

BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

ENV NO.

UNDER the Resource Management Act 1991 (*RMA*)

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

BETWEEN **JENNIFER SUSAN COCHRAN** (as Trustee of the
Anna Caroline Memorial Trust)

– *Appellant* –

AND **MARLBOROUGH DISTRICT COUNCIL**

– *Respondent* –

NOTICE OF APPEAL

Dated this 8th day of May 2020

SOLICITOR ACTING FOR
THE APPELLANT:

M J RADICH

FIRM OF SOLICITORS:

RADICH LAW
21 BELLS ROAD
P.O. BOX 842
BLENHEIM

TELEPHONE:

(03) 577 8450

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(03) 577 8451

8 May 2020

040580-2

To: The Registrar
Environment Court
CHRISTCHURCH

1. I, Jennifer Susan Cochran, as one of the Trustees of the Anna Caroline Memorial Trust, appeal against part of a decision of the Marlborough District Council (*Council*) on the proposed Marlborough Environment Plan (*Plan*).
2. I made a submission (number 1276.1) on the part of the Plan which I am now appealing.
3. I received notice of the decision on 20 February 2020, with the tracked changes version of the Plan made available on 3 March 2020. The Environment Court has subsequently issued a Minute granting an extension of the date any appeals should be lodged by.
4. I am not a trade competitor for the purposes of Section 308D of the RMA.
5. The part of the decision relating to the Plan that I am appealing is **Rule 7.2.1.5 (Volume 2 – Coastal Living Zone)** which relates to a proposed setback of buildings and states:

A building must not be constructed or sited within 28m of the Coastal Marine Zone.

6. The reasons for the appeal are as follows:
 - (a) The proposed 28m setback compromises existing land owners and infringes on private property and riparian rights for the reasons set out in my submission.
 - (b) Council did not consult with private landowners who are affected by the decision and Council's decision does not refer to Rule 7.2.1.5 or my submission.
 - (c) Council's decision does not represent an efficient use of physical resources under s7(b) of the RMA and does not consider any actual or potential effects of the Plan change.
 - (d) Council has not met its functions under s31 of the RMA.

7. We seek the following relief:
- (a) That Rule 7.2.1.5 be deleted or amended so as not to affect the status quo.
 - (b) That such other relief as is appropriate be granted.
 - (c) The costs of this process.
8. The following documents are **attached** to this Notice:
- (a) A copy of our original Submission.
 - (b) A marked up version (mark ups made by the Respondent) of Chapter 7 *Coastal Living Zone* of the MEP which contains Policy 7.2.1.5 to which this Appeal relates.
 - (c) A list of names and addresses of the persons to be served with a copy of this Notice.

DATED this 8th day of May 2020



M J Radich
on behalf of the Appellant

THIS Notice of Appeal is filed by **MIRIAM JOAN RADICH** Solicitor for the Appellant whose address for service is at the offices of Radich Law, 21 Bells Road, Blenheim, email miriam@radichlaw.co.nz.

Documents for service on the Appellant may be left at that address for service or may be:

- (a) Posted to the solicitor at P O Box 842, Blenheim, 7240; or
- (b) Transmitted to the solicitor by facsimile to (03) 577 8451.

Advice to Recipients of Copy of Notice*How to become a party to proceedings*

You may be a party to the appeal if you lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

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

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department of Courts in Christchurch.

List of Names and Addresses to be served:

1. Marlborough District Council
Seymour Street
BLLENHEIM

By email: kaye.mcilveney@marlborough.govt.nz

RECEIVED

21 MAR 2017

Marlborough
District Council

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 Jennifer Susan Cochran

Organisation (if applicable) Anna Caroline Memorial Trust

Contact Person (if applicable) Jennifer Cochran

Postal Address Kumutoto Bay

Marlborough Sounds

Post Code

Contact Details Email Address: jenny.cochran@nevada-sport.co.nz

Phone: [Daytime] 033478441 Phone: [Mobile] 02102178441

Address for Service 499 Sandy Knolls Road

(if different from above) Christchurch R. D. 5

Post Code 7 6 7 5

Signature (of submitter or person authorised to sign on behalf of submitter) J. S. Cochran Date 20 March 2017

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:

Proposed 28m setback - Rule 7.2.1.5

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)*

- 1) The proposed 28m setback severely compromises existing land owners. It restricts the use of the land by limiting the space, position of all types of building (renovating existing or a new build) and increasing the cost to build. Additionally it will further limit recreational use of the property, access to the water, and the view.
- 2) In introducing a 28m setback without notification to registered owners of privately owned land, brought with Riparian rights, with no proposed remuneration for property lost is unjust and against our constitution. ; it also devalues the property.
- 3) That a 28m setback would be introduced at a later date was not made obvious to owners at the time of purchase. Such an introduction would affect the value of the riparian rights to the purchaser; which was a benefit factored into the initial purchase. such retrospective regulation is inequitable.
- 4) Loss of use of 28m of the waterfront of the property directly devalues the property. This feature almost always commands a premium in price, and loss of this premium, having paid for it, is not acceptable.
- 5) It is difficult to understand who will benefit from this setback. The property owners with riparian rights already pay rates, for this area, manage care for and maintain this area of their property with no cost to council, are the ones who will be most unfairly disadvantaged. It will not change the accessibility for any other casual user.
- 6) This proposed setback is an outright infringement on private property ownership. It provides no significant public benefit. It is highly costly in spatial, financial, legal and recreational ways. It has been unadvised and is unsupported by land owners.

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)*

I seek that Council does not alter the current setback of 20m. That other property has only an 8m setback, even 20m can be deemed inequitable.

Should this 28m setback be able to be clearly demonstrated to be fair, reasonable and necessary for a particular purpose, and benefit to the community at large, I seek that proper consultation be undertaken with property owners who have riparian rights; that normally accepted levels of disclosure are undertaken rather than Council taking the law into their own hands, under cover and passing legislation because someone sees fit. Having demonstrated this, appropriate financial compensation is made available to all land owners with riparian rights who are affected.

