this will not be made unless special circumstances prescribed a need for it and the effects on the occupiers of both zones could be avoided, remedied or mitigated or accommodation of it provided for in a manner that did not adversely affect the interests of the zone being extended towards.

Further policy should be added to the effect that the particular nature of industrial areas and particularly with regard to the effects they may have on more sensitive activities and areas will be provided for by protection of them from reverse sensitivity effects resulting from decisions to extend or permit extension or location of sensitive activities in close enough proximity to them to cause reverse sensitivity effects.

DISCUSSIONS AND CONSULTATION

The company encourages and would welcome the opportunity to discuss the requests made in this submission and other solutions and is keen to work with the Council to achieve an outcome that recognises and provides for the issues presented in this submission and enables the objectives of the company, the Council and the community and particularly the surrounding locality to be achieved in as effective manner as practicable and that in the best interest of all.

100. Insert a new additional sentence at the end of the explanatory statement to Policy 11.1.8 as follows:

... In addition, Policy 11.1.10(b) requires an evaluation to establish the nature of the flood hazard in the Level 2 risk area. The results of the evaluation may enable locating a house or other habitable structure in this risk area.

101. The exception recognises that Policy 11.1.10(a) provides a means of mitigating the adverse effects of flooding by establishing minimum floor levels. In addition, Policy 11.1.10 (b) enables an evaluation to establish the nature of the flood hazard in the Level 2 risk area. The results of the evaluation may enable locating a house or other habitable structure in this risk area.

Hazard Overlay and Floodway mapping in other locations not in the Tuamarina Pocket

102. In a number of other locations submissions were received from various property owners in the following situations as to the need for closer reconsideration of mapped Flood Hazard Levels or Floodway Zone boundaries.

103. Those submissions included submissions in respect of properties owned by:

- S & D Groome, T Offen and A Harvey all at Clova Bay, Pelorus Sound mapped on Map 4 & 6;⁶
- S Parkes located at Queen Charlotte Drive Linkwater mapped on Map 13;⁷
- Raeburn Property Partnership at Waikakaho valley mapped on Map 23;⁸
- CG & WA Tozer immediately adjacent to the Wairau River on its southern side in the lower Rapaura/Spring Creek area mapped on Map 23 (acceptance of this submission would necessitate a consequential change to the adjoining property to the west);⁹
- KJ, JS & JA Timms, P Wilhelmus and Ormond Aquaculture located at Wairau Valley on the southern side of the river west of the township mapped on Map 28;¹⁰
- Tim and Franzi Trust located at Riverlands by Cob Cottage Road mapped on Map 33;¹¹
- CG & WA Tozer immediately adjacent to the Wairau River on its southern side in the lower Rapaura/Spring Creek area mapped on Map 149; and finally,¹²
- M Tschepp and J Park located in the Waihopai Valley and mapped on Map 169.¹³

⁶ S & D Groome (344.1 & 350.1), T Offen (151.1 & 151.5) and A Harvey (388.1)

⁷ (339.28)

⁸ (1084.7)

⁹ (319.17)

¹⁰ KJ, JS & JA Timms (475.2), P Wilhelmus and Ormond Aquaculture (1035.4)

¹¹ (353.1)

¹² (319.4)

¹³ (631.42)

- M Patrick located at 8 Market Street, Picton and mapped on Map 34.¹⁴

Section 42A Report

104. In each of those cases the Section 42A report and/or Reply to Evidence report detailed the reconsideration carried out by Mr Kuta after discussions on-site with the submitters. The reports detailed the changes suggested to be made and the reasons for those changes. The Panel, after its consideration of the evidence from submitters, was persuaded to amend the maps in the case of the submitters listed above.

Consideration

105. However, as to the extent of the changes in each case, the Panel has accepted the expert evidence and assessment of Mr Kuta and has agreed with his recommendations in each case for the reasons outlined in either the original report and/or the response to evidence. The Panel did not receive countervailing expert evidence to a level of detail which either rebutted or undermined the detailed recommendations made by Mr Kuta in each case.
106. Another reason why this discussion has been included in the Panel's decision is particularly because in the case of the Tozer submission, the amendments recommended have the effect of changing the Floodway Hazard extent on the adjoining properties to the west.
107. However, the Panel considers that the relatively small adjustments recommended to be made can be regarded as reasonably within the scope of the relief sought in the Clive Tozer submission, because that submission was seeking mapping changes based on water levels. It is obvious and logical that water levels will not be restricted in their effects by title boundary lines. Moreover, the Panel considers that the effects of the change sought is beneficial for the adjoining property owners in that it removes areas from the more restrictive planning treatment of the lands, and so the changes are not at all prejudicial to the respective landowners' interests. In short the result of the amendments approved by the Panel is to lessen the PMEP impact on the affected land not to increase it.
108. A map provided by Mr Kuta in response to Minute 39 showed minor consequences to other properties that the Panel accepts because the effect of the consequential changes is less restrictive for the properties affected. A number of other submissions made seeking amendments to Floodway mapping or Flood Hazard Level mapping were not accepted on reconsideration by Mr Kuta for the reasons he set out in the Section 42A Report. The Panel has carefully considered each of those submissions.

