BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

ENV NO.

UNDER	the Resource Management Act 1991 (RMA)
IN THE MATTER	of an appeal pursuant to Clause 14 Schedule 1 of the RMA
IN THE MATTER	of an appeal of the Marlborough Environment Plan
BETWEEN	**VILLA MARIA ESTATE LIMITED** at Auckland
	– Appellant -
A N D	**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
FACSIMILE: (03) 577 8451

8 May 2020

030285-68

To: The Registrar
Environment Court
CHRISTCHURCH

1. **Villa Maria Estate Limited (Appellant)** appeals against a decision of the Respondent, Marlborough District Council (**Council**), on the Marlborough Environment Plan (**MEP**), such being the Council's decision in relation to Policy 5.5.5.

2. The Appellant made a submission (1218.060) in relation to Policy 5.5.5 and also presented legal submissions and expert evidence at the hearing. It is Council's decision to reject the changes the Appellant sought to Policy 5.5.5 of the MEP which is subject to appeal.

3. The Appellant received notice of the decision on 21 February 2020 and 3 March 2020. The Environment Court has subsequently issued a Minute granting an extension of the date any appeals should be lodged by.

5. The Appellant is not a trade competitor for the purposes of Section 308D of the Resource Management Act 1991 (**RMA**).

6. The part of a decision that the Appellant is appealing against is **Topic 4: Water Allocation** – Policy 5.5.5 (**the Policy**).

Reasons for the Appeal

7. (a) The Appellant's expert evidence was that, in terms of actual use of the aquifer water in the relevant catchment, there is no over-allocation of the water resource and the current use is within the range of "sustainable use" based on the parameters set out in the MEP.

(b) In these circumstances, the decision by Council has proceeded on the basis of there being over-allocation when in fact there is not. As a result, Council has misapplied the provisions of the National Policy Statement for Freshwater Management (**NPSFM**) by finding it was "bound at law to impose surface flow limits and aquifer levels which result in cut offs." This has resulted in an outcome which is inconsistent with the evidence or which was made in the absence of complete data.

(c) Council has apparently, in evaluating the consequences for the Appellant, proceeded on the basis of a misunderstanding of the effect of the Policy. The decision refers that the situation was "not as extreme" as the Appellant contended because "the period of cutoffs was unlikely to extend out as far as the peak period of water use by a winery." Policy 5.5.5 proposes the claw back of volumes of water not cut off periods. A clawback has far more serious consequences for the Appellant than the risk of seasonal cutoffs.

(d) The Policy provides no certainty to resource users. Specifically, the explanation states that "where water use is for non-irrigation purposes [...] the proportion of the reallocation will be recalculated to be relative to irrigation water permit holders." Reallocating water fairly needs to consider more than just the relative irrigated area associated with water use in a Fresh Management Unit. Other factors include the length of time water has been taken and used, the level of investment that relies on a take and use of water and the overall environmental, cultural, social and economic benefit derived from the take and use.

(d) The Policy, if implemented, would mean that the Appellant's existing 35,000 tonne winery would be unable to continue to process grapes and produce wine at the consented volumes. This is inconsistent with Council's obligations under Part 2 of the RMA (and in terms of s5(2) particularly) and in terms of the many authorities which have put those obligations in context, in terms of a plan change.

(e) As a matter of law, the powers of a consent authority under s128 of the RMA do not extend to preventing the activity for which consent has been granted or causing the consent to cease to be viable.

(f) The Policy, as it is proposed to apply to non-irrigation users, such as a winery or commercial use, is uncertain. It is said that the clawback will be implemented on the basis that "the proportion of the reallocation will be calculated to be relative to irrigation water permit holders." It is not clear what this means. There are no supporting rules in the MEP to explain what this means for non-irrigation users.

(g) The Policy is inequitable in that it imposes the most severe consequences on non-irrigators, who (unlike irrigators) do not have an alternative supply because they cannot connect to the Southern Valleys Irrigation Scheme.

(h) The cause of the notional and "on paper" over allocation is irrigation consents which have the largest allocations, many of which are banked. If any claw back is to be effected it should be on the basis of reductions where water is taken but not used and not on users which have used and will continue to need to use all of their allocated water.

(i) The Policy does not balance Council's obligations under the NPSFM. There is no dispute from the submitters that, in terms of Objective B2 of the NPSFM, Council has an obligation to avoid any further over-allocation of fresh water and phase out existing over-allocation. Equally, however, Council has an obligation to enable communities to provide for their economic wellbeing, including productive economic opportunities, in sustainably managing freshwater quantity within limits (Objective B5). The appropriate balance is not struck by requiring the Appellant to relocate its substantial existing winery to a hypothetical location in Riverlands, in circumstances where the subject over-allocation is notional only and caused, primarily, by the banking of water by irrigators.

Relief Sought

8. The Appellant seeks the following relief:

(a) That Policy 5.5.5 be amended to exclude existing wineries, which rely on having a minimum volume of potable water in order to continue their operations.

(b) That such other relief as is appropriate be granted.

(c) The costs of this process.

9. The following documents are **attached** to this Notice:

(a) A copy of the Appellant's original Submission.

(b) Summary of Legal Submissions of Radich Law dated 11 February 2019.

(c) Evidence of Peter Francis Callander (undated).

(d) Evidence of Fabian George Yukich dated 1 February 2019.

(e) A copy of Council's decision which relates to the part of the Plan to which this Appeal relates together with the marked up version (mark ups made by the Respondent) of Policy 5.5.5 contained in Chapter 5 - Allocation of Freshwater Resources.

(f) 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
   BLENHEIM

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

Villa Maria

Submission – Proposed Marlborough Environment Plan

August 2016

1. SUBMITTER DETAILS

Villa Maria
c/- WilkesRM Ltd
Attn Steve Wilkes
Temple Chambers
76 High Street
Blenheim 7201
steve@wilkesrm.co.nz
ph: 021668477

2. TRADE COMPETITION

Could you gain an advantage in trade completion in making this submission? **NO**

3. COUNCIL HEARING

Do you wish to be heard in support of this submission? **YES**

Are you prepared to present a joint case **YES**

4. RETURN SUBMISSIONS TO:

Planning Technician
MDC
PO Box 443
Blenheim
mep@marlborough.govt.nz

5. THE SPECIFIC PARTS OF THE PROPOSED PLAN THE SUBMISSION RELATES TO ARE AS FOLLOWS:

5.1 Volume 1, Chapter 4 – Use of Natural & Physical Resources

Objective 4.1 *Marlborough's primary production sector and tourism sector continue to be successful and thrive whilst ensuring the sustainability of natural resources.*

Policy 4.1.1 *Recognise the rights of resource users by only intervening in the use of land to protect the environment and wider public interests in the environment.*

Policy 4.1.2 *Enable sustainable use of natural resources in the Marlborough environment.*

5.2 Volume 1, Chapter 5 – Allocation of Public Resources

Policy 5.2.4 *Set specific environmental flows and/or levels for Freshwater Management Units dominated by rivers, lakes and wetlands to.....*

Policy 5.2.6 *For rivers, establish whether the flow has reached the management flows set in the Marlborough Environment Plan on the basis of 24 hour averages (midnight to midnight).*

Objective 5.3 *Enable access to reliable supplies of freshwater*

Policy 5.3.5 *Enable the take and use of water where it will have little or no adverse effect on water resources.*

Policy 5.3.6 *Allocate water within any class on a first-in, first-served basis through the resource consent process until the allocation limit is reached for the first time.*

Policy 5.3.7 *Allocate water to irrigation users on the basis of a nine in ten year water demand for the crop/pasture.*

Policy 5.3.8 *Approve water permit applications to continue taking and using surface water when:*

(a) a specific minimum flow and allocation limit for the source Freshwater Management Unit is established in the Marlborough Environment Plan;

(b) the Freshwater Management Unit is not over-allocated in terms of the limits set in the Marlborough Environment Plan;

(c) *there is to be no change to the intended use of water, or if there is a change in use, this results in a decrease in the rate of take of water; and*

(d) *the application is made at least three months prior to the expiry of the existing water permit.*

Policy 5.3.9 *Express any allocation of water for irrigation purposes on the following basis.....*

Policy 5.3.10 *The instantaneous rate of take from a surface waterbody may exceed the instantaneous equivalent of the maximum daily allocation:*

(a) *by 20% at any point in time; or*

(b) *for 20% of the time;*

but in both cases the cumulative take over 24 hours (midnight to midnight) must not exceed the daily maximum.

Policy 5.3.12 *Enable the construction of bores while recognising that this policy does not authorise the taking of water for any purpose other than bore testing.*

Policy 5.3.14 *The duration of water permits to take water will reflect the circumstances of the take and the actual and potential adverse effects, but should generally:*

(a) *not be less than 30 years when the take is from a water resource:*
(i) that has a water allocation limit specified in Schedule 1 of Appendix 6; and
(ii) that has a minimum flow or level specified in Schedule 3 of Appendix 6; and
(iii) that is not over-allocated; or

(b) *not be more than ten years when the take is from an over-allocated water resource as specified in Policy 5.5.1; or*

(c) *not be more than ten years when the take is from a water resource that has a default environmental flow established in accordance with Policies 5.2.7 and 5.2.14.*

Policy 5.3.15 *Require land use consent for the planting of new commercial forestry in flow sensitive areas.*

Policy 5.3.16 *When considering any application for land use consent required as a result of Policy 5.3.15, have regard to the effect of the proposed forestry on river flow (including combined effects with other commercial forestry and carbon sequestration forestry (non-permanent) established after 9 June 2016) and seek to avoid any cumulative reduction in the seven day mean annual low flow of more than 5%.*

Objective 5.4 *Improve the utilisation of scarce water resources.*

Policy 5.4.3 *The lapse period for water permits to use water shall be at least ten years.*

Policy 5.4.4 *Enable access to water that has been allocated but is not currently being utilised by individual water permit holders through the transfer of water permits.*

Policy 5.4.5 *When an enhanced transfer system is included in the Marlborough Environment Plan to enable the full or partial transfer of individual water allocations between the holders of water permits to take and use water, this will be provided for as a permitted activity where:*

(a) the respective takes are from the same Freshwater Management Unit;

(b) the Freshwater Management Unit has a water allocation limit specified in Schedule 1 of Appendix 6;

(c) the take is not from the Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit or the Riverlands Freshwater Management Unit;

(d) metered take and use data is transferred to the Council by both the transferor and the transferee in real time using telemetry;

(e) the allocation is authorised via a water permit(s) applied for and granted after 9 June 2016;

(f) the transferee holds a water permit to take water if their abstraction point differs from the that of the transferor; and

(g) the transferee holds a water permit to use water.

The duration of the transfer is at the discretion of the transferor and transferee and can be on a temporary basis or for the remaining duration of the water permit.

Policy 5.4.6 *Provide water users and the community with daily water use information for fully allocated water resources.*

Policy 5.5.5 *Resolve over-allocation of the Benmorven, Brancott and Omaka Aquifer Freshwater Management Units by reducing individual resource consent allocations on a proportional basis, based on the total allocation available relative to each individual's irrigated land area, or equivalent for non-irrigation water uses (excluding domestic and stock water). The reductions will be achieved by reviewing the conditions of the relevant water permits to reallocate the available allocation fairly across all relevant users.*

Objective 5.7 *The allocation and use of water do not exceed the rate or volume required for any given water use.*

Policy 5.7.2 *To allocate water on the basis of reasonable demand given the intended use.*

Policy 5.7.3 *Water permit applications to use water for irrigation will not be approved when the rate of use exceeds the reasonable use calculation, except where the applicant can demonstrate that they require more water based on property specific information.*

Objective 5.8 *Maximise the availability of water within the limits of the resource.*

Policy 5.8.1 *Encourage the storage of water as an effective response to seasonal water availability issues.*

Policy 5.8.2 *Provide for the abstraction of surface water for storage purposes during periods of higher flow for subsequent use during periods of low flow (and therefore low water availability).*

Policy 5.8.3 *Water may be stored at times other than those specified in Policy 5.8.2 to provide water users with greater flexibility to manage water use on-site, provided that the rate of take does not exceed the authorised daily rate of take for irrigation purposes.*

Issue 5I *There is the potential for a new water user to get access to water on a more reliable basis than allocations already made, resulting in inequitable outcomes.*

Policy 5.9.1 *Once an allocation limit is reached and that part of the water resource is fully allocated, any water that subsequently becomes free to allocate to other users will only be made available to those users through a system of ballot.*

Policy 5.9.2 *On securing the ballot, the successful ballotter must apply for the necessary water permits to authorise the taking and (if relevant) use of water. Until the successful ballotter(s) secures the necessary water permits, the water resource is considered fully allocated.*

Policy 5.9.3 *If required, any ballot will be conducted on the following basis:*

(a) at least annually for the calendar year;

(b) if the water permit holder already holds a water permit to take and use water for the same purpose, then they must surrender the original water permit before giving effect to the new water permit; and

(c) if the subsequent water permit application to authorise the taking of water is not made within 12 months of the ballot result or the water permit application.

5.M.3 Ballot *If water in a fully allocated FMU becomes available for allocation again, the Council will hold a ballot to determine who can make an application to take and use the water. If a water user group exists for the FMU, then the Council will seek to work with it to run the ballot.*

5.3 <u>Volume 1, Chapter 14 – Use of the Rural Environment</u>

Policy 14.1.1 *Enable the efficient use and development of rural environments for primary production.*

Policy 14.1.7 *Recognise that primary production activities in rural environments may result in effects including noise, dust, smell and traffic generation, but that these will require mitigation where they have a significant adverse effect on the environment.*

Policy 14.1.10 *Control water levels in the Marlborough District Council-administered drainage network by removing surplus water from the soils of the Lower Wairau Plain to enable primary production activities to continue.*

Objective 14.2 *The sustainability of Marlborough's rural economy is not adversely affected by the spread or introduction of pests.*

Policy 14.2.1 *The Marlborough District Council will support any national response to an incursion of a pest(s) where this occurs, if it has the potential to reach Marlborough or is already present and/or has the potential to affect Marlborough's primary production sector.*

Policy 14.2.2 *A strategic approach will be developed and maintained to manage the containment/eradication of pests impacting on Marlborough's primary production sector in rural environments.*

Policy 14.2.3 *Raising community awareness that all individuals have responsibilities in pest management, particularly land occupiers.*

Objective 14.3 *Activities that are not related to primary production are appropriate to be located within rural environments.*

Policy 14.3.2 *Where an activity is not related to primary production and is not otherwise provided for as a permitted activity, a resource consent will be required and the following matters must be determined by decision makers in assessing the impacts on primary production before any assessment of other effects is undertaken:*

(a) the extent to which the activity is related to primary production activities occurring at the site;

(b) the functional need for the activity to be located within a rural zone and why it is not more appropriately located within another zone;

(c) whether the proposed activity will result in a loss of land with primary production potential and the extent of this loss when considered in combination with other non-rural based activities; and

(d) the extent to which the proposed activity supports primary production activities, including the processing of agricultural, viticultural or horticultural produce.

Policy 14.4.1 *Subdivision, use and development of Marlborough's rural environments should be of a density, scale, intensity and location that individually and cumulatively recognises the following elements:*

(a) a lack of buildings and structures;

(b) a very high ratio of open space in relation to areas covered by buildings;

(c) open space areas in pasture, trees, vineyards, crops or indigenous vegetation;

(d) areas with regenerating indigenous vegetation, particularly in the Marlborough Sounds;

(e) tracts of unmodified natural features, indigenous vegetation, streams, rivers and wetlands;

(f) farm animals and wildlife;

(g) noises, smells and sights of agriculture, viticulture, horticulture and forestry;

(h) post and wire fences, purpose-built farm buildings and scattered dwellings;

(i) low population density;

(j) the presence of Blenheim, Omaka and Koromiko airports;

(k) generally narrow carriageways within wide road reserves, often unsealed with open drains, low-speed geometry and low traffic volumes; and

(l) a general absence of urban-scale and urban-type infrastructure, such as roads with kerb and channel, footpaths, mown berms, street lights or advertising signs.