If the rule does pass, I advise it is my intention to join with others similarly affected and instigate a legal challenge to block it and seek to recover damages.

Continue on a separate sheet if necessary

Marlborough Environment Plan Submissions

Anna Caroline Memorial Trust

Provision

~~Volume 27 Coastal Living Zone 7.2.1.5~~

A building must not be constructed or sited within 28m of the Coastal Marine Zone.

Submission

- 1) The proposed 28m setback severely compromises existing land owners. It restricts the use of the land by limiting the space, position of all types of building (renovating existing or a new build), and increasing the cost to build. Additionally it will further limit recreational use of the property, access to the water, and the view.
- 2) In introducing a 28m setback without notification to registered owners of privately owned land, brought with Riparian rights, with no proposed remuneration for property lost is unjust and against our constitution; it also devalues the property.
- 3) That a 28m setback would be introduced at a later date was not made obvious to owners at the time of purchase. Such an introduction would affect the value of the riparian rights to the purchaser; which was a benefit factored into the initial purchase. Such retrospective regulation is inequitable.
- 4) Loss of use of 28m of the waterfront of the property directly devalues the property. This feature almost always commands a premium in price, and loss of this premium, having paid for it, is not acceptable.
- 5) It is difficult to understand who will benefit from this setback. The property owners with riparian rights already pay rates for this area, manage, care for and maintain this area of their property with no cost to Council, are the ones who will be most unfairly disadvantaged. It will not change the accessibility for any other casual user.
- 6) This proposed setback is an outright infringement on private property ownership. It provides no significant public benefit. It is highly costly in spatial, financial, legal and recreational ways. It has been unadvised and is unsupported by land owners.

Decision Requested

I seek that Council does not alter the current setback of 20m. That other property has only an 8m setback, even 20m can be deemed inequitable.

Should this 28m setback be able to be clearly demonstrated to be fair, reasonable and necessary for particular purpose, and benefit to the community at large, I seek that property consultation be undertaken with property owners who have riparian rights; that normally accepted levels of disclosure are undertaken rather than Council taking the laws into their own hands, under cover and passing legislation because someone sees fit. Having demonstrated this, appropriate financial compensation is made available to all land owners with riparian rights who are affected.

If the rule does pass, I advise it is my intention to join with others similarly affected and instigate a legal challenge to block it and seek to recover costs.

7. Coastal Living Zone

7.1. Permitted Activities

Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent where they comply with the applicable standards in 7.2 and 7.3:

[D]

7.1.1. Residential activity.

[D]

7.1.2. Home occupation.

[D]

7.1.3. Homestay.

[D]

7.1.4. Papakāinga.

[D]

7.1.5. Relocated building.

[D]

7.1.6. Temporary building or structure, or unmodified shipping container.

[D]

7.1.7. Grazing of livestock.

[R, D]

7.1.8. Planting of vegetation.

[R, D]

7.1.9. Indigenous vegetation clearance, ~~including where managed by the National Environmental Standards for Plantation Forestry 2017.~~

[R, D]

7.1.10. Non-indigenous vegetation clearance ~~including~~ excluding where managed by the National Environmental Standards for Plantation Forestry 2017.

[R, D]

7.1.11. Excavation or filling, ~~including where managed by the National Environmental Standards for Plantation Forestry 2017.~~

[D]

7.1.12. ~~Excavation or filling~~ Earthworks within ~~at~~ the National Grid Yard.

[R]

7.1.13. Application (involving a discharge) of an agrichemical into or onto land.

[R]

7.1.14. Discharge of swimming or spa pool water into or onto land.

Comment [RW1]: NES – Plantation Forestry 1/2/2019

Comment [2]: Topic 19

Comment [RW3]: NES – Plantation Forestry 1/2/2019

Comment [RW4]: NES – Plantation Forestry 1/2/2019

Comment [5]: Topic 20

Comment [6]: Topic 14

[R]

7.1.15. Discharge human effluent into or onto land through any onsite wastewater management system.

[R]

7.1.16. Discharge of contaminants to air arising from burning in the open.

[R]

7.1.17. Discharge of contaminants to air from the burning of solid fuel in any small scale solid fuel burning appliance, except an enclosed pellet burner.

[R]

7.1.18. Discharge of contaminants to air from the burning of solid fuel in an enclosed pellet burner.

[R]

7.1.19. Discharge of contaminants to air from the burning of solid fuel in any indoor open fire.

[D]

7.1.20. Park or reserve.

[D]

7.1.21. Community activity using an existing community facility.

[R]

7.1.22 Discharge of contaminants to air arising from the burning of materials for any of the following purposes:

(a) training people to put out fires;

(b) creating special smoke and fire effects for the purposes of producing films;

(c) fireworks display or other temporary event involving the use of fireworks.

Comment [7]: Topic 13

[R]

7.1.23 The discharge of contaminants into air from the storage or transfer of petroleum products, including vapour ventilation and displacement.

Comment [8]: Topic 13

[D]

7.1.24 Buildings, structures and activities in the National Grid Yard.

Comment [9]: Topic 20

[R]

7.1.25 Discharge of dust.

Comment [10]: Topic 18

[R]

7.1.26 Amateur Radio Configurations

Comment [11]: Topic 20

7.2. Standards that apply to all permitted activities

7.2.1. Construction and siting of a building or structure except a temporary building or structure, or unmodified shipping container (unless any Standards listed below are specified as Standards for those activities).