¹⁴ (434.1)

109. One submitter who did appear was Timberlink Limited. It sought removal of the Floodway zoning affecting a long elongated slither of land in the Taylor River area in Blenheim on which it conducts some of its activities, particularly involving the storage of timber or vehicle movements related to that activity. The land is leased from the Council and the lease enables the storage of timber.
110. The Panel's view of that request was that removal of the Floodway zoning at that location was inappropriate in terms of potential high flood levels which can inundate that land in major flood events as Mr Kuta stressed. The Panel's decision cannot of course affect the terms of the lease, but the Panel notes the lease does not enable either side not to abide by other statutorily based legal obligations. The Panel also noted the lease has only a relatively limited number of years to run. Its renewal or otherwise, and on what terms, can be reconsidered at that time.
111. Other issues of significance included a submission by G Hutchings¹⁵ which sought removal of the Flood Hazard Level 2 Overlay on a property adjacent to the Waikawa Stream. Mr Hutchings did not appear at the hearing. Removal at one location obviously has potential implications for other properties affected up or down stream from the submitter's property. The Section 42A Report drew the Panel's attention to the fact that the Council was undertaking a detailed hydraulic analysis of the Waikawa Floodway which would also include with greater certainty the detailed design flood level around the Hutchings property.
112. The Panel is of the view that protection of this floodway is of major importance to its safe functioning as it protects many properties downstream from the submitter and that a conservative approach is warranted until the detailed broader hydraulic analysis has been carried out. Once that has been completed a plan change can be carried out with design levels having more precision. For those reasons the submission is rejected.
113. A not dissimilar situation arose in respect of the submission by the NZ Institute of Surveyors seeking to remove Flood Hazard Level 1 mapping on the lower terraces immediately north of Renwick.
114. The Section 42A Report stated that major flood protection upgrade works were planned to be carried out in the 2019/2020 year but until they were complete that it was premature to remove the Flood Hazard Overlay. The Panel was well aware that this area has been the subject of flood risk exposure which is the very reason the flood protection upgrade works are planned to be carried out. Once those works have been completed then a plan change process

¹⁵ Grant Hutchings (48.1)

can be undertaken to reflect the detailed final outcome of the protection provided by those works. The Panel will recommend to Council that that planning process follows on the completion of the physical works.

115. The Panel recommends that once upstream upgrade flood protection works have been completed, increasing protection for the lower terraces north of Renwick, that Council embark on a detailed flood risk analysis and accompanying plan change proposal to amend the Flood Hazard Level 1 mapped area.

Decision

116. The Timberlink submission is rejected.
117. Amend flood hazard overlay maps 4, 6, 13, 18, 23, 24, 28 and 33 to reflect the maps provided in the Section 42A Report.
118. The Floodway Zone is amended as shown on the Section 42A Report in respect of Map 34 (Michael Patrick Limited), Map 169 (Tschepp and Park) and Map 149 (Tozer).
119. As a consequence to the changes to Mr Patrick's property on Map 34, the overlay over the adjoining property to the south is also amended.
120. As a consequence to the changes to Mr Tozer's property on Map 149, the overlay over the adjoining property to the west is also amended.

Liquefaction mapping detail

Policy 11.1.17

Avoid locating residential, commercial or industrial developments on Rural Environment or Rural Living zoned land on the Wairau Plain east of State Highway 1/Redwood Street, unless remediation methods are to be used to reduce the level of liquefaction risk to an acceptable level.

121. The potential liquefaction hazard posed in an earthquake prone area such as Marlborough with population bases and related built development on an alluvial plain was demonstrated graphically in the Christchurch 2010 and 2011 earthquakes. That risk is addressed in the PMEP in Policy 11.1.17:

Policy 11.1.17 – Avoid locating residential, commercial or industrial developments on Rural Environment or Rural Living zoned land on the Wairau Plain east of State Highway 1/Redwood Street, unless remediation methods are to be used to reduce the level of liquefaction risk to an acceptable level.

Schedule E: Address for Service of Persons to be Served

Name / Organisation	Contact	Address for Service
Marlborough District Council	Kaye Mcllveney	Kaye.Mcllveney@marlborough.govt.nz