Objective 14.5 *Residential activity takes place within appropriate locations and limits within rural environments.*

5.4 ***Volume 1, Chapter 15 – Resource Quality***

Policy 15.1.32 *In considering any resource consent application for the disturbance of a river or lake bed, or the seabed, or land in close proximity to any waterbody, regard will be had to:*

(a) whether the disturbance is likely to result in non-compliance with the clarity standards set for the waterbody, after reasonable mixing;

(b) in the event of possible non-compliance with the clarity standards set for the waterbody, after reasonable mixing:

(i) the purpose for undertaking the disturbance and any positive effects accruing from the disturbance;

(ii) the scale, duration and frequency of the disturbance;

(iii) the extent to which the bed disturbance is necessary and adverse water quality effects caused by the disturbance are mitigated; and

(iv) for freshwater, the potential effects of increased turbidity on the values of the waterbody set out in Schedule 1 of Appendix 5 of the Marlborough Environment Plan or on the natural character values of the coastal environment in relation to water quality as set out in Appendix 2 of the Marlborough Environment Plan.

Objective 15.3 *Reduce the potential for nuisance and health effects from the discharge of contaminants into air.*

Policy 15.3.4 *Manage the use of agrichemicals to avoid spraydrift. The boundary of the property on which the application of agrichemical occurs is the point at which management applies, as follows:*

(a) any agrichemical should not move, either directly or indirectly, beyond the property boundary of the site(s) where it is or has been applied; and

(b) agrichemical users will be required to utilise best practice and exercise reasonable care to achieve (a).

5.5 Volume 2, Chapter 2 – General Rules

Rule 2.1.1 *Environmental flows and levels, as specified in Appendix 6, control the quantity, level, and flow of water.*

Rule 2.2.5 *Take and use of water for incidental use associated with farming up to $5m^3$ per day per Computer Register.*

Standard 2.3.5 *Take and use of water for incidental use associated with farming up to $5m^3$ per day per Computer Register.*

Rule 2.4.1 *Take and damming C Class water for the purpose of retaining water in storage for subsequent use.*

Rule 2.5.2 *Any take of water not provided for as a Permitted Activity or Controlled Activity, or limited as a Prohibited Activity.*

5.6 Volume 2, Chapter 3 – Rural Environment Zone

Rule 3.1.1 *Farming and associated standards and definitions*

Rule 3.1.5 *Audible bird-scaring device and associated standards and definitions*

Rule 3.1.7 *Commercial forestry planting and associated standard 3.3.6.2(g).*

Rule 3.1.13 *Cultivation and all associated standards and definitions.*

Rule 3.1.14 *Excavation and all associated standards and definitions.*

Rule 3.1.17 *Bore construction or alteration (except geotechnical bores constructed for the investigation of sub-surface conditions) and all associated standards and definitions.*

Rule 3.1.22 *Application of an agrichemical into or onto land and all associated standards and definitions.*

Rule 3.1.23 *Application of fertiliser or lime into or onto land and all associated standards and definitions.*

Rule3.1.25 *Application of compost or solid agricultural waste into or onto land and all associated standards and definitions.*

Rule 3.1.26 *Discharge of agricultural liquid waste (except dairy farm effluent) into or onto land and all associated standards and definitions.*

Rule 3.1.33 *Making compost or silage in a pit or stack, or stockpiling agricultural solid waste and all associated standards and definitions.*

Rule 3.1.34 *Storage of compost not in a pit or stack and all associated standards and definitions.*

Rule 3.1.39 *Discharge of contaminants to air from the burning of oil in a frost protection heater and all associated standards and definitions.*

Rule 3.4.1 *Erection and use of a frost fan and all associated standards, terms and definitions.*

Rule 3.4.2 *Sale of farm produce from a rural selling place.*

Rule 3.6.2 *Winery, distillery or brewery and all associated definitions.*

5.7 ***Volume 3, Appendix 6***

Environmental Flows and Levels.

6. THE SUBMISSION IS:

A. VILLA SUPPORTS THE ABOVE PROVISIONS SUBJECT TO THE FOLLOWING AMENDMENTS (AND EXCLUDING THOSE PROVISIONS SPECIFICALLY IDENTIFIED BELOW AS BEING OPPOSED):

6.1 Policy 5.5.5 Resolve over-allocation of the Benmorven, Brancott and Omaka Aquifer Freshwater Management Units by reducing individual resource consent allocations on a proportional basis, based on the total allocation available relative to each individual's irrigated land area, or equivalent for non-irrigation water uses (excluding domestic and stock water). The reductions will be achieved by reviewing the conditions of the relevant water permits to reallocate the available allocation fairly across all relevant users.

Villa submit that the policy fails to recognise that there are water uses within the listed Freshwater Management Units that are solely reliant upon reliable access to groundwater such as the Villa Maria winery. There are no readily available alternate supplies of water of sufficient quality to be useable within the winery and the policy must acknowledge this.

Relief Sought

That Policy 5.5.5 be amended as follows:

> Policy 5.5.5 Resolve over-allocation of the Benmorven, Brancott and Omaka Aquifer Freshwater Management Units by reducing individual resource consent allocations on a proportional basis, based on the total allocation available relative to each individual's irrigated land area, or equivalent for non-irrigation water uses (excluding winery processing, domestic and stock water). The reductions will be achieved by reviewing the conditions of the relevant water permits to reallocate the available allocation fairly across all relevant users.

6.2 Volume 1 Policy 5.7.2 To allocate water on the basis of reasonable demand given the intended use.

The policy is supported however Villa submit that reasonable demand as per the Irricalc model relates to irrigation use only and that the Plan must provide for additional allocations of water routinely required by land user such as pump flushing, irrigation mainline flushing and crop spraying.

Villa submit that the soils & climate database on which Irricalc relies is of such a broad scale that the reasonable use allocation may not account for within property variations which can be highly variable such that property specific data must take precedence over a generic computer model.

Relief Sought

That Policy 5.7.2 be amended as follows to reflect the submission that reasonable demand relates to irrigation water only.

> *Policy 5.7.2 To allocate irrigation water on the basis of reasonable demand given the intended use.*

That an additional policy be added providing direction for decision makers when assessing applications for resource consent to abstract and use water for non-irrigation purposes as follows:

> *Policy 5.7.X To recognise that land users require water for uses other than irrigation purposes and applications for allocations of water for such uses shall be assessed on a case by case basis.*

6.3 Policy 5.7.3 – Water permit applications to use water for irrigation will not be approved when the rate of use exceeds the reasonable use calculation, except where the applicant can demonstrate that they require more water based on property specific information.

The policy is supported however Villa submit that reasonable demand as per the Irricalc model must only be recognised as a default position and that there will be many circumstances where reasonable demand does not reflect the actual demand.

Villa submit that it is appropriate to have enabling policy direction for such circumstances.

Relief Sought

That policy 5.7.3 be re-worded as follows to provide for an enabling policy:

> *Where based on property specific information, an applicant can demonstrate that an allocation of water in excess of the reasonable demand calculation is required, then that*

allocation may be granted subject to water availability. Under such circumstances the property specific information will take precedence over the reasonable use calculation.

6.4 Volume 1 Policy 5.8.3 Water may be stored at times other than those specified in Policy 5.8.2 to provide water users with greater flexibility to manage water use on-site, provided that the rate of take does not exceed the authorised daily rate of take for irrigation purposes.

The Water Allocation Working Group agreed on the principle that A class & B class water could be pumped into storage at the maximum daily rate of take for irrigation purposes. This provides the opportunity to fill storage on the shoulders of the irrigation season (Spring & Autumn) and also top-up storage when there is spare pumping capacity during the main irrigation season after a rain event. This regime is currently consented for a large number surface water permits, and has proven to provide greater flexibility and more efficient use of the water resource.

Relief Sought

That policy 5.8.3 be amended as follows:

In addition to the storage of water as per Policy 5.8.2, Class A and B water may also be stored to provide water users with greater flexibility to manage water use on-site, provided that the rate of take does not exceed the authorised maximum daily rate of take for irrigation purposes.

That the last explanatory paragraph be deleted and replaced in entirety with following:

The policy provides the consent holder with flexibility to decide how water will be used on any given day. However, the policy limits the rate of take of Class A and B water for storage to the authorised maximum daily rate of take for irrigation purposes. The total volume of water that can be physically stored will limit the number of consecutive days that a consent holder will pump to storage along with the competing need to utilise the water allocation to provide direct irrigation.

6.5 *Objective 14.3 Activities that are not related to primary production are appropriate to be located within rural environments.*

Villa supports the thrust of this objective and its explanation, however considers it is not particularly well expressed.

Relief Sought

Redraft the objective to read:

> Activities that are not related to primary production are only located within rural environments if they are appropriate for that environment."

6.6 *Policy 14.3.2 Where an activity is not related to primary production and is not otherwise provided for as a permitted activity, a resource consent will be required and the following matters must be determined by decision makers in assessing the impacts on primary production before any assessment of other effects is undertaken:*

(a) the extent to which the activity is related to primary production activities occurring at the site;

(b) the functional need for the activity to be located within a rural zone and why it is not more appropriately located within another zone;

(c) whether the proposed activity will result in a loss of land with primary production potential and the extent of this loss when considered in combination with other non-rural based activities; and

(d) the extent to which the proposed activity supports primary production activities, including the processing of agricultural, viticultural or horticultural produce.

Villa considers that this policy would be enhanced by an explicit reference to reverse sensitivity effects. This would help to ensure that existing primary production activities are not unreasonably constrained by new sensitive land uses.

An associated definition of reverse sensitivity effects should also be added.

Relief Sought

Retain, with an additional clause (e):

> *The extent to which the proposed activity is likely to have reverse sensitivity effects on primary production activities.*

6.7 ***Objective 14.5 Residential activity takes place within appropriate locations and limits within rural environments.***

This objective and supporting policies are appropriate in terms of managing where residential development occurs. District Plan Policy 14.5.4 enables residential activity that is directly associated with primary production.

Villa suggests that the policy should clarify that residential activity should "only" take place within appropriate locations and limits.

Relief Sought

Redraft the objective to read:

> *Residential activity takes place only within appropriate locations and limits within rural environments.*

6.8 ***Volume 1 Policy 15.1.32 In considering any resource consent application for the disturbance of a river or lake bed, or the seabed, or land in close proximity to any waterbody, regard will be had to:.....***

The policy as proposed includes no direct recognition of the need to undertake disturbance of river beds or land in close proximity to waterbodies for the installation and maintenance of water supply intakes on which much of the Marlborough regional economy stems.

The policy as a drafted, and absent of any recognition of the economic implication of not being able to install and maintain water supply intakes, has the potential to be interpreted by decision makers that such matters are not to be considered when determining applications for resource consent for the disturbance of a river or lake bed, or the seabed, or land in close proximity to

any waterbody. Likewise the policy does not recognise that viable alternatives intake structures may not exist.

In terms of importance to the Marlborough regional economy the Awatere Valley alone contributes in excess of $810 million gross revenue largely on the back of irrigated vineyards and process cropping properties. The un-certainty created by the proposed policy puts this significant return at risk.

Relief Sought

That Policy 15.1.32 be amended as follows:

Policy 15.1.32 – In considering any resource consent application for the disturbance of a river or lake bed, or the seabed, or land in close proximity to any waterbody, regard will be had to:

(a) whether the disturbance is likely to result in non-compliance with the clarity standards set for the waterbody, after reasonable mixing;

(b) in the event of possible non-compliance with the clarity standards set for the waterbody, after reasonable mixing:

(i) the purpose for undertaking the disturbance and any positive effects accruing from the disturbance;

(ii) the economic consequences of not undertaking the disturbance;

(iii) the scale, duration and frequency of the disturbance;

(iv) in the case of water supply intakes and associated structures in a river bed, the practical viability of alternative methods of abstracting water;

(v) the extent to which the bed disturbance is necessary and adverse water quality effects caused by the disturbance are mitigated by way of site specific management plans that set out how potential adverse effects from such activities are to be avoided, minimised or mitigated; and

(vi) for freshwater, the potential effects of increased turbidity on the values of the waterbody set out in Schedule 1 of Appendix 5 of the Marlborough

Environment Plan or on the natural character values of the coastal environment in relation to water quality as set out in Appendix 2 of the Marlborough Environment Plan.

That the Method of Implementation 15.M.18 be amended to add the following bullet point

Work with water user groups and other agencies to develop riverbed activity guidelines.

That the Method of Implementation 15.M.24 be amended to add the following bullet point

Work with water user groups and other agencies to develop riverbed activity guidelines to prevent or minimise the adverse effects of activities in, on, under or over river beds; to assist in the preparation of site specific management plans and for the processing of resource consent applications.

6.9 *Objective 15.3 Reduce the potential for nuisance and health effects from the discharge of contaminants into air.*

VILLA considers that a request to (further) "reduce" is unnecessary where the potential for nuisance and health effects are already very low (because discharges of contaminants are already well managed).

Relief Sought

Redraft the objective to read:

Where necessary, reduce the potential for nuisance and health effects from the discharge of contaminants into air.

6.10 Policy 15.3.4 ***Manage the use of agrichemicals to avoid spraydrift. The boundary of the property on which the application of agrichemical occurs is the point at which management applies, as follows:***

(a) any agrichemical should not move, either directly or indirectly, beyond the property boundary of the site(s) where it is or has been applied; and

(b) agrichemical users will be required to utilise best practice and exercise reasonable care to achieve (a).

The wording of this policy (and its explanation) is conducive to responsible agri-chemical use. Use of the word 'should' in clause (a), and reference in clause (b) to best practice being utilised in order to achieve (a), acknowledges that complete control may not always be possible. However, Villa considers that the policy should only require users to avoid spray drift "as far as practicable", as the policy does not require absolute avoidance in all circumstances.

Relief Sought

Redraft the policy to reflect the following amendment:

Manage the use of agrichemicals to avoid spray drift <u>as far as practicable.</u>"

6.11 Volume 2 Standard 3.3.5.3 A Category B device must not be operated for any continuous period exceeding two seconds, or at a frequency greater than 10 times in any hour.

The definition of a Category B device is such that the use of a vehicle (including a quad or motor bike) horn is included. Villa submit that the use of a vehicle horn should not be limited to a frequency of use of less than 10 times per hour and that the standard as drafted with regards to vehicle horns is overly restrictive and unenforceable.

Relief Sought:

That standard 3.3.5.3 be amended to read:

A Category B device must not be operated for any continuous period exceeding two seconds, or at a frequency greater than 10 times in any hour <u>for each 5ha block that the device is being operated over.</u>"

612 *Volume 2 Standard 3.3.13.2. On all slopes greater than 10° cultivation must not be within 8m of a river (except an ephemeral river, or intermittently flowing river when not flowing), lake or coastal marine area.*

613 *Volume 2 Standard 3.3.13.3. On all slopes less than or equal to 10° cultivation must not be within 3m of a river (except an ephemeral river, or intermittently flowing river when not flowing), lake or coastal marine area.*

6.14 *Volume 2 Standard 3.3.13.4. Cultivation must not be in, or within 8m of, a Significant Wetland, except where the wetland is fenced in accordance with the wetland boundaries mapped in the Plan, in which case cultivation may occur up to the fenced boundary.*

Villa submit that the above Standards must be amended such that various setbacks for cultivation should not apply when the land slopes away from the identified waterbody and in such circumstances a maximum setback if 1 metre is sufficient.

Relief Sought

That a new standard 3.3.13.1 be inserted as follows with existing standards re-numbered accordingly.

3.3.13.1 On land which slopes away from a river (except an ephemeral river, or intermittently flowing river when not flowing), lake or coastal marine area cultivation must not be within 1 metres of the waterbody.

That the standards 3.3.13.2, 3.3.13.3 and 3.3.13.4 be amended to read:

3.3.13.2 On any slope ascending above a river (except an ephemeral river, or intermittently flowing river when not flowing), lake or coastal marine area where the slope is greater than 10° cultivation must not be within 8m of the river, lake or coastal marine area.

3.3.13.3 On any slope ascending above a river (except an ephemeral river, or intermittently flowing river when not flowing), lake or coastal marine area where the slope is less than or equal to 10° cultivation must not be within 3m of the river, lake or coastal marine area.

3.3.13.4 Cultivation must not be in, or within 8m of, a Significant Wetland, except where the wetland is fenced in accordance with the wetland boundaries mapped in the Plan, in which case cultivation may occur up to the fenced boundary or where the land slopes away from Significant Wetland in which case cultivation must not be within 1m of the Significant Wetland.

6.15 Volume 2 Rule 3.1.2.6, Standard 3.3.26 and the associated definitions of Agricultural liquid waste and Agricultural Waste.