7.2.1.1. No more than one residential dwelling must be construction or sited per ~~Computer Register~~ Record of Title.

Comment [12]: Topic 21

- 7.2.1.2. A building or structure in which human effluent will be generated must connect to and dispose of its effluent into a Council operated sewerage system designed for that purpose, if there is a Council operated sewerage system within 30m of the property boundary or 60m of the closest building.
- 7.2.1.3. The maximum height of a building or structure must not exceed 7.5m, except that where pole foundations are used, the maximum height must not exceed 10m.
- 7.2.1.4. Permanent buildings must not cover more than 15% of net site area.
- 7.2.1.5. A building must not be constructed or sited within 28m of the Coastal Marine Zone.
- 7.2.1.6. On a site smaller than 4,000m², no part of any building must exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26. The recession plane angle must be measured from a starting point 2m above ground level at the property site boundary. The exception to this Standard is where a site boundary abuts the street or road, in that case no part of a building must exceed a height limit imposed by a line drawn at an angle of 55° from the horizontal and originating and drawn at right angles from a point 2m above the boundary of the lot where it abuts the street or road.
- 7.2.1.7. Notwithstanding Standard 7.2.1.5, on a site larger than 4,000m², a building must not be constructed or sited from within 8m of any site boundary.
- 7.2.1.8. A building or structure must not be constructed or sited in, or within 8m of, a river, Significant Wetland or the landward toe of any stopbank.
- 7.2.1.9. On land within the Marlborough Sounds ~~Coastal~~ High Amenity Landscape or any Marlborough Sounds Outstanding Natural Feature and Landscape, any paint applied to the exterior cladding of a building or structure must have a light reflectance value of 45% or less.
- 7.2.1.10. ~~(Deleted) Under the National Grid Conductors (wires) within the National Grid Yard the following apply:~~
- ~~(a) an accessory building for a sensitive activity must not have a height greater than 2.5m and an area greater than 10m²;~~
- ~~(b) a building alteration or addition must be contained within the original building height and footprint;~~
- ~~(c) a fence must not exceed 2.5m in height;~~
- ~~(d) a building or structure must have a minimum vertical clearance of 10m below the lowest point of the conductor associated with the National Grid line or otherwise comply with NZECP34:2001.~~
- 7.2.1.11. ~~(Deleted) Around National Grid support structures within the National Grid Yard the following apply:~~
- ~~(a) a fence must not exceed 2.5m in height and must not be closer than 5m from any National Grid support structure;~~
- ~~(b) a building or structure must not be closer than 12m to a National Grid support structure.~~
- 7.2.1.10. A building or structure must not be located within 1.5m of the legal boundary with the rail corridor of the Main North Line except for a fence up to 2m in height.

Comment [13]: Topic 10

Comment [14]: Topic 10

Comment [15]: Topic 5

Comment [16]: Topic 20

Comment [17]: Topic 12

7.2.2. Noise.

7.2.2.1. An activity must not cause noise that exceeds the following limits at any point within the boundary of any other property~~at the Zone boundary or~~ within the zone:

7.00 am to 10.00 pm	50-dBA L_{Aeq}	
10.00 pm to 7.00 am	40-dBA L_{Aeq}	70dB L_{AFmax}

7.2.2.2. Noise must be measured in accordance with NZS 6801:2008 – Measurement of Environmental Sound, and assessed in accordance with NZS 6802:2008 – Environmental Noise.

7.2.2.3. Construction noise must not exceed the recommended limits in, and must be measured and assessed in accordance with, NZS 6803:1999 Acoustics – Construction Noise.

7.2.3. Use of external lighting.

7.2.3.1. Light spill onto an adjoining residential site must not exceed 2.5 Lux spill (horizontal and vertical). All external lighting shall be fully shielded to prevent any light spillage above the horizontal plane of the light source.

Comment [18]: Topic 11

7.2.3.2. All outdoor lighting and exterior lighting excluding lighting required for safe navigation under the Maritime Transport Act, must be directed away from roads so as to avoid any adverse effects on traffic safety.

Comment [19]: Topic 18

7.2.4. Odour.

7.2.4.1. There must be no ~~The odour must not be~~ objectionable or offensive odour to the extent that it causes an adverse effect, ~~as detected~~ at or beyond the legal boundary of the ~~site~~ area of land on which the permitted activity is occurring

Note:

For the purpose of this performance standard, an offensive or objectionable odour is that odour which can be detected and is considered to be offensive or objectionable by a Council officer. In determining whether an odour is offensive or objectionable, the "FIDOL" factors must be considered (the frequency; the intensity; the duration; the offensiveness (or character); and the location). For the purposes of this performance standard, the "site" comprises all that land owned or controlled by the entity undertaking the activity causing the odour.

Comment [20]: Topic 18

7.2.5. Smoke.

7.2.5.1. The smoke must not be objectionable or offensive, as detected at or beyond the legal boundary of the area of land on which the permitted activity is occurring.

7.2.6. Dust.

7.2.6.1. ~~The best practicable method must be adopted to avoid dust beyond the legal boundary of the area of land on which the activity is occurring.~~ There must be no objectionable or offensive discharge of dust to the extent that it causes an adverse effect (including on human health) at or beyond the legal boundary of the site.

Note 1:

For the purpose of this performance standard, an offensive or objectionable discharge of dust is one which can be detected and is considered to be offensive or objectionable by a Council officer. In determining whether dust is offensive or objectionable, the "FIDOL" factors must be considered (the frequency; the intensity; the duration; the offensiveness (or character); and the location). For the purposes of this performance standard, the "site"

comprises all that land owned or controlled by the entity undertaking the activity causing the dust.

Note 2:

This performance standard shall not apply if the discharge of dust is authorised by an air discharge permit.

Comment [21]: Topic 18

7.2.7. Dust-Particulate from any process vent or stack.

7.2.7.1. The dust-particulate must not contain hazardous substances such that it causes an adverse effect (including on human health) at or beyond the legal boundary of the site.

7.2.7.2. The concentration of particulate discharged-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.

This standard does not apply to discharges to air which are subject to "Standards for specific permitted activities.

~~7.2.7.3. Dust particles must not exceed 0.05mm size in any direction. (Deleted)~~

Comment [22]: Topic 18

7.3. Standards that apply to specific permitted activities

7.3.1. Home occupation.

7.3.1.1. The home occupation must be undertaken by a person(s) residing on the site and employ/contract no more than 1 additional person.

7.3.1.2. For home occupation activities that generate traffic, hours of operation must only occur during the following hours:

8.00 am to 6.00 pm Monday to Friday

9.00 am to 12.00 pm Saturday

7.3.1.3. The home occupation must be carried out wholly within the dwelling or within an accessory building.

7.3.1.4. Only goods produced, repaired, renovated or restored on the site may be retailed from the site.

7.3.2. Homestay.

7.3.2.1. The homestay must be operated within a dwelling that is a Permitted Activity in the Plan.

7.3.2.2. The homestay must be operated by a person residing in the dwelling on the property.

7.3.2.3. The homestay must be incidental and secondary to the use of the dwelling for residential purposes.

7.3.2.4. The homestay must not accommodate more than 5 guests at any time.

7.3.3. Papakāinga.

7.3.3.1. A maximum of five papakāinga units are permitted on any ~~Computer Register-Record of Title.~~

7.3.3.2. A minimum land area of 80m² must be provided for each papakāinga unit.

Comment [23]: Topic 21

- 7.3.3.3. Any setbacks required under Standards 7.2.1.5 to 7.2.1.8 (inclusive) are to the external boundary of the property site and do not apply between units on the site.

Comment [24]: Topic 10

7.3.4. Relocated building.

- 7.3.4.1. ~~Any~~ relocated building intended for use as a dwelling must have previously been designed, built and used as a dwelling.

~~7.3.4.2. All work required to reinstate the exterior must be completed within 6 months of the building being delivered to the site and is to include connections to all infrastructure services and closing in and ventilation of the foundations. The proposed owner of the relocated building must certify to the Council that the reinstatement work will be completed within the 6 month period. (Deleted)~~

Comment [25]: Topic 12 – new 7.3.4.2 (previous 7.3.4.2 deleted)

7.3.4.2 A report shall accompany the application for a building consent for the destination site that identifies all reinstatement works that are to be completed to the exterior of the building.

7.3.4.3 The building shall be located on permanent foundations approved by building consent, no later than 2 months from when the building is moved to the site.

7.3.4.4 All other reinstatement work required by the report referred to in 7.3.3.2 and the building consent to reinstate the exterior of any relocated dwelling shall be completed within 12 months of the building being delivered to the site. Without limiting 7.3.3.5, reinstatement work is to include connections to all infrastructure services and closing in and ventilation of the foundations.

7.3.4.5 The owner of the land on which the building is to be located must certify to the Council, before the building is relocated, that the reinstatement work will be completed within the 12 month period.

7.3.4.36. The siting of the relocated building must also comply with Standards 7.2.1.1 to 7.2.1.14-10 (inclusive).

Comment [26]: Topic 6

7.3.5. Temporary building or structure, or unmodified shipping container.

- 7.3.5.1. For a temporary building or structure, or an unmodified shipping container, ancillary to a building or construction project the building, structure or container must not:

- (a) exceed 40m² in area;
- (b) remain on the site for longer than the duration of the project or 12 months, whichever is the lesser.

7.3.5.2. A temporary building or structure, or an unmodified shipping container, on site for a purpose other than those specified in Standard 7.3.5.1 (such as the storage of goods or materials, a gala, market or public meeting) must not remain on site longer than 1 month.

7.3.5.3. A temporary building or structure, or an unmodified shipping container, on site for a purpose other than those specified in Standard 7.3.5.1 must not be located between the front boundary and the dwelling, and must also comply with Standards 7.2.1.6 and 7.2.1.7.

7.3.6. Planting of vegetation.

- 7.3.6.1. Only indigenous species may be planted in, or within 8m of, a Significant Wetland.

7.3.7. Indigenous vegetation clearance.

Note:

Where indigenous vegetation clearance is managed under the National Environmental Standards for Plantation Forestry 2017, Standards, 7.3.7.2, 7.3.7.3(a), 7.3.7.5 and 7.3.7.6 do not apply.

- 7.3.7.1. Indigenous vegetation clearance must comply with Standards 7.3.8.1 to 7.3.8.11 (inclusive).
- 7.3.7.2. The clearance of indigenous vegetation in the following circumstances is exempt from Standards 7.3.7.3 to 7.3.7.6 (inclusive):
- (a) indigenous vegetation under ~~or within 50m of commercial forest or a~~ shelter belt;
 - (b) indigenous vegetation dominated by manuka, kanuka, tauhinu, bracken fern and silver tussock, and which has grown naturally from previously cleared land (i.e. regrowth) and where the regrowth is less than ~~20-10~~ years in age;
 - (c) indigenous vegetation dominated by matagouri, and which has grown naturally from previously cleared land (i.e. regrowth) and where the regrowth is less than ~~50-20~~ years in age;
 - (d) where the clearance is associated with the maintenance of ~~an~~-existing roads, forestry roads, harvesting tracks ~~or farm tracks, fence lines, cycling tracks or walking tracks~~;
 - (e) where the clearance is on a Threatened Environments – Indigenous Vegetation Site and that clearance is within the curtilage of a dwelling-;
 - (f) where the clearance is associated with operation and maintenance of the: National Grid, existing network utility operations, and existing electricity distribution activities;
 - (g) where the clearance is associated with the maintenance of existing fire breaks.
- 7.3.7.3. Clearance of indigenous vegetation must not occur:
- (a) on a Threatened Environments – Indigenous Vegetation Site;
 - (b) on land above mean high water springs that is within 20m of an Ecologically Significant Marine Site.
- 7.3.7.4. Clearance of indigenous vegetation within the coastal environment must not include the following habitats/species:
- (a) duneland vegetation;
 - (b) coastal grassland;
 - ~~(c) coastal flaxlands;(deleted)~~
 - ~~(d)~~ coastal vegetation dominated by (making up >50% of the canopy cover) ~~wharariki/coastal flax~~-(Phormium ~~sp~~~~eeokianum~~);
 - ~~(e)~~ coastal broadleaved shrubland;
 - ~~(f)~~ coastal small-leaved shrubland;
 - ~~(g)~~ coastal salt turf;
 - ~~(h)~~ coastal speargrass herbfield.