Villa submit that the definition of Agricultural liquid waste is appropriate however the definition of Agricultural waste must refer directly to viticulture and viticulture processing activity in order to provide clarity and certainty.

Relief Sought:

That the definition of Agricultural Waste be amended as follows:

Agricultural waste means the waste from the customary and generally accepted activities, practices, and procedures that ~~farmers~~ producers adopt, use, or engage in during the production and preparation for market of poultry, livestock, and associated farm products; and in the production, ~~and~~ harvesting and processing of agricultural crops that include agronomic, horticultural, viticultural, silvicultural and aquaculture activities.

6.16 Volume 3, Appendix 6 Environmental Flows and Levels

Villa support in full:

- Schedule 1 – Quantity Allocations for Water Takes, and
- Schedule 2 – Quantity Allocations for Consumptive Diversions.

Villa support in part:

- Schedule 3 – Minimum Flows and Levels for Water Takes.

Relief Sought

That the minimum levels for aquifers be independently reviewed to demonstrate the appropriateness of such levels as they have the potential to seriously impact upon aquifer based viticulture.

B VILLA MARIA REQUEST THE FOLOWING ADDITIONAL MATTERS BE INCLUDED:

The MEP is silent regarding the abstraction of groundwater for the purposes of placing into storage.

The MEP sets minimum levels for Freshwater Management Units dominated by aquifers which will impact upon abstractions from those aquifers. Villa submit that the MEP must provide clear direction that it is appropriate to abstract groundwater to place into storage for use when minimum aquifer levels have been reached and direct abstraction of water for irrigation and other uses is restricted or shut down.

Relief Sought:

Villa submit the following policy be inserted as Policy 5.8.4 with a subsequent amendment to the numbering of the following existing policies.

> *Policy 5.8.4 Aquifer water may be abstracted to storage to provide water users with greater flexibility to manage water use on-site and to ensure that in the event of aquifer minimum levels being reached an alternate supply of water may be available.*

The MEP makes reference to Soil Sensitive Areas in a number of locations. Villa appreciate the difference in soils and soils types and the differing nature of those soils with respect to discharges, disturbance and productivity however the scale of the current mapping is extensive.

Relief Sought

Villa submit that the MEP should include as a method the ongoing commitment of Council toward the further refining of the Soils Sensitive Areas and boundaries.

C. *VILLA MARIA <u>OPPOSES</u> THE FOLLOWING PROVISIONS:*

***Issue 5I** There is the potential for a new water user to get access to water on a more reliable basis than allocations already made, resulting in inequitable outcomes.*

***Objective 5.9** Ensure that water users in the same or similar circumstances are treated in the same manner when it comes to securing access to water.*

***Policy 5.9.1** Once an allocation limit is reached and that part of the water resource is fully allocated, any water that subsequently becomes free to allocate to other users will only be made available to those users through a system of ballot.*

***Policy 5.9.2** – On securing the ballot, the successful ballotter must apply for the necessary water permits to authorise the taking and (if relevant) use of water. Until the successful ballotter(s) secures the necessary water permits, the water resource is considered fully allocated.*

***Policy 5.9.3** If required, any ballot will be conducted on the following basis:*

(a) at least annually for the calendar year;
(b) if the water permit holder already holds a water permit to take and use water for the same purpose, then they must surrender the original water permit before giving effect to the new water permit; and
(c) if the subsequent water permit application to authorise the taking of water is not made within 12 months of the ballot result or the water permit application.

***5.M.3 Ballot** If water in a fully allocated FMU becomes available for allocation again, the Council will hold a ballot to determine who can make an application to take and use the water. If a water user group exists for the FMU, then the Council will seek to work with it to run the ballot.*

Villa submit that the current practice for water allocation of first in – first served as outlined in MEP Policy 5.3.6 remains the most appropriate means for allocating water. The proposed ballot system provides no surety on which development expenditure can be based.

Relief Sought

That Issue 5I, Objective 5.9, Policies 5.9.1, 5.9.2 and 5.9.3 along with Method of Implementation 5.M.3 be deleted in entirety.

Rule 3.4.2 Sale of farm produce from a rural selling place and associated Standards & Terms

Villa considers that the restriction in 3.4.2.3 is inappropriate, does not relate to the adverse environmental effects of activities, and does not serve a resource management purpose.

It is not uncommon for vineyards or wineries to sell products that were produced in other locations, or wine produced by combining grapes from a number of different vineyards., There is no good reason to restrict this.

Villa seeks that vineyards, wineries and associated retail should be clearly excluded from this requirement.

Relief Sought

That the rule be deleted, or alternately amend so that vineyards, wineries and associated retail are clearly excluded.

7. THE DECISION VILLA MARIA SEEK FROM COUNCIL IS:

That the various provisions outlined in Section 5 (above) are retained subject to the amendments detailed in Section 6A (above).

That the additional provisions outlined in Section 6B (above) be adopted in full.

That the various provisions outlined in Section 6C (above) be deleted and /or amended accordingly.

8. CONSEQUENTIAL AMENDMENTS

While specific reference has been made to certain objectives, policies and rules, due to the complexity of the Marlborough Environment Plan (MEP) there may be associated references to similar issues elsewhere in the Plan that may require consequential relevant amendments and which are not detailed above.

Villa request all consequential amendments following the adoption of this submission be made.

Sub No	Submitter	Point	Volume	Chapter	Provision	Type
Decision Requested	Amend Policy 5.5.5 to read: Resolve over-allocation of the Benmorven, Brancott and Omaka Aquifer Freshwater Management Units by reducing individual resource consent allocations on a proportional basis, based on the total allocation available relative to each individual's irrigated land area, or equivalent for non-irrigation water uses (excluding domestic and stock water). The reductions will be achieved by reviewing the conditions of the relevant water permits. ~~**to reallocate the available allocation fairly across all relevant users**~~.					
715	Royal Forest and Bird Protection Society NZ (Forest and Bird)	70	Volume 1	5 Allocation of Public Resources	Policy 5.5.5	Support
Decision Requested	Retain Policy 5.5.5					
717	Fulton Hogan Limited	33	Volume 1	5 Allocation of Public Resources	Policy 5.5.5	Oppose
Decision Requested	Delete Policy 5.5.5 and rely on Policy 5.5.4 or Policy 5.7.2 to give effect to Policy B6 of the NPS Freshwater.					
769	Horticulture New Zealand	27	Volume 1	5 Allocation of Public Resources	Policy 5.5.5	Oppose
Decision Requested	Amend Policy 5.5.5: as follows: Apply a reasonable use test to all takes in the Benmorven, Brancott and Omaka FMU's to ensure that allocations reflect required amounts. Undertake a review of the limits for the aquifers to ensure that they reflect all values. If additional reductions are then required they will be applied according to the priorities set out in Policy 5.3.1.					
778	Irrigation New Zealand Incorporated	63	Volume 1	5 Allocation of Public Resources	Policy 5.5.5	Support
Decision Requested	Retain Policy 5.5.5.					
1039	Pernod Ricard Winemakers New Zealand Limited	51	Volume 1	5 Allocation of Public Resources	Policy 5.5.5	Support in Part
Decision Requested	Retain Policy 5.5.5, subject to providing further guidance (including as sought) in relation to how reductions will be determined.					
1218	Villa Maria	60	Volume 1	5 Allocation of Public Resources	Policy 5.5.5	Support in Part

Sub No	Submitter	Point	Volume	Chapter	Provision	Type
Decision Requested	That Policy 5.5.5 be amended as follows: *Policy 5.5.5 Resolve over-allocation of the Benmorven, Brancott and Omaka Aquifer Freshwater Management Units by reducing individual resource consent allocations on a proportional basis, based on the total allocation available relative to each individual's irrigated land area, or equivalent for non-irrigation water uses (excluding winery processing, domestic and stock water). The reductions will be achieved by reviewing the conditions of the relevant water permits to reallocate the available allocation fairly across all relevant users.*					
509	Nelson Marlborough Fish and Game	87	Volume 1	5 Allocation of Public Resources	Issue 5F	Support
Decision Requested	Retain as proposed					
715	Royal Forest and Bird Protection Society NZ (Forest and Bird)	71	Volume 1	5 Allocation of Public Resources	Issue 5F	Support
Decision Requested	Retain Issue 5F (inferred)					
338	Gwyneth Lowe	6	Volume 1	5 Allocation of Public Resources	Objective 5.6	Support
Decision Requested	1. Re-allocation of irrigation permits to ensure water levels stay at original/natural levels to retain habitat and aesthetic values on all waterways. 2. Strict monitoring of bores to ensure the above.					
479	Department of Conservation	43	Volume 1	5 Allocation of Public Resources	Objective 5.6	Support
Decision Requested	Retain as notified.					
509	Nelson Marlborough Fish and Game	88	Volume 1	5 Allocation of Public Resources	Objective 5.6	Support in Part
Decision Requested	Retain the policy with amendments that ensure that it reflects that the taking of groundwater does not cause limits to be breached.					
688	Judy and John Hellstrom	23	Volume 1	5 Allocation of Public Resources	Objective 5.6	Support
Decision Requested	Retain Objective 5.6 and associated policies.					
698	Environmental Defence Society Incorporated	32	Volume 1	5 Allocation of Public Resources	Objective 5.6	Support in Part

Sub No	Submitter	Point	Volume	Chapter	Provision	Type
Decision Requested	Amend Objective 5.6 to read: Objective 5.6 – Ensure that the taking of groundwater does not cause ~~**significant adverse effects on**~~ river flow limits **to be breached** . (inferred)					
715	Royal Forest and Bird Protection Society NZ (Forest and Bird)	72	Volume 1	5 Allocation of Public Resources	Objective 5.6	Support in Part
Decision Requested	Retain this objective and add another objective to set out expectations for effects of groundwater abstraction on instream flows where this may where the change in flow is less than significant.					
908	Lion - Beer, Spirits and Wine (NZ) Limited	7	Volume 1	5 Allocation of Public Resources	Objective 5.6	Support in Part
Decision Requested	Amend Objective 5.6 and supporting policies to provide a more appropriate and considered method for managing significant adverse effects on river flows.					
1039	Pernod Ricard Winemakers New Zealand Limited	52	Volume 1	5 Allocation of Public Resources	Objective 5.6	Support in Part
Decision Requested	Retain Objective 5.6, subject to amendments to policies and rules to address PR's concerns.					
1189	Te Runanga o Kaikoura and Te Runanga o Ngai Tahu	58	Volume 1	5 Allocation of Public Resources	Objective 5.6	Support
Decision Requested	Accept					
425	Federated Farmers of New Zealand	65	Volume 1	5 Allocation of Public Resources	Policy 5.6.1	Support in Part
Decision Requested	Amend the policy as follows (bold) - "*Unless there is an identified aquifer dominant Freshwater Management Unit, all water within a catchment will be managed as a surface water resource. This means that the minimum flow, management flow and allocation limit established for the river dominant Freshwater Management Unit will also apply to groundwater takes.* ***A transition period*** *(the Submitter has not provided any specific duration for the period)* ***is provided so that those with existing groundwater takes can organise alternative sources.***"					
479	Department of Conservation	44	Volume 1	5 Allocation of Public Resources	Policy 5.6.1	Support
Decision Requested	Retain as notified.					
509	Nelson Marlborough Fish and Game	89	Volume 1	5 Allocation of Public Resources	Policy 5.6.1	Support in Part

IN THE MATTER OF The Resource Management Act 1991

AND

IN THE MATTER OF A Submission from Villa Maria Estate Limited (*VM*) and Fulton Hogan Limited (*FHL*) in relation to Policy 5.5.5 of Chapter 5 of Volume 1 of the proposed Marlborough Environment Plan (*MEP*)

SUMMARY OF LEGAL SUBMISSIONS

1. VM and FHL have each submitted in relation to Policy 5.5.5 of the proposed MEP. Policy 5.5.5 and the explanation which follows it, as proposed, provide:

> **Resolve over-allocation of the Benmorven, Brancott and Omaka Aquifer Freshwater Management Units by reducing individual resource consent allocations on a proportional basis, based on the total allocation available relative to each individual's irrigated land area or equivalent for non-irrigation water uses (excluding domestic and stock water). The reductions will be achieved by reviewing the conditions of the relevant water permits to reallocate the available allocation fairly across relevant users.**
>
> This policy sets out the means by which over-allocation of ground water from the Benmorven, Brancott and Omaka Aquifer FMUs will be resolved. A reduction in the allocation that has been granted resource consent, based on reallocating the total allocation available relative to each individual's irrigated land area, is considered to be the most equitable means of reducing total allocation of waters from these FMUs. Where water is for non-irrigation purposes, such as winery or commercial use, the proportion of the reallocation will be calculated to be relative to irrigation water permit holders.
>
> A degree of reduction of allocation has already occurred prior to the notification of the MEP through the processing of some water permits to continue taking water from these resources. Some resource consent applicants have also applied to take less water than the guideline rate under the provisions of the WARMP/MSRMP. These actions will be taken into account in terms of the application of the policy to these specific water permits.

> The reductions will be calculated and applied by reviewing the conditions of water permits in accordance with s128(1)(b) of the RMA.
>
> Reflecting Policy 5.3.1, no proportional reduction of allocation has been applied to takes used to supply stock or domestic water.
>
> This policy will assist to give effect to Policy B6 of the NPSFM.

2. VM has asked that the Policy be amended to exclude resource consents granted for winery processing and FHL has opposed the Policy in totality and submitted that it should be removed from MEP. The bases given for the FHL proposal that the Policy be removed include:

> The explanation for this Policy provides absolutely no certainty to resource users. Specifically, the explanation states that "where water use is for non-irrigation purposes [. . .] the proportion of the reallocation will be recalculated to be relative to irrigation water permit holders." Reallocating water fairly needs to consider more than just the relative irrigated area associated with water use in a FMU. Other factors include the length of time water has been taken and used, the level of investment that relies on a take and use of water and the overall environmental, cultural, social and economic benefit derived from the take and use.

3. Council's s42A officers have recommended rejection of VM and FHL's concerns and in so doing so have seemingly accepted that although this Policy, if implemented, could have *dire consequences* for VM's business, those consequences are necessary and appropriate in terms of Council's obligations under the RMA and that, in any event, VM could relocate to industrial land at Riverlands.

4. In VM and FHL's submission, the recommendation from Council's s42A officers has not properly considered the consequences of implementing this proposal. If those consequences are considered it is evident that Policy 5.5.5 is flawed and should be removed until it can be replaced by a more appropriate mechanism to deal with any actual or perceived effects of over-allocation in the specified FMUs.

5. The bases for this submission are:

   (a) Those set out in the FHL submission.

(b) Those set out in the parties' evidence, including that the Policy, if implemented, would mean that VM's winery (consented for 35,000 tonnes per annum) would be unable to continue to process grapes and produce wine at the consented volumes. This is inconsistent with Council's obligations under Part 2 of the RMA (and in terms of s5(2) particularly) and in terms of the many authorities which have put those obligations in context, in terms of a plan change.[1]

(c) That, as a matter of law, the powers of a consent authority under s128 of the RMA do not extend to preventing the activity for which consent has been granted or causing the consent to cease to be viable.[2]

(d) The fact that the Policy, as it is proposed to apply to non-irrigation users, such as a winery or commercial use, is uncertain. It is said that the clawback will be implemented on the basis that "the proportion of the reallocation will be calculated to be relative to irrigation water permit holders." It is not clear what this means. There are no supporting rules in the MEP to explain what this means for non-irrigation users.

(e) The exclusion for domestic and stock users is arbitrary.

(f) The Policy fails to recognise that the s128 process is discretionary and requires an evaluative process to be undertaken in terms of ss96 to 102 of the RMA. This requires the particular effects of a particular consented activity to be considered, together with all of the other statutory considerations. The s128 process does not permit Council to implement restrictions of the kind proposed on a pro forma basis.

(g) The Policy is inequitable in that it imposes the most severe consequences on non-irrigators, who (unlike irrigators) do not have an alternative supply because they cannot connect to the SVIS (because the SVIS supply is purely for irrigation, is not potable and is unable to be used in a winery in a manner which complies with the applicable wine making regulations).

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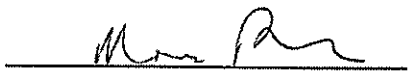
1 Including for example *Long Bay – Okura Great Parks Society Inc v North Shore City Council* A078/2008; *Fairley v North Shore City Council* (2010) NZEnvc 208.

2 *Minister of Conservation v Tasman DC* 9/12/03; *Exide Pollution Action Group Inc v Wellington RC* [2006] NZRMA 293.

(h) The cause of the notional and "on paper" over allocation is irrigation consents which have the largest allocations, many of which are banked. If any claw back is to be effected it should be on the basis of reductions where water is taken but not used and not on users which have used and will continue to need to use all of their allocated water.

(i) The Policy does not balance Council's obligations under the NPSFM. There is no dispute from the submitters that, in terms of Objective B2 of the NPSFM, Council has an obligation to avoid any further over-allocation of fresh water and phase out existing over-allocation. Equally, however, Council has an obligation to enable communities to provide for their economic wellbeing, including productive economic opportunities, in sustainably managing freshwater quantity within limits (Objective B5). The appropriate balance is not struck by requiring VM to relocate its substantial existing winery to a hypothetical location in Riverlands, in circumstances where the subject over-allocation is notional only and caused, primarily, by the banking of water by irrigators.

DATED this 11th day of February 2019



M J Radich

On Behalf of VM and FHL

IN THE MATTER OF The Resource Management Act 1991

AND

IN THE MATTER OF A Submission from Fulton Hogan Limited and Villa Maria Estate Ltd in relation to Policy 5.5.5 of Chapter 5 of Volume 1 of the proposed Marlborough Environment Plan

EVIDENCE OF PETER FRANCIS CALLANDER

1. My name is Peter Francis Callander. I hold the qualifications of BSc (Geology) from the University of Auckland and MSc (Earth Sciences) from the University of Waterloo (Canada). Since 1991 I have been employed as a Senior Hydrogeologist with Pattle Delamore Partners Limited, an environmental consulting firm specialising in groundwater and surface water resources. In 1997 I was appointed as a Director of that firm.

2. Previously I had been employed for seven years by the Canterbury Regional Council and its predecessor the North Canterbury Catchment Board. During this time I was involved with all the Regional Council's groundwater resource investigations and field trials. Between 1989 and 1991 I was in charge of that Council's groundwater section.

3. In the course of my work, I have conducted and analysed numerous pumping tests, assessed well yields and determined the effects of groundwater abstractions on other well users and the surrounding environment. I have carried out numerical modelling exercises to quantify groundwater resources. I have been involved in previous water resources assessments within the Wairau Valley, the Wairau Plains including the Southern Valleys, and both the inland and coastal Wairau Plains aquifers. These have involved pumping test and resource consent issues, regional groundwater assessments with the Marlborough District Council and contamination risks to groundwater from contaminated sites.

4. I completed the MfE Commissioner Training Course, "Making Good Decisions" in 2008 and the recertification course in 2012 and 2017 and from time to time have been appointed to hearing panels dealing with consent applications for groundwater abstraction and wastewater discharges to land and to surface waterways.

5. For this hearing I have been engaged as an expert in relation to the submissions made by Fulton Hogan Limited and Villa Maria Estate Limited in relation to a particular aspect of the proposed MEP. The extent of my engagement is to assess certain issues arising from Policy 5.5.5 of Volume 1 of the proposed Marlborough Environment Plan. Policy 5.5.5 reads as follows:

> *Resolve over-allocation of the Benmorven, Brancott and Omaka Aquifer Freshwater Management Units by reducing individual resource consent allocations on a proportional basis, based on the total allocation available relative to each individual's irrigated land area, or equivalent for non-irrigation water uses (excluding domestic and stock water). The reductions will be achieved by reviewing the conditions of the relevant water permits to reallocate the available allocation fairly across all relevant users.*

6. The evidence I will present today is within my area of expertise, except where I state that I am relying on information provided by another party. I have not knowingly omitted facts of information that might alter or detract from the opinions I express. I am familiar with the Code of Conduct for Expert Witnesses and I agree to comply with this code.

7. I am giving this evidence on the basis that both submitters (Fulton Hogan and Villa Maria) will seek to rely on it in support of their submissions. Fulton Hogan has submitted that Policy 5.5.5 should be deleted and Villa Maria has submitted its application should not include wineries.

A. GROUNDWATER LEVEL PATTERNS IN THE SOUTHERN VALLEYS AQUIFERS

8. Villa Maria has established and operates a winery located on the south-eastern corner of New Renwick Road and Paynters Road which is just within the Benmorven Freshwater Management Unit shown in Figure 1 attached to my evidence (Map 1 of the Freshwater Management units in Appendix 4 of the PMEP). Villa Maria is in the process of finalising a resource consent to increase the capacity of this winery to 35,000 tonnes of grapes per vintage. I have been involved in that resource consent process for Villa Maria. It is

likely I understand that the consent will be granted by the time of the hearing of this submission.

9. In 1998 Villa Maria obtained resource consent to take groundwater for its winery from bore P28w/3310. The current terms and conditions which apply to this consent are attached hereto at Appendix A. This authorises an annual volume take of 36,500 m^3/year for winery use and irrigation of 2 hectares, utilising bore P28w/3310. I have been advised by Villa Maria that they utilise SVIS water for irrigation and their bore water is fully committed to the winery. In the 2018 calendar year they used 35,105 m^3/year in the winery. They also have an arrangement to utilise groundwater from a neighbouring bore supply authorised by consent U90893 held by IR Hammond, if this is required, but their preference is to be self-sufficient and utilise their own bore.

10. Groundwater levels in the MDC monitoring bores in the Benmorven FMU and the neighbouring Brancott and Omaka Aquifer FMUs experienced a significant decline during the late 1990s and early 2000s, as shown by the water level graphs in Figures 2, 3 and 4 attached to this evidence. The decline relates to periods of very dry conditions which had low rainfall and increased groundwater use.

11. As a result of the historical decline in groundwater levels, MDC have classified the Benmorven, Brancott and Omaka aquifers as being over-allocated and is no longer granting any new groundwater abstraction consents from these aquifers.

12. The Council has managed the over-allocation issue in the Benmorven Aquifer (and other Southern Valleys aquifers) by implementing the Southern Valleys Irrigation Scheme (SVIS), which was completed in 2004. This is a piped water scheme sourced from the Wairau River that provides irrigation water to properties so they do not need to utilise as much groundwater as they have in the past. However, groundwater abstraction still needs to occur when the quality of SVIS water is not sufficient for the intended use or when the supply from the SVIS is restricted, or completely shut off, due to very high or very low flows in the Wairau River. I have been advised by Villa Maria that the terms and conditions of the SVIS Scheme do not allow Villa Maria to take winery water from the Scheme.

13. Villa Maria, therefore, has no other ability to take water for its winery other than from its groundwater consent unless it purchases that water and imports it from other catchments (which is not easy or perhaps even possible to do).

14. Because of the SVIS Scheme, groundwater abstraction has decreased because there is no longer heavy reliance on the aquifer for irrigation. This is shown by the plots of MDC records of water usage from water meter records presented in Figures 5, 6 and 7. An extreme drought year in 2000/01 saw an increase in groundwater abstraction and a lowering of groundwater levels. However in most other years groundwater abstraction has been at, or less than, the PMEP allocation limits. Given that pattern of actual usage it seems that very little restriction of actual water usage needs is required to recharge the groundwater or to remedy any perceived "over-allocation" and certainly no blanket pro-rata reduction for every user. The pattern of groundwater usage and groundwater levels for each aquifer are superimposed on each other in Figures 8, 9 and 10 to better understand the relationship between these two groundwater measurements. These figures show how groundwater levels declined when abstraction levels increased during the late 1990s and early 2000s and have subsequently risen from their previous lows in response to the reduction in groundwater usage achieved by the SVIS.

15. Consequently the current actual levels of abstraction over the last few years are operating within the sustainable limits specified in the PMEP, as shown in Figures 2, 3 and 4, for the Benmorven Brancott and Omaka Aquifers. The rise in aquifer water levels is linked to the reduction in irrigation bore abstractions, due to the introduction of the SVIS. In the case of the Benmorven aquifer the rate of water level increase was very slow, until after the November 2016 Kaikoura earthquake. I expect this is a reflection of the compartmentalised nature of the aquifer which has more permeable zones that are often isolated from each other by zones of silty less permeable strata. The shaking of the strata due to the earthquake has likely opened up some of the flow paths between the zones to allow the Benmorven monitoring well P28w/2022 to show the response resulting from the reduced groundwater abstraction.

B. EFFECT OF POLICY 5.5.5

16. The following table provides estimates of the state of the Benmorven, Brancott and Omaka Aquifer Freshwater Management Units which are the subject of Policy 5.5.5.

Table 1. Water Allocation numbers for Benmorven, Brancott and Omaka Aquifer Freshwater Management Units

Freshwater Management Units	Consent Allocation (cubic metres per year)	Allocation Limit in PMEP (cubic metres per year)	Percentage of current consented allocation that can occur to achieve PMEP Allocation Limit
Benmorven	710,997	209,000	29.4%
Brancott	1,020,940	282,000	27.6%
Omaka Aquifer	1,135,279	290,000	25.5%

17. Policy 5.5.5 specifies that individual consents will be reviewed to reduce allocations on a proportional basis across all users. Based on the consented allocation numbers, Table 1 indicates that this could mean that only 25 – 29% of currently consented allocation could be used in the future. My understanding is that Villa Maria utilise, and fully require, their consented requirement of 100 m^3/day. The pro-rata reduction from total allocation, as specified in Policy 5.5.5 would mean that Villa Maria's consent would be reduced from an annual volume of 36,500 m^3/year to only 10,585 m^3/year. This is a severe cut back that would not provide Villa Maria with sufficient water from their bore P28w/3310 to continue their current operation That seems a very severe restriction to apply when actual water requirements, as indicated by the water usage records, have generally been within the PMEP limits.

18. A severe level of restriction from actual usage seems unnecessary given that the water level limits are comfortably being met (Figures 2, 3 and 4) due to the reductions that have been achieved by the SVIS supply. The SVIS was established as a supply for irrigators. The water is not treated and being river water often has an elevated turbidity and E. coli contamination. It is also subject to short term shut downs during very high river flows and potentially for longer periods during prolonged periods of very low river flows. Consequently it is not suitable for a winery operation and is not used by Villa Maria for winery activities. Therefore the improvement in aquifer water levels shown in Figures 2, 3 and 4 has been achieved without any reduction in winery abstraction. This

is because the winery use is only a small proportion of the overall abstraction from the FMU.

19. Given that the SVIS does not provide an alternative water supply for winery water use and the allocation limits in the PMEP are already being met by current water use activities it seems unreasonable to restrict all users on a pro-rata basis. Rather, a review of existing consent conditions could allocate water based on current and expected future use, taking into account the availability of SVIS water for those users who can utilise it (primarily irrigators).

20. In response to the Villa Maria submission the Council officers raise three points in paragraph 1455 of the s42A report:

    - *If the Villa Maria winery were not restricted it may not make a lot of difference to solving the over-allocation issue due to the small component of their groundwater take (100 m^3/day) originating from the Benmorven Aquifer versus the Southern Springs source;*
    - *It would mean all other consented irrigators would be restricted slightly more severely than they would otherwise be the case;*
    - *Other consented non-irrigation water users in these FMUs could justifiably say they are just as dependent the FMUs as the Villa Maria winery, and the consequences of their being restricted or cut-off are also dire to their business or activity.*

21. I agree with the first bullet point in paragraph 1455 of the s42A Officers report (paragraph 20 above), which is consistent with the analysis presented in this evidence. An exemption from the allocation reduction for wineries (or any other commercial activity that could not utilise SVIS water) will not jeopardise achievement of the allocation limits in the PMEP.

22. The second bullet point in paragraph 1455 of the s42A Officers report (paragraph 20 above) is correct. However, as noted in the first bullet point, the increase in restrictions would be small and of no great consequence when distributed across several different users and particularly given that the limits are already being met so comfortably (Figures 2, 3 and 4).

23. To a certain extent I agree with the third bullet point in paragraph 1455 of the s42A Officers report (paragraph 20 above). However this comment does seem to accept that the potential consequences to Villa Maria and other wineries if Policy 5.5.5 is implemented are "dire to [its] business or activity." I am also not aware that there are

any significant abstractions in the Benmorven, Brancott or Omaka Valley aquifers that cannot utilise SVIS water and would experience the significant impacts of water restrictions on the same scale of impact as the wineries. I understand residents' use water for garden irrigation but I do not think a restriction on that could be considered as being of a similar scale to the impact of restrictions on winery activities. In paragraph 1456 of the s42A officers report it is noted that this issue was considered by the Water Allocation Working Group (WAWG) and it was agreed that all abstractors should have their allocation reduced. I was not involved with that group but it seems to me that if they were presented with a scenario where those who had their bore allocations restricted could make up the shortfall with SVIS water then they would have little reason to object to some small scale uses not being subject to restrictions, whilst still operating comfortably within the environmental limits that have been set.

24. The s42A officers' report does not address Fulton Hogan's submission in any substantive way, other than to say that the relief sought by Fulton Hogan would not resolve over allocation in an effective manner for these particular FMUs.

25. As I have endeavoured to demonstrate in this brief, there is a real issue about whether these particular FMUs are, in fact, over-allocated based on current requirements for water usage with the SVIS in place. I accept that before the SVIS Scheme was up and running there was an allocation issue. But since then, the records I have analysed do not support the conclusion that there is an actual over allocation issue in these particular FMUS. The allocation volumes on some consents will be in excess of actual requirements and should be adjusted, but this is to address an over-allocation on paper rather than in practice. But for other consents where the volumes represent realistic requirements, the type of restriction or claw back proposed by Policy 5.5.5 should not be implemented.

26. Fulton Hogan has a number of takes which would be potentially affected and which are used for dust suppression, aggregate washing and the operations of its yards. Fulton Hogan has advised that they would not be able to access SVIS to replace any water which was clawed back.

CONCLUSION

27. Allocation limits have been specified for the Benmorven, Brancott and Omaka Aquifer FMUs, based on declining water levels that occurred in the late 1990's and early 2000's in response to increasing groundwater use. Since that time an alternative water supply has been provided to the area which is suitable for irrigation and other users that do not have high water quality requirements. Groundwater use must still occur when the SVIS use is restricted or when very high quality water is required.

28. To impose a pro-rata reduction on all water users seems unnecessary (because the allocation limits are already being met) and unreasonable (because some users need their full current allocation where the SVIS is not an alternative supply option due to unsatisfactory quality and reliability).

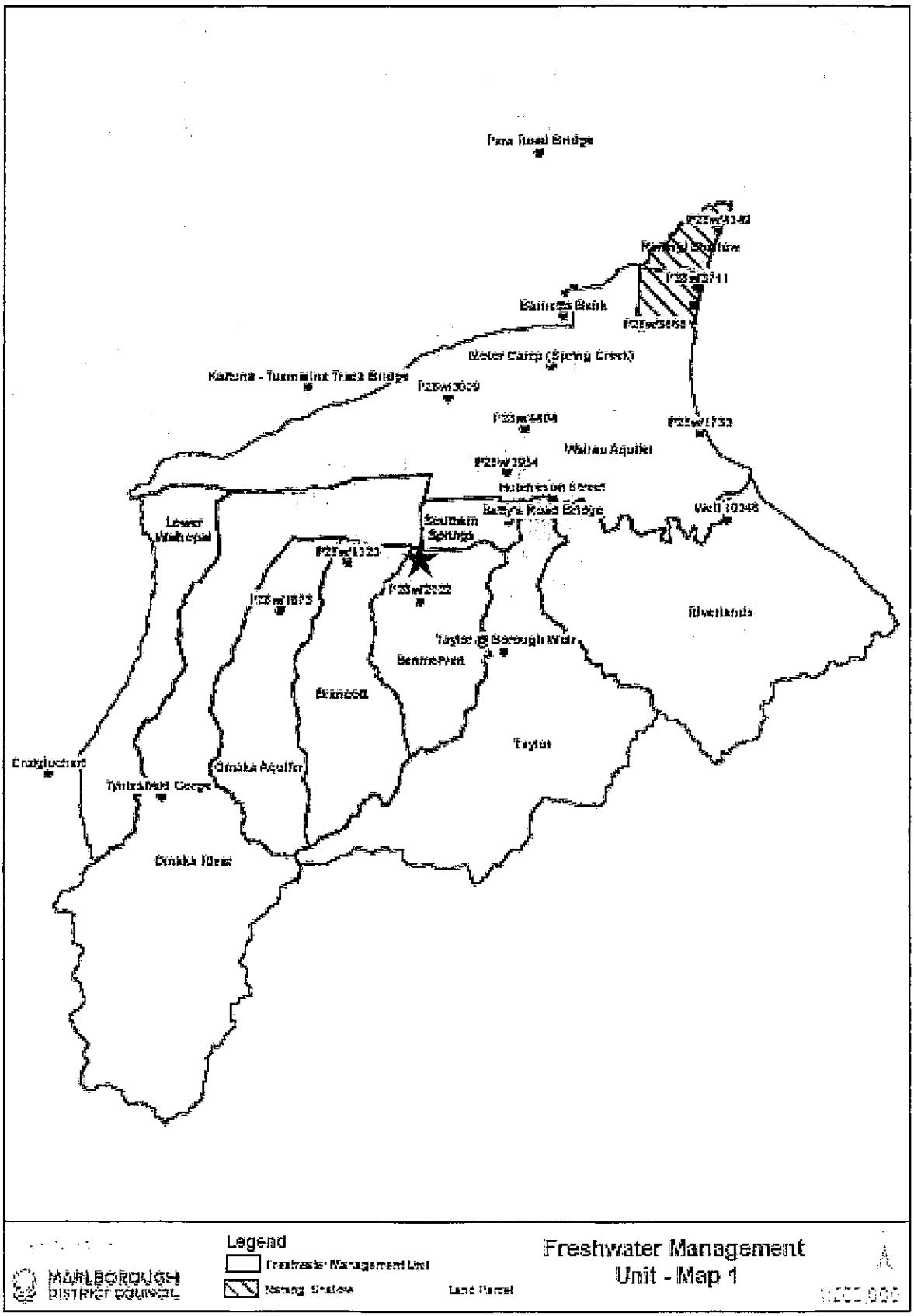


Figure 1: Ben Morven, Brancott and Omaka Aquifer FMUs (from Map 1 in Appendix 4 of the Proposed Marlborough Environment Plan). The green star shows the location of the Villa Maria winery.