Comment [RW27]: NES – Plantation Forestry 1/2/2019

Comment [RW28]: NES – Plantation Forestry 1/2/2019

Comment [29]: Topic 6

Comment [30]: Topic 6

7.3.7.5. Clearance of indigenous forest must not exceed 1,000m² per ~~Computer Register~~ Record of Title in any 5 year period.

Comment [31]: Topic 21

7.3.7.6. Clearance of indigenous vegetation, per ~~Computer Register~~ Record of Title, must not exceed:

- (a) 2,000m² in any 5 year period where the average canopy height is between 3m and 6m;
- (b) 10,000m² in any 5 year period where the average canopy height is below 3m, except for the following species where clearance in any 5 year period must not exceed:
 - (i) 500m² of indigenous sub-alpine vegetation;
 - (ii) 100m² of tall tussock of the genus *Chinochloa*.

Comment [32]: Topic 6

7.3.7.7. Clearance of indigenous forest within the coastal environment must not exceed 500m² per Record of Title in any 5 year period.

7.3.7.8. Clearance of indigenous vegetation within the coastal environment, per Record of Title, must not exceed:

- (a) 1,000m² in any 5 year period where the average canopy height is between 3m and 6m;
- (b) 5,000m² in any 5 year period where the average canopy height is below 3m, except for the following species where clearance in any 5 year period must not exceed:
 - (i) 250m² of indigenous sub-alpine vegetation;
 - (ii) 50m² of tall tussock of the genus *Chinochloa*.

Comment [33]: Topic 6

7.3.8. **Non-indigenous vegetation clearance excluding where managed by the National Environmental Standards for Plantation Forestry 2017.**

Comment [34]: Topic 19

Note:

Standards 7.3.8.2, 7.3.8.4, 7.3.8.8, 7.3.8.9 do not apply in the case of clearance of species listed in the Biosecurity New Zealand Register of Unwanted Organisms or the Marlborough Regional Pest Management Plan.

Comment [35]: Topic 19

Note:

Where non-indigenous vegetation clearance is managed under the National Environmental Standards for Plantation Forestry 2017, Standards 7.3.8.1, 7.3.8.8, 7.3.8.9 do not apply, and Standards 7.3.8.2, 7.3.8.5, 7.3.8.6, 7.3.8.7, 7.3.8.10 and 7.3.8.11 only apply to the extent that they relate to Significant Wetlands and the coastal marine area.

Comment [36]: Topic 19

7.3.8.1. Where clearance is by mechanical means, blading or root-raking by a bulldozer must not be used on slopes greater than 20°.

Comment [RW37]: NES – Plantation Forestry 1/2/2019

7.3.8.2. Vegetation must not be removed by fire or mechanical means within 8m of a river (except an ephemeral river, or intermittently flowing river when not flowing), lake or the coastal marine area.

7.3.8.3. Within, or within 8 metres of, a Significant Wetland, ~~Pest~~ Plants identified in Appendix 25 ~~and willow, blackberry, broom, gorse and old man's beard~~ are the only vegetation that may be removed. Any vegetation removed under this standard must only be done by non-mechanical means.

Comment [38]: Topic 6

7.3.8.4. Vegetation clearance must not be within such proximity to any abstraction point for a community drinking water supply registered under section 69J of the Health Act 1956 as to cause contamination of that water supply.

- 7.3.8.5. All trees must be felled away from a river (except an ephemeral river, or intermittently flowing river, when not flowing), lake, Significant Wetland or the coastal marine area.
- ~~7.3.8.6. Notwithstanding 7.3.8.5, where trees are leaning over a river, lake, Significant Wetland or coastal marine area, they must be felled in accordance with industry safety practices~~
- 7.3.8.67. ~~Except for trees felled in accordance with 7.3.8.6, No~~ tree or log must be dragged through the bed of a river (except an ephemeral river or intermittently flowing river, when not flowing), lake or Significant Wetland or through the coastal marine area.
- 7.3.8.78. Wheeled or tracked machinery must not be operated in, or within 8m of:
- ~~a~~ a river (except an ephemeral river or intermittently flowing river, when not flowing);
 - ~~a~~ a lake;
 - ~~a~~ a Significant Wetland ~~or the coastal marine area~~ except where the wetland is fenced in accordance with the wetland boundaries mapped in the Plan, in which case wheeled or tracked machinery may be operated up to the fenced boundary
 - ~~a~~ the coastal marine area.
- 7.3.8.89. On completion of a vegetation clearance, a suitable vegetative cover that will mitigate soil loss, is to be restored on the site so that, within 24 months the amount of bare ground is to be no more than 20% greater than prior to the vegetation clearance taking place.
- 7.3.8.910. The depth of topsoil removed must not exceed more than 20mm over more than 15% of any vegetation clearance site.
- 7.3.8.1011. Woody material greater than 100mm in diameter or soil debris must:
- not be left within 8m of, or deposited in, a river (except an ephemeral river or intermittently flowing river when not flowing), lake, Significant Wetland or the coastal marine area;
 - not be left in a position where it can enter, or be carried into, a river (except an ephemeral river), lake, Significant Wetland or the coastal marine area;
 - be stored on stable ground;
 - be managed to avoid accumulation to levels that could cause erosion or instability of the land.
- 7.3.8.1112. Vegetation clearance must not cause any conspicuous change in the colour or ~~visual-natural~~ clarity of a flowing river after reasonable mixing, or the water in a Significant Wetland, lake or the coastal marine area, ~~measured as follows:~~
- ~~hue must not be changed by more than 10 points on the Munsell scale;~~ Deleted
 - ~~the natural clarity must not be conspicuously changed due to sediment or sediment laden discharge originating from the vegetation clearance site;~~ Deleted
 - ~~the change in reflectance must be <50%.~~ Deleted

Comment [39]: Topic 12

Comment [40]: Topic 12

Comment [41]: Topic 6

Comment [42]: Topic 13

7.3.9. Excavation or filling.

Note:

Where excavation and filling are managed under the National Environmental Standards for Plantation Forestry 2017 as earthworks, Standards 7.3.9.2 to 7.3.9.6 and 7.3.9.8 to 7.3.9.14-15 do not apply and Standard 7.3.9.1 applies and Standard 7.3.9.7 only applies to the extent that it relates to Significant Wetlands smaller than 0.25ha in area.