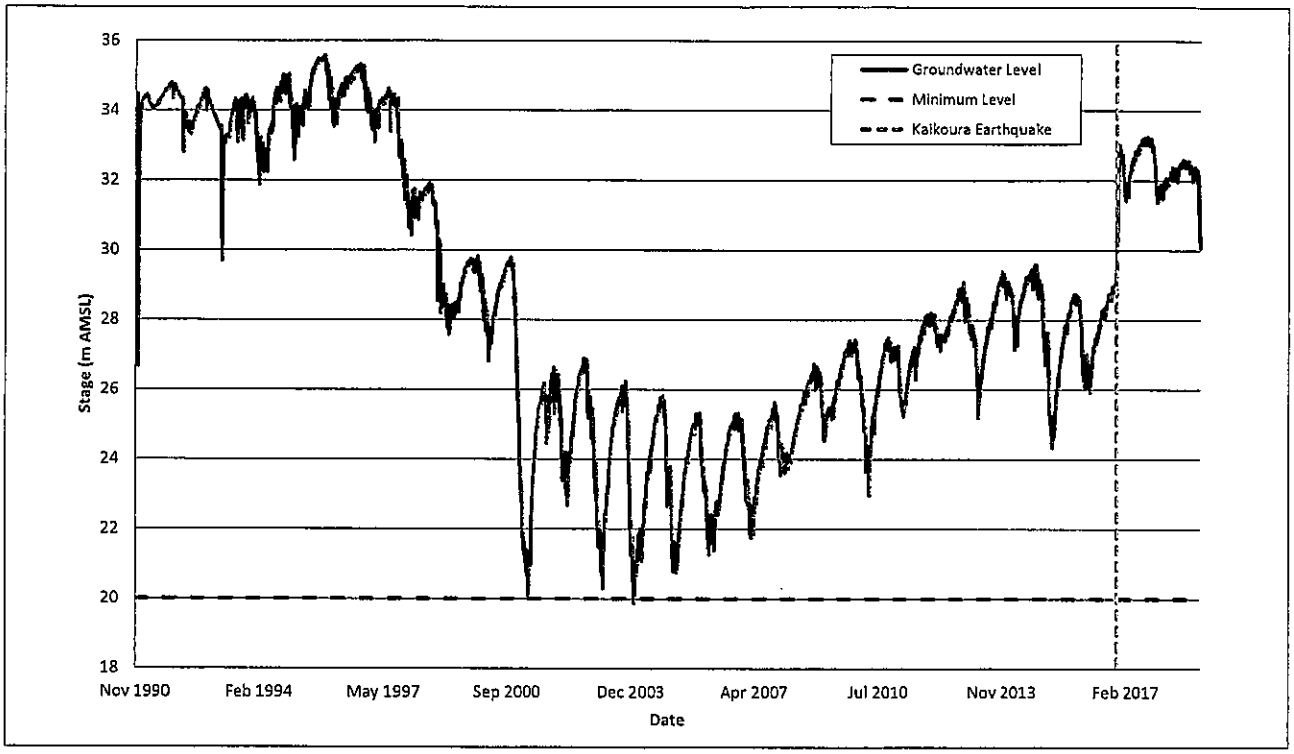


Figure 2: Groundwater Levels in Benmorven FMU Monitoring Bore P28w/2022

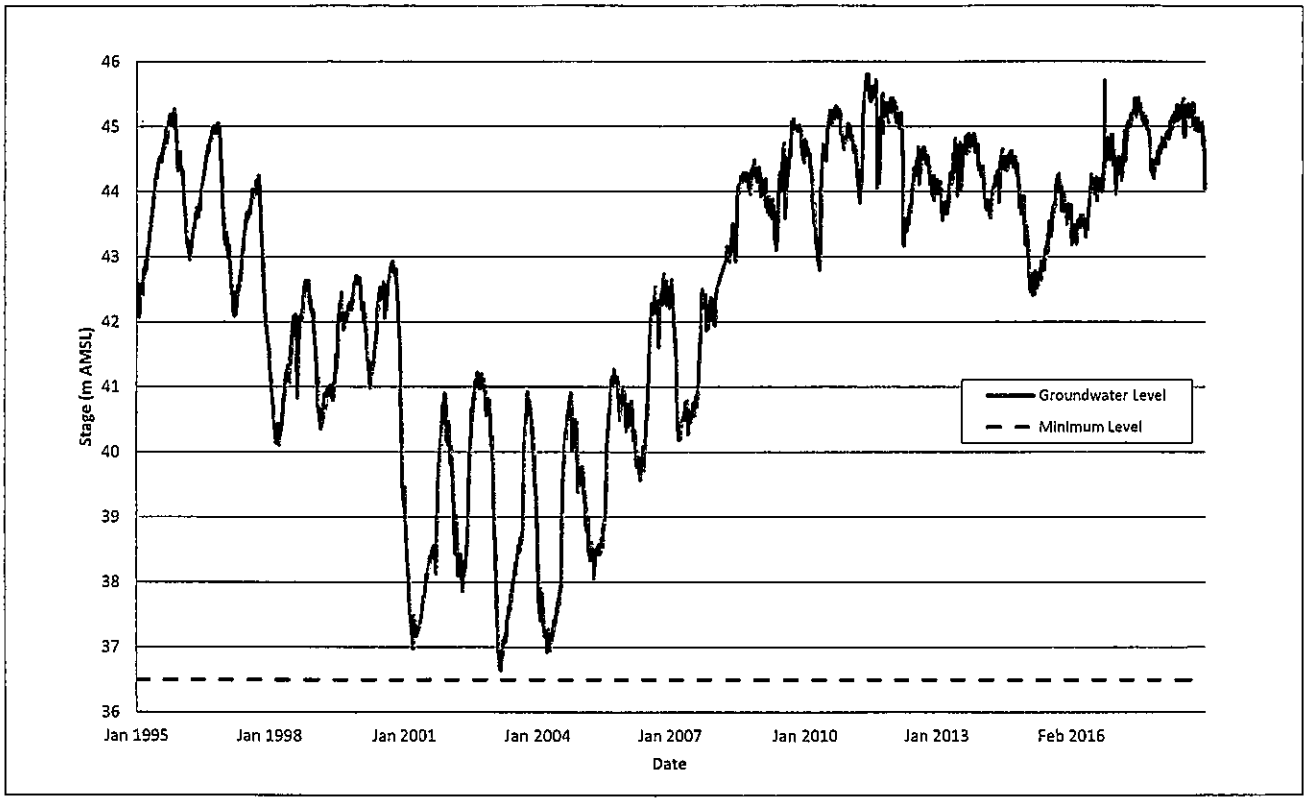


Figure 3: Groundwater Levels in Brancott FMU Monitoring Bore P28w/1323

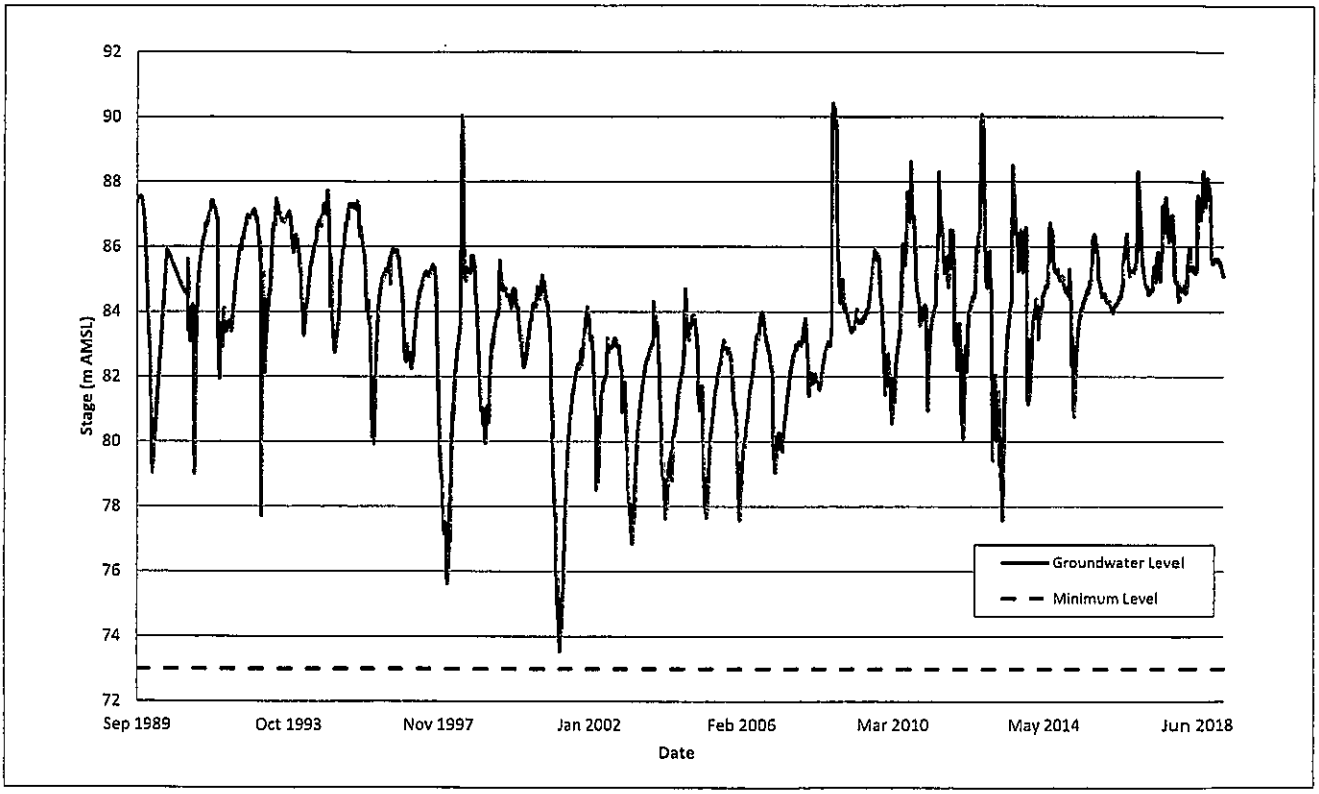


Figure 4: Groundwater Levels in Omaka Aquifer FMU Monitoring Bore P28w/1873

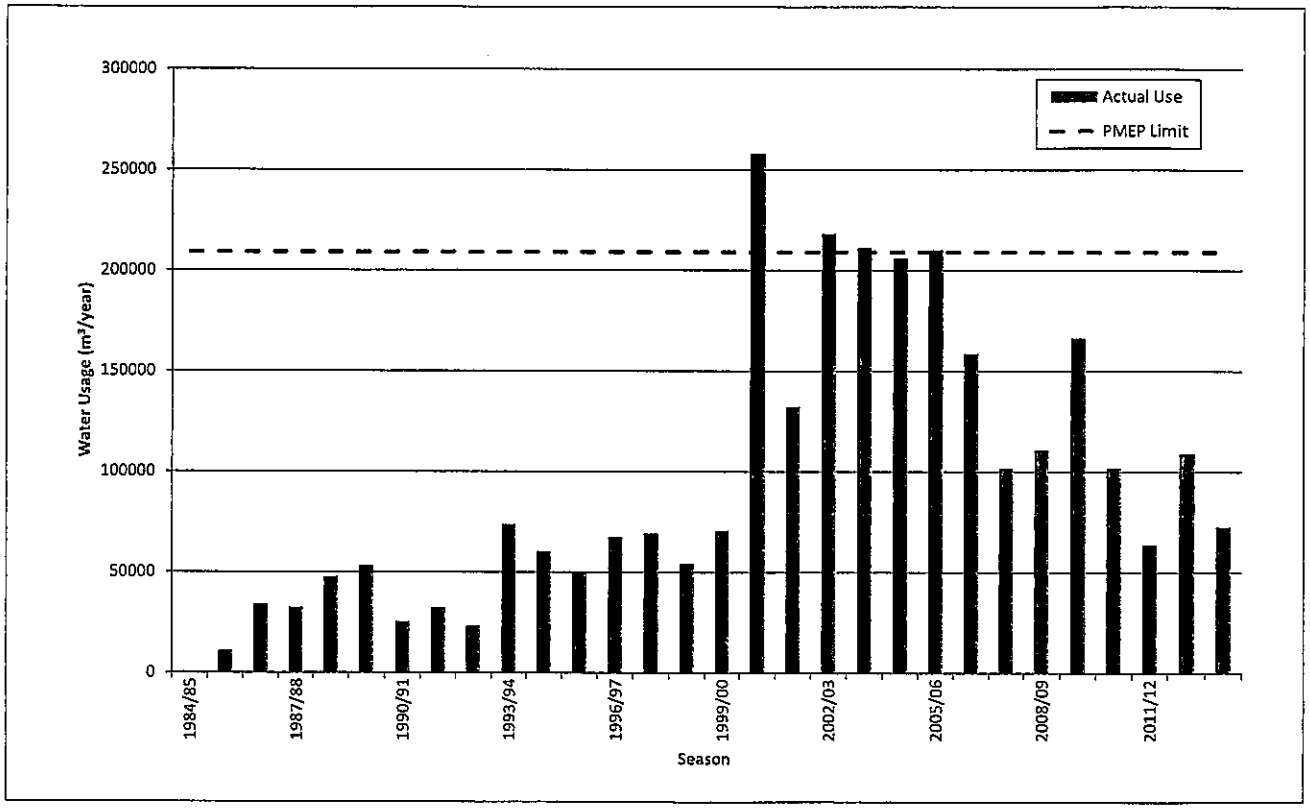


Figure 5: MDC Water Usage Records in Benmorven FMU

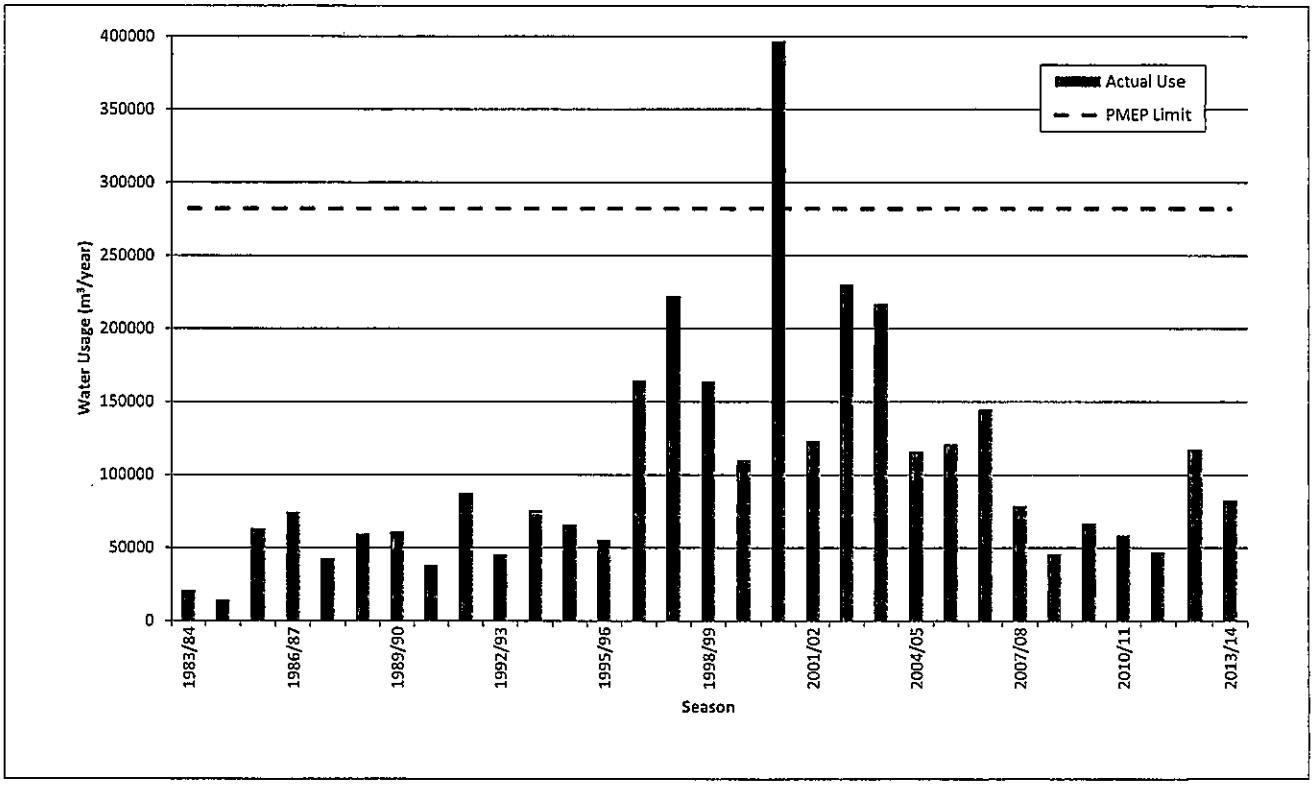


Figure 6: MDC Water Usage Records in Brancott FMU

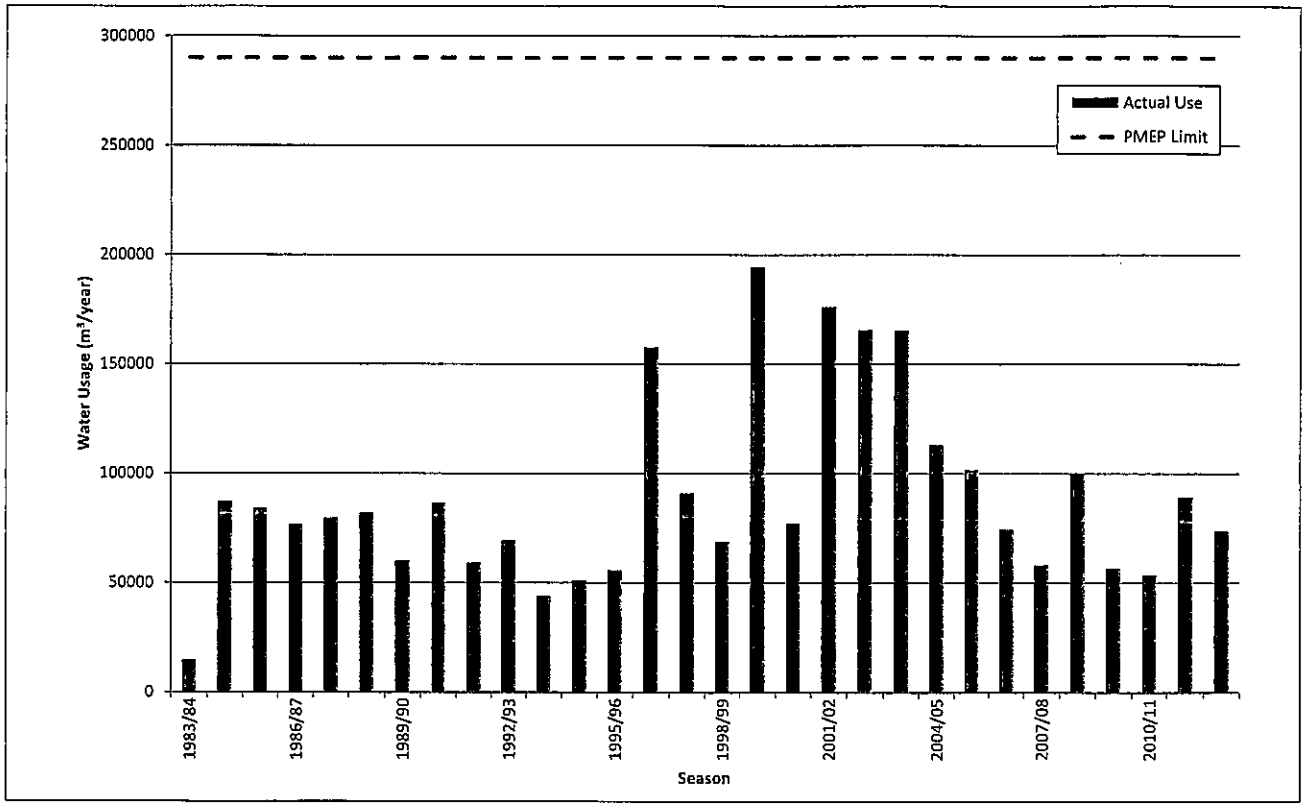


Figure 7: MDC Water Usage Records in Omaka Aquifer FMU

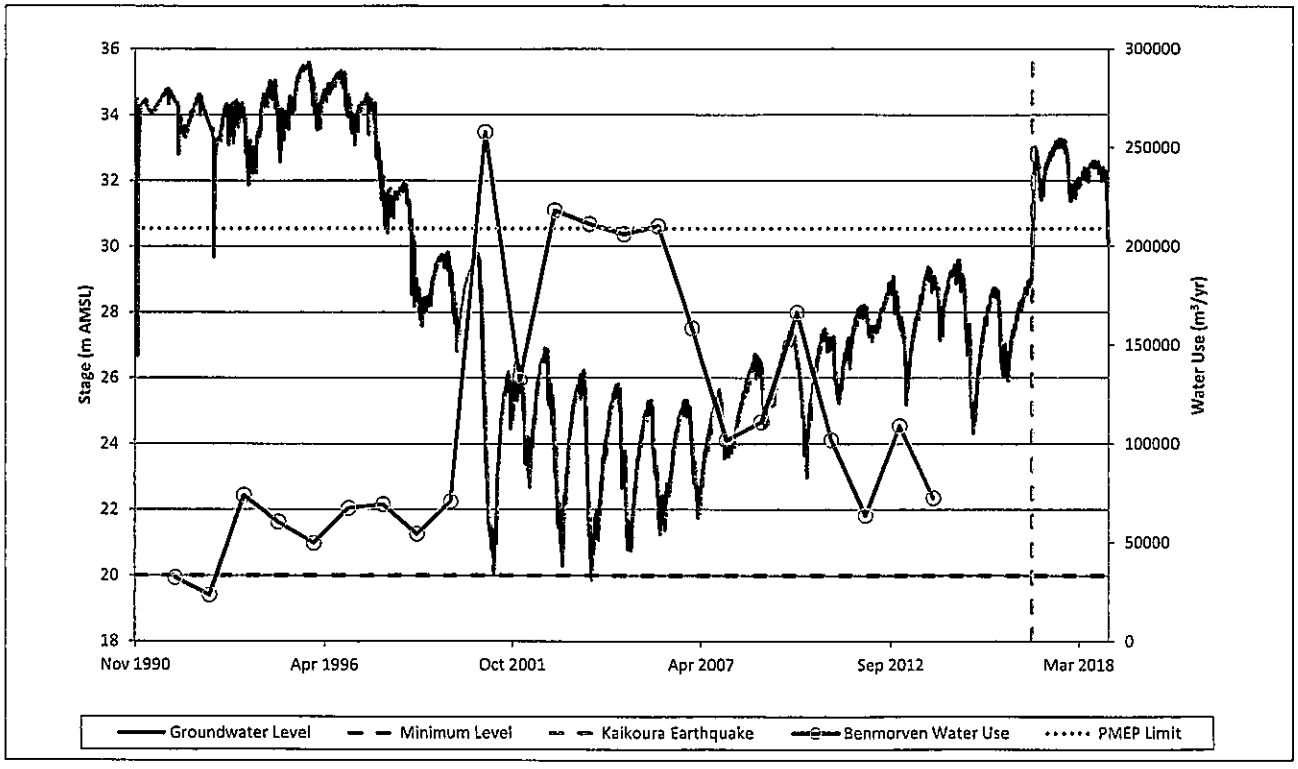


Figure 8: MDC Water Usage and Monitoring Bore Records in Benmorven FMU