- 7.3.9.1. Excavation or filling must not occur within 8m of the landward toe of a stopbank and the depth of any excavation must not exceed 20% of the distance between the landward toe of the stopbank and the excavation.
- 7.3.9.2. Excavation or filling must not be within a Level 2 or 3 Flood Hazard Area.
- 7.3.9.3. The maximum volume for excavation must not exceed 50m³ per ~~Computer Register~~ Record of Title within any 12 month period, unless the excavation is to establish the foundation for a building permitted in this zone.
- 7.3.9.4. The maximum volume for filling must not exceed 50m³ per ~~Computer Register~~ Record of Title within any 12 month period, unless the filling is to establish the foundation for a building permitted in this zone.
- 7.3.9.5. Excavation must not occur on any land with a slope greater than ~~10~~25°.
- 7.3.9.6. Excavation must not intercept groundwater or cause any ponding of surface run-off.
- 7.3.9.7. Excavation and filling must not occur in, or within 8m of, a river, Significant Wetland, drainage channel or Drainage Channel Network and filling must not occur within 20m of the coastal marine area.
- 7.3.9.8. Batters must be designed and constructed to ensure they are stable and remain effective after completion of the excavation.
- 7.3.9.9. A filled area must be designed, constructed and maintained to ensure it is stable and remains effective after completion of filling.
- 7.3.9.10. Water control measures and sediment control measures must be designed, constructed and maintained in all areas disturbed by any excavation or filling, such that the areas are stable and the measures remain effective after completion of the excavation or filling. The diameter of a culvert used to drain excavation or fill area must not be less than 300mm.
- 7.3.9.11. Excavation or filling must not occur on a slope greater than 7.5° ~~degrees~~ if the activity is within a Soil Sensitive Area identified as loess soils.
- 7.3.9.12. For staged excavation or filling, any part of the excavation or filled area that has not been further developed within 12 months must be re-vegetated.
- 7.3.9.13. Where the excavation or filling results in areas of exposed soil, those areas must be re-vegetated within 12 months of the completion of the excavation or filling.
- 7.3.9.14. The fill must not contain any:
- hazardous substances;
 - combustible or organic materials;
 - any other contaminant subject to chemical or biological breakdown;
 - liquids or sludge.
- 7.3.9.15. Excavation or filling must not cause water to enter onto any adjacent land under different ownership.

Comment [RW43]: NES – Plantation Forestry 1/2/2019

Comment [44]: Topic 19

Comment [45]: Topic 21

Comment [46]: Topic 21

Comment [47]: Topic 19

Comment [48]: Topic 19

Comment [49]: Topic 19

7.3.10. ~~Excavation or filling~~ Earthworks within the National Grid Yard.

7.3.10.1. ~~Excavation~~ Earthworks within the National Grid Yard in the following circumstances ~~is~~ are exempt from the remaining standards under this rule:

- (a) ~~excavation~~ Earthworks ~~that is~~ undertaken as part of agricultural, horticultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track;
- (b) Excavation of a vertical hole, not exceeding 500mm in diameter, that is more than 1.5m from the outer edge of a pole support structure or stay wire;
- ~~(c) excavation of a hole, not exceeding 500mm in diameter, that is a post hole for a farm fence or horticulture structure and more than 5m from the visible outer edge of a tower support structure foundation.~~
- (c) Earthworks that are undertaken by a network utility operator.

Comment [50]: Topic 20

7.3.10.2. The ~~excavation~~ earthworks must be no deeper than 300mm within 6m of the outer visible edge of a foundation of a National Grid transmission line support structure ~~transmission tower support structure~~.

7.3.10.3. The ~~excavation~~ earthworks must be no deeper than 3m between 6m and 12m of the outer visible edge of a foundation of a National Grid transmission line support structure ~~transmission tower support structure~~.

7.3.10.4. The ~~excavation~~ earthworks must not compromise the stability of a National Grid transmission line support structure.

7.3.10.5. The ~~filling~~ earthworks must not result in a reduction in the ground to conductor clearance distances as required in Table 4 of the New Zealand Electrical Code of Practice (NZECP34:2001).

Comment [51]: Topic 20

7.3.11. Application (involving a discharge) of an agrichemical into or onto land.

Comment [52]: Topic 14

7.3.11.1. ~~(Deleted) The agrichemical must be approved for use under the Hazardous Substances and New Organisms Act 1996.~~

7.3.11.2.1. The application must be undertaken either:

- (a) in accordance with the most recent product label; or,
- (b) if the agrichemical is approved for use under the Hazardous Substances and New Organisms Act 1996, the discharge shall be in accordance with all conditions of the approval. All spills of agrichemicals above the application rate must be notified to Council immediately.

Comment [53]: Topic 14

7.3.11.2. All spills of agrichemicals above the application rate must be notified to Council immediately.

Comment [54]: Topic 14

7.3.11.3. All reasonable care must be exercised in the application to ensure that the agrichemical must not pass beyond the legal boundary of the area of land on which the agrichemical is being applied.

7.3.11.4. The application must not result in the agrichemical being deposited in or on a river, lake, Significant Wetland, drainage channel or Drainage Channel Network.