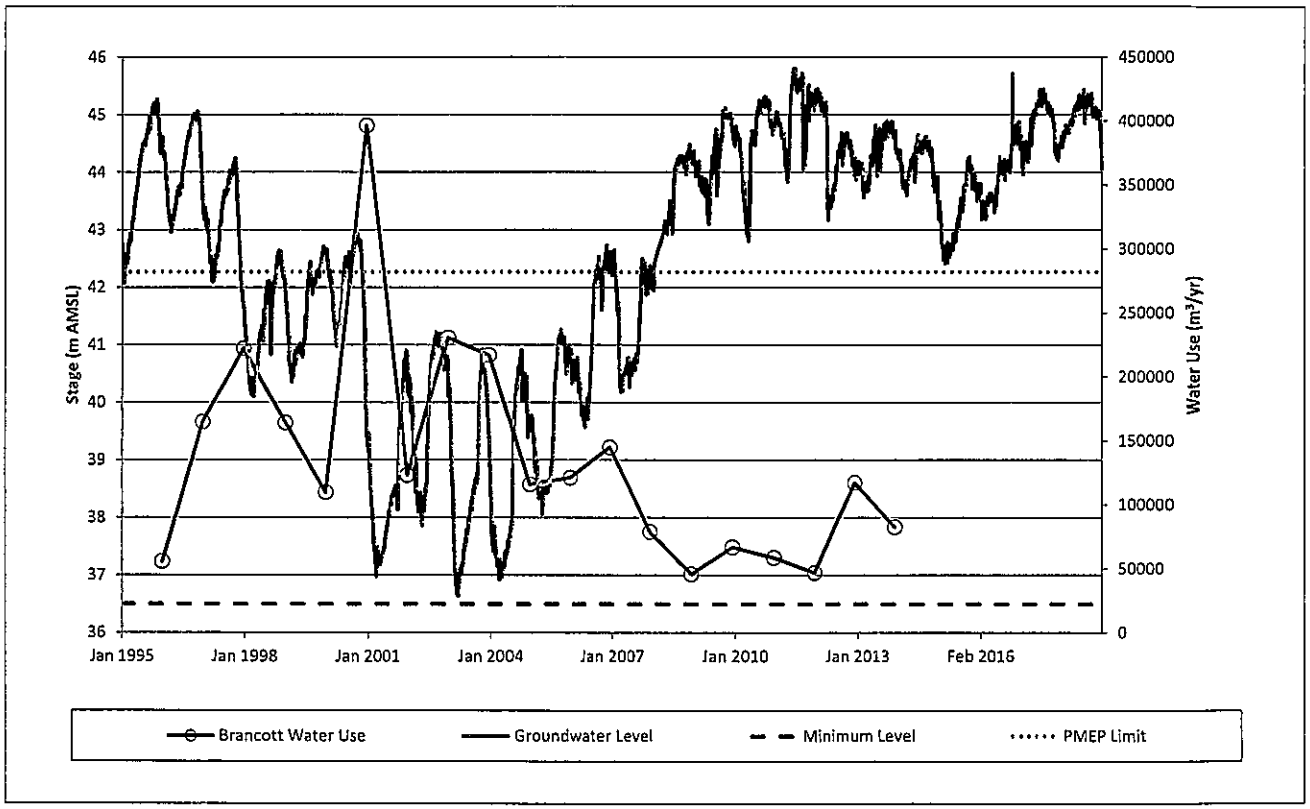


Figure 9: MDC Water Usage and Monitoring Bore Records in Brancott FMU

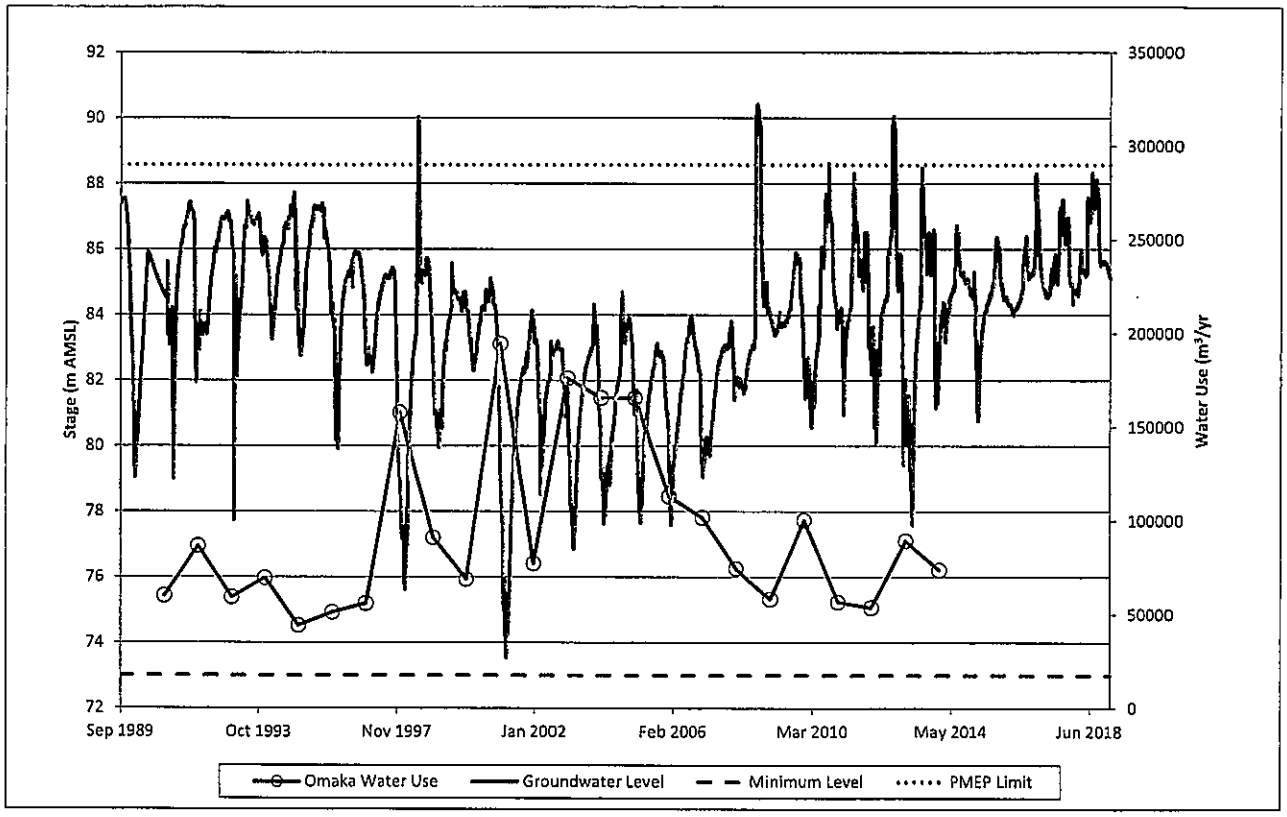


Figure 10: MDC Water Usage and Monitoring Bore Records in Omaka Aquifer FMU

IN THE MATTER OF The Resource Management Act 1991

AND

IN THE MATTER OF A Submission from Villa Maria Estate Ltd in relation to Policy 5.5.5 of Chapter 5 of Volume 1 of the proposed Marlborough Environment Plan

EVIDENCE OF FABIAN GEORGE YUKICH

QUALIFICATIONS AND EXPERIENCE

1. My full name is Fabian George Yukich.

2. I am Executive Director at Villa Maria Estate Limited, Director of New Zealand Winegrowers, and Chair of the New Zealand Winegrowers Sustainability Committee.

3. I have a Roseworthy Agricultural College Diploma in Wine.

4. My family has been involved in grape-growing and winemaking in New Zealand since the 1930s and were the founding family behind Montana Wines, planting the first modern day commercial vineyard in Marlborough in the 1970s. I started work in the vineyard at an early age and gained experience in all aspects of the domestic wine business by my 20s when I enrolled in the wine diploma course at Roseworthy College in South Australia.

5. After working in the Barossa Valley Australia, I moved to a project management then a winemaking role for Penfolds Wines in Gisborne. In 1998 I joined Villa Maria to project manage the build of the Marlborough and Auckland Wineries. I was appointed to the Villa Maria board in 2006, and have been heavily involved in all operational aspects of the business including vineyards, wineries and export sales. During my time at Villa Maria I have championed a progressive approach to sustainable practices including our organic vineyard developments from 1999 and Carbon Emissions accounting from 2009. In 2010 I won the Sustainable Business Network Champion Award and in 2012 Villa Maria was the overall supreme winner at both the Sustainable Business Network Awards and New Zealand Parliament's Green Ribbon Awards. In 2017 I led the team that built the new Villa Maria Hawke's Bay Winery at State Highway 50 in the middle of Villa Maria's extensive (over 220 hectares) of Gimblett Gravels vineyard holdings.

6. I was first elected to the board of New Zealand Winegrowers in 2012 and am now serving sixth successive term. At New Zealand Winegrowers I have served on the advocacy, sustainability and marketing committees, am a past chair of the marketing committee and chair of the Sustainability Committee since 2016.

7. I have been involved in the design, consenting and development of Villa Maria's Marlborough winery from the outset. I will say more about that later in this evidence.

VILLA MARIA

8. Villa Maria was founded by Sir George Fistonich in Mangere, Auckland, in 1961. He started from small beginnings, producing grapes and wine on a family market garden. George moved on to supplying the Auckland market and then the New Zealand domestic market. Now Villa Maria supplies high quality wines, worldwide.

9. Initially, all Villa Maria wines were processed in a small winery at Mangere. As demand for grapes increased, grapes were purchased in Gisborne and trucked to Auckland for processing. In the 1970's Villa Maria expanded in Hawkes Bay and in the following decades into Marlborough.

10. Villa Maria is owned by the Fistonich family and is New Zealand's largest family owned wine company. Villa Maria has received numerous awards for the quality of its wine and is able to say that it has been New Zealand's most awarded wine company continuously over the last 40 years. Our wines are well known and we have developed markets throughout the world. We have built our markets on the quality of our wines and on value.

VILLA MARIA IN MARLBOROUGH

11. Villa Maria's entry into Marlborough occurred in a small way in the 1980s. We formed relationships with some contract growers whose fruit we would truck to the North Island for processing. Increasingly, it became necessary for us to establish a winery in Marlborough, as Marlborough's reputation and status as a wine producing area grew and, with it, demand from our customers for Marlborough wine grew.

12. When we looked to establish a winery we undertook a careful evaluation. We were one of the first larger wine companies to establish a winery in Marlborough. We looked at length for a suitable site and came to the view that the site at New Renwick Road was the best site. For us, a winery is not simply the place where we undertake the industrial

process of making wine. It is our Marlborough "shop front" where wine writers, international buyers, tourists, customers and our guests come to experience the best of what Marlborough and Villa Maria has to offer. We have taken great care in the design and development of our Marlborough winery. It has been architecturally designed and landscaped, to a very high standard. The Villa Maria winery has been on the "Marlborough Wine Trail" since the 1990s and continues to be visited by large numbers of people from throughout the world.

13. Villa Maria's Marlborough winery is part of our marketing and selling programme and it is a part which simply could not be undertaken were the winery not situated where it is. We have apartment accommodation within the complex and this is frequently occupied by important international buyers and visitors who use it as a base for exploring Marlborough.

14. I would like to emphasise the extent and importance of our existing investment because of the comments in the s42A report in response to our submission in relation to Policy 5.5.5. We have asked that the claw back proposed not apply to wineries, like us, which have established infrastructure and which have invested millions of dollars over many years to establish in the Fairhall area.

15. Peter Callander has said, in his brief, that Policy 5.5.5, if implemented, could result in Villa Maria's existing entitlements under its current resource consent being scaled back from 100 cubic metres per day to 29 cubic metres per day. We could not operate the winery with that amount of water.

16. Council seems to accept in its s42A report that Policy 5.5.5, if implemented, could have "dire" consequences on our business. This is how I understand the last bullet point of para. 1455 where Peter Davidson's advice, to reject the relief we seek, includes the following statement:

> *Other consented non-irrigation water users in these FMUs could justifiably say they are just as dependent [on] the FMUs as the Villa Maria winery and the consequences of their being restricted or cut off are also dire to their business or activity.*

17. Following this comment is the comment, in para. 1456, that although alternative water sources may not be available to Villa Maria, "Council provides land zoned for industrial purposes, which includes a suitable water supply."

18. As I understand the s42A officers' response to our submission, they accept that, if implemented, the consequences to our business will be "dire" but that those consequences can be addressed by our relocation to Riverlands.

19. There are many problems with this analysis.

20. The first and most obvious is the substantial investment we have already made in our New Renwick Road site. We have just been through a long process of working with Marlborough District Council to expand the capacity of our existing winery to 35,000 tonnes. We have spent tens of millions of dollars on developing the winery and we cannot simply walk away from that and move to Riverlands. There is not the capacity for us and all the other wineries this Policy may affect to simply shut up shop and relocate to Riverlands.

21. Second, the s42A officers' view of wineries as a simply industrial process is not correct. The operation we conduct at New Renwick Road is aesthetic and experiential and important for our marketing and branding. We cannot reasonably be expected to showcase our wines from an industrial premise at Riverlands.

22. The aesthetic and experiential component of our winery operation has been planned for and implemented and follows the models of all of the other leading wine regions of the world. The leading wine regions of the world, such as the Napa Valley, the Barossa Valley, Burgundy, Sancerre and the Margaret River have not become such by taking their visitors to an industrial zone to showcase their wines. In these regions the wineries are situated in rural areas amongst the vineyards.

23. The production of wine is not a purely industrial process. It is a process which is deeply rooted in history and one which has a multitude of components. Taking grapes, crushing them, taking them through a fermentation process and the maturing and clarifying the wine for consumption has industrial components. However, for Villa Maria to create an internationally recognised and authentic wine brand to a point where it is an attractive proposition for local and international consumers requires much more. It requires the place where the product is created to be in an attractive, location and the winery to be part of the consumer experience whether through a visit to the website or cellar door.

SCALE OF OPERATIONS

24. Our winery processes processed some 23,000 tonnes last vintage. We have 29 permanent employees at the winery involved in winery operations and sales and administration and in the peak of the season this number rises to 91. In our vineyards we have permanent staff of 22 and numerous seasonal staff as required. We have approximately 1,300 hectares of vineyard under contract or lease. Most of the production comes through our New Renwick Road winery.

25. The winery was established in consultation with Marlborough District Council and all of our expansions have been the subject of consultations and consents.

WATER ISSUES

26. All wineries have an absolute dependency on potable water for the washing and cleaning of winery infrastructure and equipment. All water is used sustainably and wastages avoided. Wineries realise that when water is used it has to be disposed of as effluent and there is a pressure therefore to keep water use to the minimum in order to keep effluent outputs to the minimum.

27. We would suggest that the value that is obtained out of the winery use of water is extremely high relative to other uses.

28. We think that Council's obligations are to deal with any issues of allocation which exist in a more responsible way than taking back water which has already been consented and which is relied upon. I do not believe that Villa Maria relocating to Riverlands, as Council's s42A officers seem to suggest we should, is sensible or consistent with Council's obligations of sustainable management.

DATED this 1st day of February 2019

Fabian George Yukich

MARLBOROUGH DISTRICT COUNCIL

Proposed Marlborough Environment Plan

Topic 4: Water Allocation

Hearing dates:	18 – 20 and 25 – 26 February 2019
S42A Report Writer:	Rachel Anderson, Peter Hamill, Peter Davidson, Vallyn Wadsworth
Conflicts of Interest:	None
Interim decision:	No

(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)

List of Abbreviations

FMU	Freshwater Management Unit
PMEP	Proposed Marlborough Environment Plan
MALF	Mean Annual Low Flow
MDC	Marlborough District Council
NPSFM	National Policy Statement for Freshwater Management
RMA	Resource Management Act 1991
WRU	Water Resource Unit

Submitter abbreviations

AWUG	Awatere Water Users Group
DOC	Department of Conservation
EDS	Environmental Defence Society Incorporated
FENZ	Fire and Emergency New Zealand
Fish & Game	Nelson Marlborough Fish and Game
Forest & Bird	Royal Forest and Bird Protection Society NZ
Ngāti Kuia	Te Rūnanga O Ngāti Kuia
Ngāi Tahu	Te Rūnanga O Kaikōura and Te Rūnanga O Ngāi Tahu
Ngāti Toa	Te Rūnanga o Toa Rangatira
NZTA	New Zealand Transport Agency
NZDF	New Zealand Defence Force

Structure of Decisions

1. It is important that the topic decision is read as a whole together with the tracked change version of the Plan. The decision on each topic contains the reasons for the Panel's decisions. These comprise either adoption of the reasoning and recommendations of the original Section 42A Report or the replies to evidence, or a specific reasoning by the Panel[1].

2. The tracked change version of the relevant PMEP provisions forms an integral part of the decision. The source of the change in terms of the topic that the subject matter was dealt with is clearly identified in the track changes version of the plan. This records all amendments (additions and deletions) to the notified PMEP provisions made by the Panel.

3. Where the PMEP provisions **remain as notified**, it is because:

   (a) The Panel has decided to retain the provision as notified for reasons set out in this decision; or

   (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to retain the provision as notified as recommended in the Reply to Evidence; or

   (c) The Panel adopted the reasoning and recommendation of the Section 42A Report to retain the provision as notified in the original Section 42A report.

4. Where there is a **change to a provision** within the plan it is because:

   (a) The Panel has amended a provision for reasons set out in this decision in response to a submission point which the Section 42A report writer(s) does not recommend in their reports; or

   (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the Reply to Evidence; or

   (c) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the original Section 42A report; or

[1] (The only exception to that approach relates to the Noise section of the Nuisance topic where the reasoning and recommendations in the responses to Minutes 54 and 59 may have been adopted, rather than the reasoning and recommendations in the Section 42A Report or the Reply to Evidence report. The reasons for that difference in that topic are dealt with in detail at the commencement of the Noise section of the Nuisance topic decision. In respect of that topic the approach to understanding of the individual submission point decisions addressed in paragraphs 13.3 to 13.5 below should be adjusted accordingly to apply references to the Section 42A Report and/or Reply to Evidence in those paragraphs as being references to the responses to Minutes 54 & 59 for that Nuisance topic.)

(d) A consequential change has been necessary following on from a decision in either a), b) or c).

5. Where there is a **different recommendation** between the Section 42A Report and the Reply to Evidence (i.e., the recommendation by the Section 42A report writer(s) has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.

6. There are limited circumstances where the Panel has taken the opportunity to give effect to national policy statements or implement national environmental standards. Where this occurs the relevant decision clearly sets out the nature of the change and the reason for the change.

7. Finally, there are limited circumstances where the Panel has decided that **alternative relief** is more appropriate than that requested by the submitters, but still within the scope of the relief sought. This is recorded in the Panel's decision.

Water Allocation

Background

8. This chapter approaches the decision making on the basis that recognises the major issue is complex in that it is addressing water availability predominantly in the Wairau Plain and also in other catchments where limits on volumes of surface flows and aquifer levels are either directly or indirectly linked. By way of example, on the Wairau Plain, two-thirds of the surface flow is absorbed into the Wairau Aquifer within a relatively short distance downstream of Conders Bend and surface flows and aquifer levels there are directly interlinked. The evidence is that the southern valley aquifers will either have direct or indirect linkages to the Wairau Aquifer. It is very difficult to deal with each of these issues separately and for this particular decision we have therefore approached all of those contributing issues to the fixing of limits on surface flows and aquifer levels in the one substantial consideration.

9. As a consequence the format used for the discussion of limits on surface flows and levels in aquifers will be different in this topic decision from that utilised generally in other topic decisions because the interrelated evidence of submitters and report writers will be addressed as part of a general consideration. However, the important Te Mana o te Wai issue, which is at the commencement of this topic decision, does follow the normal format. Other decisions following the consideration of limits on surface flows and aquifer levels similarly revert to that decision format.

10. One of the most pressured public resources in a dry climate province like Marlborough is the freshwater resource available from its aquifers and surface flows in rivers and streams. Chapter 5 of Volume 1 of the PMEP addresses that issue and is entitled 'Allocation of Public Resources'.

11. The RMA (s 67(1)(a)) requires that all regional councils must give effect to a National Policy Statement in their various plans. In accordance with the parlance required by the National Policy Statement for Freshwater Management 2017 (NPSFM 2017) each of those resources are called a Freshwater Management Unit (FMU) in the PMEP. The FMUs are mapped in Volume 4 of the PMEP as part of the Overlays section..

12. The NPSFM was first issued in 2011, amended in 2014, and again in 2017. (As if that was not enough of a moving target, as this present decision was being written, the Government has announced an intent to issue a further amended NPSFM. The draft of that was released for public response in early September, 2019, but as it will not be operative before our decisions are released we need only address the 2014 and 2017 versions.) The 2014 version of the

NPSFM was the version that the PMEP as notified sought to give effect to, but as the 2017 NPSFM is now operative we are bound to give effect to it in our decision.

13. The 2017 NPSFM importantly contained a significant additional recognition of water quality protection by incorporating, largely at the repeated request of iwi interests throughout the country, the concept of Te Mana o te Wai. Objective AA1 of the NPSFM 2017 provides:

To consider and recognise Te Mana o te Wai in the management of fresh water.

14. That recognition of Te Mana o te Wai for the first time provides a statutory base to the fundamental concept of a sustainable bottom line being necessary to be fixed in plans for each FMU. The purpose of the bottom line is to protect the life force in ecological and water quality terms of a river (or FMU) for it to be able to maintain its mauri – the essence or life force of an FMU. The concept is relevant then not only to maintenance or restoration of water quality, but also to maintenance of water quantities within FMUs to maintain Te Mana o te Wai.

15. The PMEP has two appendices, 5 and 6, which are directly relevant to the both the concept of Te Mana o te Wai and the objectives and policies in Chapter Five of the PMEP which govern the allocation principles expressed in those objectives and policies. Those appendices are entitled:

Appendix 5 - Water Resource Unit Values & Water Quality Classification Standards

Appendix 6 - Environmental Flows and Levels

16. Appendix 5 contains two schedules, Schedule 1 – Water Resource Unit Values, and Schedule 2 - Water Quality Classification Standards. Schedule 1 is particularly relevant to the allocation of water resources, as it identifies and describes the values of what are described as Water Resource Units, which for practical purposes relate to the FMUs in Appendix 6.

17. Appendix 6 fixes the allocation quantities able to be sustainably taken while maintaining environmental flows and levels. Appendix 6 is comprised of a number of schedules the most important of which, for the purposes of this decision, are Schedule 1 – Quantity Allocations for Water Takes, and Schedule 3 - Minimum Flows and Levels for Water Takes.

18. Schedule 1 of Appendix 6 fixes maximum quantities able to be sustainably taken expressed on a daily basis for surface FMUs, and on an annual basis for subsurface aquifer FMUs. Of particular significance in the Awatere, but potentially increasingly in the Wairau catchment, for some FMUs the surface flow allocations are divided into three classes A, B and C. C class takes are for very high flow storage takes (usually in winter), B class only available for higher

flow irrigation takes, with A class being available for takes all year - provided minimum flows or levels specified for FMUs in Schedule 3 of Appendix 6 are maintained.

19. Schedule 3 of Appendix 6 provides the 'bottom line protections' for FMUs by fixing aquifer levels and surface flow volumes at which abstraction must cease, or in some cases where rationing of takes commences on a reducing basis until cessation. It also fixes the monitoring location where those flow or level assessments are to be made. An important exception is the Wairau Aquifer which does not have cut-off levels fixed for reasons that will be traversed later.