7.3.11.5. All sprays must be applied with hand held equipment.

7.3.12. Discharge of swimming or spa pool water into or onto land.

7.3.12.1. If a public sewer is located within 30m of the lot boundary or 60m of the pool discharge point, the discharge must be through a connection to the sewer.

- 7.3.12.2. The discharge must not occur within 10m of the boundary of any adjacent land in different ownership.
- 7.3.12.3. Fourteen days prior to discharging to land, swimming or spa pool water:
 - (a) must be uncovered;
 - (b) must not be treated with any chemicals.

7.3.13. Discharge human effluent into or onto land through any onsite wastewater management system.

- 7.3.13.1. The discharge was lawfully established without Resource Consent prior to 9 June 2016.
- 7.3.13.2. The human effluent must be treated through an on-site wastewater management system, which must be maintained in an efficient operating condition at all times.
- 7.3.13.3. There must be no increase in the rate of discharge due to an increased occupancy of the building(s).
- 7.3.13.4. There must be:
 - (a) no ponding of effluent;
 - (b) no run-off or infiltration of effluent beyond the property boundary or into a river, lake, Significant Wetland, drainage channel, Drainage Channel Network, groundwater or coastal water.
- 7.3.13.5. The discharge rate must not exceed 2000 litres per day, averaged over any 7 day period.
- 7.3.13.6. Effluent must be able to:
 - (a) infiltrate through at least 600mm of unsaturated soil following primary treatment; or
 - (b) infiltrate through at least 300mm of unsaturated soil following secondary treatment.
- 7.3.13.7. The discharge must not occur within 50m of a bore unless the bore intercepts the confined layer of Riverlands FMU or the confined layer of the Wairau Aquifer FMU.
- 7.3.13.8. The discharge must not be within a Level 2 or 3 Flood Hazard Area.

7.3.14. Discharge of contaminants to air arising from burning in the open.

- 7.3.14.1. Only material generated on the same property or a property under the same ownership can be burned.
- 7.3.14.2. The total volume of material being burned must not exceed 2m³.

7.3.15. Discharge of contaminants to air from the burning of solid fuel in any small scale solid fuel burning appliance, except an enclosed pellet burner.

- ~~7.3.15.1. The appliance must comply with the emission, operational and other requirements of Appendix 8 – Schedule 1. (Deleted)~~
- 7.3.15.21. The appliance must comply with the stack requirements of Appendix 8 – Schedule 2.
- 7.3.15.32. The appliance must only burn fuels approved for use in the appliance.

Comment [55]: Topic

- 7.3.15.43. The appliance must be operated so that all reasonable steps are taken to minimise the amount of smoke discharged.
- 7.3.16. **Discharge of contaminants to air from the burning of solid fuel in an enclosed pellet burner.**
- ~~7.3.16.1. The burner must comply with the stack requirements of Appendix 8 – Schedule 2. (Deleted)~~
- 7.3.16.21. The burner must only burn fuels approved for use in the burner.
- 7.3.17. **Park or reserve.**
- ~~7.3.17.1. The park or reserve must be owned, managed or administered by the Marlborough District Council. (Deleted)~~
- 7.3.17.21. All activities within the park or reserve must also comply with the rules of the Open Space 1 Zone.
- 7.3.18. Discharge of contaminants to air arising from the burning of materials for any of the following purposes:**
- (a) training people to put out fires;
- (b) creating special smoke and fire effects for the purposes of producing films;
- (c) fireworks display or other temporary event involving the use of fireworks.
- 7.3.18.1 The Council must be notified at least 5 working days prior to the burning activity commencing.
- 7.3.18.2 Any discharges for purposes of training people to put out fires must take place under the control of Fire and Emergency New Zealand, the New Zealand Defence Force or any other nationally recognised agency authorised to undertake firefighting research or firefighting activities.
- 7.3.19. The discharge of contaminants into air from the storage or transfer of petroleum products, including vapour ventilation and displacement.**
- 7.3.19.1. There shall be no objectionable or offensive odours to the extent that it causes an adverse effect at or beyond the boundary of the site.
- 7.3.20. Buildings, structures and activities in the National Grid Yard**
- 7.3.20.1. Sensitive activities and buildings for the handling or storage of hazardous substances with explosive or flammable intrinsic properties must not be located within the National Grid Yard.
- 7.3.20.2. Buildings and structures must not be located within the National Grid Yard unless they are:
- (a) a fence not exceeding 2.5m in height; or
- (b) an uninhabited farm or horticultural structure or building (except where they are commercial greenhouses, wintering barns, produce packing facilities, or milking/dairy sheds (excluding ancillary stockyards and platforms)).
- (c) irrigation equipment used for agricultural or horticultural purposes including the reticulation and storage of water where it does not permanently physically obstruct vehicular access to a National Grid support structure;
- 7.3.20.3. Buildings and structures must not be within 12m of a foundation of a National Grid transmission line support structure unless they are:

Comment [56]: Topic 13

Comment [57]: Topic 12

Comment [58]: Topic 13

Comment [59]: Topic 13

- (a) a fence not exceeding 2.5m in height that is located at least 6m from the foundation of a National Grid transmission line support structure; or at least 5m from a National Grid pi-pole structure (but not a tower); or
- (b) artificial crop protection structures or crop support structures not more than 2.5m in height and located at least 8m from a National Grid pi-pole structure (but not a tower) and are:
 - (i) removable or temporary to allow a clear working space of 12m from the pole for maintenance and repair purposes; and
 - (ii) all weather access to the pole and a sufficient area for maintenance equipment, including a crane; or
- (c) located within 12 metres of a National Grid transmission line support structure that meets the requirements of clause 2.4.1 of the New Zealand Electrical Code of Practice (NZECP34:2001).

7.3.20.4. All buildings and structures must have a minimum vertical clearance of 10m below the lowest point of a conductor under all transmission line and building operating conditions.

7.3.21 Amateur Radio Configurations

- 7.3.21.1 Except as specified below, the Recession Plane and Height Controls do not apply to any antenna or support structure.
- 7.3.21.2 Any part of an antenna or support structure must not overhang property boundaries.
- 7.3.21.3 Any of the elements making up an antenna must not exceed 80mm in diameter.
- 7.3.21.4 The maximum height of any support structure (including antenna) shall not exceed the height limit otherwise applicable to structures, except that:
 - (a) one free standing support structure (including antenna) per site may exceed the maximum height for a structure, up to a maximum of 20m; and
 - (b) any support structure (including antenna) attached to a building may exceed the height of the building by no more than 7m.
- 7.3.21.5 The maximum number of antennas on a site shall not exceed 12.
- 7.3.21.6 For horizontal HF yagi or loop antenna, the maximum element length shall not exceed 14.9m and the boom length must not exceed 13m.
- 7.3.21.7 Any dish antenna must:
 - (a) Be less than 5m in diameter
 - (b) Be pivoted less than 4m above the ground
 - (c) Meet the relevant building setback
 - (d) At any point in its possible rotation, not exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26. The recession plane angle must be measured from a starting point 2m above ground level at the property boundary.

Comment [60]: Topic 20

7.4. Discretionary Activities

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

[R, D]

- 7.4.1. Any activity provided for as a Permitted Activity that does not meet the applicable standards.

[D]

- 7.4.2. Commercial Activity.

[D]

- 7.4.3. Visitor accommodation.

[R]

- 7.4.4. Discharge human effluent into or onto land through an onsite wastewater management system.

[D]

- 7.4.5. Community facility.

[D]

- 7.4.6. Any use of land not provided for as a Permitted Activity or limited as a Prohibited Activity.

[R]

- 7.4.7. Any discharge of contaminants into or onto land, or into air, not provided for as a Permitted Activity or limited as a Prohibited Activity.

7.5. Prohibited Activities

The following are Prohibited Activities for which no application can be made:

[R, D]

- 7.5.1. ~~Commercial forestry planting~~ Plantation forestry afforestation, carbon sequestration forestry planting (~~non-permanent~~) or woodlot forestry planting on land identified as Steep Erosion-Prone Land, that has not previously been planted in lawfully established commercial, carbon sequestration (~~non-permanent~~) or woodlot forestry.

Comment [61]: Topic 22

[R]

- 7.5.2. ~~The harvesting of commercial forestry or woodlot forestry plantings on land identified as Steep Erosion-Prone Land, which has not been lawfully established.~~ (Deleted)

Comment [62]: Topic 22

[D]

- 7.5.3. ~~Planting Lodgepole pine (*Pinus contorta*).~~ (Deleted)

Comment [63]: Topic 22

Note:

Where the planting of Lodgepole pine (*Pinus contorta*) is managed under the National Environmental Standards for Plantation Forestry 2017 Rule 7.5.3 does not apply.

Comment [RW64]: NES –
Plantation Forestry 1/2/2019

[R]

7.5.42. Discharge of human effluent into or onto land through a soak pit established after 9 June 2016.

[R]

7.5.53. The storage and reprocessing of hazardous waste, or disposal of hazardous waste into or onto land (other than into a lawfully established hazardous waste landfill).

[R]

7.5.64. Discharge of contaminants to air arising from the burning in any small scale solid fuel burning appliance of any of the following materials:

- (a) wood having a moisture content of more than 25% dry weight;
- (b) wood which is painted, stained, oiled or coated;
- (c) wood treated with preservatives or impregnated with chemicals, including but not limited to, wood treated with Copper-Chrome-Arsenic, except that woodfuel burnt in a fuel burning device (external combustion) may contain incidental amounts of anti-sapstain chemicals;
- (d) pellets containing greater than 10 mg/kg (dry) of copper and 0.02 w-% (dry) of chlorine;
- (e) composite wood boards containing formaldehyde or similar adhesives, including but not limited to chip board, fibreboard, particle board and laminated boards;
- (f) metals and materials containing metals including but not limited to cables;
- (g) materials containing asbestos;
- (h) material containing tar or bitumen;
- (i) all rubber, including but not limited to, rubber tyres;
- (j) synthetic material, including, but not limited to motor vehicle parts, foams, fibreglass, batteries, chemicals, paint and other surface-coating materials, or any type of plastics;
- (k) waste oil (excluding re-refined oil);
- (l) peat;
- (m) sludge from industrial processes;
- (n) animal waste (except animal waste generated on production land), medical waste, pacemakers, biomechanical devices or chemical waste.

Comment [65]: Clause 16 Minor Amendment

[R]

7.5.5. Discharge of contaminants to air arising from the deliberate burning in the open of any of the materials in the following list, except where material is present in minor quantities and cannot be separated from the principal material being burnt, or where the discharge arises from the burning of material for training people to put out fires as provided for as a Permitted Activity or authorised by a resource consent;

- (a) wood which is painted, stained, oiled or coated;
- (b) wood treated with preservatives or impregnated with chemicals, including but not limited to, wood treated with Copper-Chrome-Arsenic, except that woodfuel burnt in a fuel burning device (external combustion) may contain incidental amounts of anti-sapstain chemicals;
- (c) pellets containing greater than 10mg/kg (dry) of copper and 0.02 w-% (dry) of chlorine;

- (d) composite wood boards containing formaldehyde or similar adhesives, including but not limited to chip board, fibreboard, particle board and laminated boards;
- (e) metals and materials containing metals including but not limited to cables;
- (f) materials containing asbestos;
- (g) material containing tar or bitumen;
- (h) all rubber, including but not limited to, rubber tyres;
- (i) synthetic material, including, but not limited to motor vehicle parts, foams, fibreglass, batteries, chemicals, paint and other surface-coating materials, or any type of plastics;
- (j) waste oil (excluding re-refined oil);
- (k) peat;
- (l) sludge from industrial processes;
- (m) animal waste (except animal waste generated on production land), medical waste, pacemakers, biomechanical devices or chemical waste.

Comment [66]: Topic 13