20. Another background document which must be referred to at this introductory stage is the Proposed National Environmental Standard on Ecological Flows and Water Levels. That document was released as a draft for discussion by the Government in 2008 as an interim measure pending the setting of limits in a regional plan.

21. The nature of this draft was expressed as follows in 2008:

> *The Proposed National Environmental Standard on Ecological Flows and Water Levels is to promote consistency in the way we decide whether the variability and quantity of water flowing to rivers, ground water systems, lakes and wetlands is sufficient.*
>
> *It would do this by:*
>
> *- setting interim limits on the alteration to flows and/or water levels where limits have not been imposed through regional plans or water conservation orders*
>
> *- providing a process for selecting the appropriate technical methods for evaluating the ecological component of environmental flows and water levels.*
>
> *(Panel's underlining for emphasis)*

22. It is important to emphasise the interim nature of this proposed standard, which has never become operative, largely because it has been superseded by the 2011 NPSFM and the two later 2014 and 2017 versions of the NPSFM.

23. With the massive development and expansion of the viticulture industry in the Wairau and Awatere catchments in recent decades, the FMUs in those catchments have come under pressure, particularly in dry summers towards the end of the irrigation season as river flows and aquifer levels reduce. In drier recent years flow rates and aquifer levels have reached the point where cessation of takes has either had to occur or has been on the brink of occurring.

24. The A class allocations in most FMUs in the Wairau and Awatere are, for historical reasons, over-allocated. The increase in intensive dairying in some of the Pelorus feeder catchments, particularly those rivers such as the Opouri, Ronga and Tunakino, has also resulted in increased irrigation pressures. Those smaller FMUs have limited aquifer structures and relatively small surface flows which in some cases dry up in an irrigation season.

Submissions

25. A major issue, both in submissions and in evidence at the hearings, was the surface flow rates fixed in the Wairau River itself. In essence, the flow rates fixed in the PMEP were challenged by some submitters, particularly led by Fish & Game[2], as being unsustainable in terms of protection of in-stream ecological values, particularly for the habitat necessary for the trout fishery.

26. Another major feature identified in various policies, and in the limits contained in the schedules to Appendix 6, is the complex interrelationship between surface flows and subsurface aquifers, particularly in the major Wairau Springs aquifer areas, but generally in relation to all aquifer FMUs other than the Wairau. The levels fixed for aquifers in Schedule 6, particularly in the Wairau catchment, were consequently the focus of considerable attention both in submissions and in evidence at our hearings.

27. In addition to those issues, most of which attracted significant input by way of evidence at the hearings, we also considered a very large number of other submissions on the various aspects of water allocation. (As has occurred generally in the PMEP decision, to save unnecessary repetition, where we agreed entirely with the reasoning and recommendations of the Section 42A Report or Reply to Evidence we have not repeated those conclusions.)

28. Much of the content of this decision will, therefore, be occupied with addressing submissions focussed on the Te Mana o te Wai and sustainability concepts, as reflected in various policies of the Plan and in Appendix 5; and the two major issues of the effects of allocation of resources on Wairau surface flows and aquifer levels as set in Appendix 6 – both of which had many sub-sets of issues related to them raised in submissions.

Te Mana o te Wai

29. The NPS states:

> *The matter of national significance to which this national policy statement applies is the management of fresh water through a framework that considers and recognises Te Mana o te Wai as an integral part of freshwater management. ...*

[2] 509.37

Te Mana o te Wai is the integrated and holistic well-being of a freshwater body.

Upholding Te Mana o te Wai acknowledges and protects the mauri of the water. This requires that in using water you must also provide for Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people).

Te Mana o te Wai incorporates the values of tangata whenua and the wider community in relation to each water body.

The engagement promoted by Te Mana o te Wai will help the community, including tangata whenua, and regional councils develop tailored responses to freshwater management that work within their region.

By recognising Te Mana o te Wai as an integral part of the freshwater management framework it is intended that the health and well-being of freshwater bodies is at the forefront of all discussions and decisions about fresh water, including the identification of freshwater values and objectives, setting limits and the development of policies and rules. This is intended to ensure that water is available for the use and enjoyment of all New Zealanders, including tangata whenua, now and for future generations.

30. This issue also brings into play a range of policies in the PMEP under Objective 5.2. It responds to Issue 5B which is expressed as follows:

> *Issue 5B – The taking, damming or diversion of water can compromise the life-supporting capacity of rivers, lakes, aquifers and wetlands.*

31. Objective 5.2 then provides:

> *Objective 5.2 – Safeguard the life-supporting capacity of freshwater resources by retaining sufficient flows and/or levels for the natural and human use values supported by waterbodies.*

32. The policies which give effect to that objective which are of particular relevance are policies 5.2.1, 5.2.2, 5.2.3, & 5.2.11. They link to Appendix 5 as to identified resource unit or FMU values. The combination of the policy suite of those four policies and the FMU resource unit values in Appendix 5 underlie the rationale for the limits set in Appendix 6.

33. The suite of policies provides as follows:

> *Policy 5.2.1 – Maintain or enhance the natural and human use values supported by freshwater bodies.*

Policy 5.2.2 – Give priority to protecting the mauri of freshwater and freshwater flows/levels.

Policy 5.2.3 – Protect the significant values of specifically identified freshwater bodies by classifying the taking, damming or diversion of water in these waterbodies as a prohibited activity.

Policy 5.2.4 – Set specific environmental flows and/or levels for Freshwater Management Units dominated by rivers, lakes and wetlands to:

(a) protect the mauri of the waterbody;

(b) protect instream habitat and ecology;

(c) maintain fish passage and fish spawning grounds;

(d) preserve the natural character of the river;

(e) maintain water quality;

(f) provide for adequate groundwater recharge where the river is physically connected to an aquifer or groundwater; and

(g) maintain amenity values.

Policy 5.2.11 – Set specific minimum levels for Freshwater Management Units dominated by aquifers to:

(a) prevent physical damage to the structure of the aquifer;

(b) prevent headwater recession of spring flows;

(c) prevent a landward shift in the seawater/freshwater interface and the potential for saltwater contamination of the aquifer;

(d) maintain natural and human use values of rivers and wetlands where groundwater is physically connected and contributes significantly to flow in the surface waterbody;

(e) maintain groundwater quality; and

(f) prevent long-term decline in aquifer levels that compromises the matters set out in (a) to (e).

Submissions

34. Ngai Tahu[3] supported the objective but sought that it be strengthened to recognise and protect the inherent values of the water resources themselves stating:

> *The intent of the objective is largely supported however the outcome of the objective is not clear. The objective also presumes a philosophical approach whereby freshwater resources need to only be protected to a sufficient level that will support human use. As indicated in the introductory section, Ngai Tahu is of the view that allowance needs to be made for the resource itself not to just function and survive, but to maintain healthy levels, at the same time as providing for the sustainable use of the resource. This is consistent with Policy 5.2.2.*

35. Ngai Tahu's submission in respect of Objective 5.2 sought the following amendments:

> *Safeguard the life-supporting capacity of freshwater resources by retaining sufficient flows and/or levels <u>for the health of the resource as a first priority, followed by</u> natural and human use values supported by waterbodies*

Section 42A Report

36. The report writer considered that the addition was unnecessary as the notified version of the Plan recognised and protected 'natural values'. She emphasised that the explanation to the objective made that very plain.

Consideration

37. The Panel considers that the use of the term 'natural and human use' does not adequately capture the intent of Te Mana o te Wai that seeks to protect the values of the river which the NPS places at the 'forefront of all discussions and decisions about freshwater'. Therefore the Panel has decided an amendment to Objective 5.2 and its associated policies is required. The Council is required to give effect to the NPS and therefore must include provisions that achieve this.

Decision

38. Objective 5.2 and its explanatory statement are amended as follows:

> *Objective 5.2 – <u>Recognise Te Mana o te Wai and s</u>~~S~~afeguard the life-supporting capacity of freshwater resources by <u>recognising the connection between water and the broader environment and</u> retaining ~~sufficient~~ flows and/or levels <u>required</u> for the natural and human use values supported by waterbodies.*

[3] 1189.035

The natural and human use values supported by Marlborough's freshwater bodies are important to retain given their contribution to the social, economic and cultural wellbeing of the community. In addition, the values can also have significance as a matter of national importance under Section 6 of the RMA, which must be recognised and provided for. Objectives AA1 and B1 of the NPSFM require Council to recognise and consider Te Mana o te Wai in the management of fresh water, and to safeguard the ~~also requires~~ life-supporting capacity, ecosystem processes and indigenous species of freshwater resources ~~to be safeguarded~~. Objective 5.2 reflects the need to recognise Te Mana o te Wai and safeguard the life-supporting capacity of Marlborough's freshwater bodies when managing the taking, damming or diversion of water.

39. Replace the notified Policy 5.2.2 and its explanatory statement with the following:

Policy 5.2.2 – Recognising Te Mana o te Wai gives priority to the integrated and holistic well-being of freshwater.

The National Policy Statement for Freshwater Management 2017 (NPSFM) provides councils with direction on how freshwater is to be managed through an objective and policy framework. Objective 5.2 requires councils to consider and recognise Te Mana o te Wai in freshwater management, and the policy requires councils to consider and recognise Te Mana o te Wai when making or changing regional policy statements and plans, noting that:

(a) Te Mana o te Wai recognises the connection between water and the broader environment – Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people); and

(b) values identified through engagement and discussion with the community, including tangata whenua, must inform the setting of freshwater objectives and limits.

To achieve this, council and communities, including Marlborough's tangata whenua iwi, will come together and discuss what values they hold for the freshwater bodies in their rohe (geographical area) or areas of statutory acknowledgement, and set freshwater objectives and limits in response to this. This will include identifying what Te Mana o te Wai means to the Marlborough community. Marlborough's tangata whenua iwi often use terms like mauri to describe the cultural concept that all natural resources have a lifeforce. This lifeforce (wairua) is derived from the physical attributes of the resource as well as the spiritual association iwi have with natural resources. The taking, damming or diversion of water can adversely affect the mauri of water.

Te Mana o te Wai will assist in building a greater understanding amongst the community of the integrated and inter-connectedness of values and their role in managing freshwater resources.

Regard was had to protecting the mauri of freshwater and freshwater bodies when establishing the allocation frameworks and permitted activity rules contained in the provisions of this chapter. Te Mana o te Wai will build on this process.

40. Insert a new method as 5.M.1 (with subsequent numbering changes), as follows:

5.M.1 - Setting community values – Te Mana o te Wai

Council will work with communities, including Marlborough's tangata whenua iwi, to identify values and use them to inform the setting of freshwater objectives and limits.

Limits to Allocation of Water

41. As the aquifer replenishments, and aquifer levels restricting takes, (which drove a large number of the submissions on aquifer allocations), are both interrelated with Wairau surface flows, either directly or indirectly, it is best to record conclusions first on those surface flow rate issues.

42. Policies 5.2.4, 5.2.5, 5.2.11 and 5.2.13 combine with Appendix 6 to set limits on the total amount of water available to be taken from FMU's in accordance with Policy B1 of the NPSFM 2017. Policy B1 of the NSPFM requires the environmental flows and/or levels to be set together with allocation limits. Policies 5.2.4 and 5.2.11 also have relevance to the values protected by the setting of limits so were set out above when considering Appendix 5.

43. The other policies relevant to limit setting in Appendix 6 are policies 5.2.5 and 5.2.12, 5.2.13:

> *Policy 5.2.5 – With the exception of water taken for domestic needs or animal drinking water, prevent the taking of water authorised by resource consent when flows and/or levels in a Freshwater Management Unit are at or below a management flow and/or level set as part of an environmental flow and/or level set in accordance with Policy 5.2.4.*
>
> *Policy 5.2.12 – Set conductivity limits for Freshwater Management Units dominated by aquifers adjoining the coast to manage the potential for saltwater contamination of the aquifer.*
>
> *Policy 5.2.13 – Limit the total amount of water available to be taken from any freshwater management unit and avoid allocating water (through the resource consent process) beyond the limit set.*

Wairau Surface Flow Rates & Aquifer Levels submissions

44. A range of submissions were lodged in respect of Objective 5.2 and its related policies coming from quite markedly differing positions, particularly in relation to the Wairau surface flows and the related more southern Wairau aquifer levels. The basic cut-off rate for takes in the lower Wairau is set in Appendix 6 at 8 cumecs at Barnetts Bank (a recorder location on the north bank of the Wairau just upstream of the Tuamarina Bridge over SH 1).

45. Some submissions from the irrigation sector essentially sought variously modification of these policies so as to enable continued takes without reduction; or incremental rationing or reductions over time; or some level of prioritisation as restrictions start to apply; or even prioritisation for what were asserted to be 'essential' or 'survival' activities, i.e. activities which could not survive the cut-off of water at all, or which would fail to survive extended cut-offs of supply. In summary those types of submissions came from the end of the spectrum that asserted the PMEP restrictive provisions were too harsh, and needed relaxing to some extent.

46. At the other end of the spectrum were a range of submissions seeking to support the Te Mana o te Wai or sustainability bottom lines in the PMEP; or, as in the case of Nelson Marlborough Fish and Game (Fish & Game), expressly seeking that the PMEP restrictions be raised in the Wairau to at least 13 cumecs, but preferably greater than that, and increased also in other catchments so as to provide greater protection for Te Mana o te Wai, or sustainability of natural habitat.

47. In essence, the position adopted by the report writers in respect of the major Wairau resource adopted a position of support for the PMEP as notified. In practical terms that constituted a position lying somewhere between the positions of those seeking reduced flow rates or aquifer levels before cut-offs are triggered for irrigation takes, (which inherently reduces the level of protection derived from residual flows), and those seeking amended provisions retaining greater residual flows in the river.

48. A clear example of these differing positions adopted in the submissions and the PMEP provisions arose from the Fish & Game request in respect of the Wairau seeking greater protection for in-stream values, by flow rates being fixed much higher than the PMEP provides. As mentioned above, the figure of 13 cumecs was stressed as being a minimum flow rate to sustain natural habitat supporting a trout fishery.

49. The Fish & Game arguments in support of that proposal are a useful start-point from which to commence a consideration of the relevant objective, policies and appendices in the PMEP.

That is because consideration of their request for increased river flows in the Wairau will traverse or encompass most of the issues raised in other submissions adopting either a similar approach, or an opposing approach. That is so whether the issue being considered relates to the values sought to be protected by residual flow rates or aquifer levels, or the actual flow rates or levels fixed themselves.

50. In the Panel's assessment the arguments each way on the residual surface flow rate largely came down to a choice between a methodology used in the PMEP based on decades of practical observation, coupled with experienced hydrological assessment of daily extraction fluctuation effects, as against a calculated artificial assessment of what are described in hydrological terms as 'naturalised' flows as provided for in the 2008 draft Proposed National Environmental Standard on Ecological Flows and Water Levels (hereafter 'draft 2008 NES').

51. The case advanced by Fish & Game was that its methodology, provided to the Panel and described by its expert hydrological witness Ms Watson was based on an attempt to 'naturalise' Mean Annual Low Flows (MALF) by adding back into the record of measured flows in lower reaches, those extractions caused by other activities or takes. That approach was based on the draft 2008 NES methodology which was advanced before the Panel as being a methodology we should give effect to as being contained in an NES, albeit a draft one.

52. The primary flaw with this methodology is that it is of course an artificial or 'constructed' method of ascertaining flow rates. That 'constructed' naturalised flow rate is then advanced as being, in an ideal world before the extractions occur, what should be regarded as the 'natural' flow rate for that surface flow.

53. As was stated in the introduction to this part of the decision, this 'naturalising' methodology in the draft 2008 NES was only ever suggested to assist those regions where plans did not set flow rates or aquifer levels, and it was expressly stated to be an interim measure.

54. It bears repeating that the wording in the introduction to the draft 2008 NES was as follows:

> *It would do this by:*
>
> *- setting interim limits on the alteration to flows and/or water levels where limits have not been imposed through regional plans or water conservation orders*
>
> *(Panel's underlining for emphasis)*

55. That is simply not the situation with the PMEP. The PMEP specifically sets flow rates and aquifer levels at which cessation of takes are required, i.e. limits have been imposed, which are specifically designed to maintain the bottom line environmental values.

56. Moreover, the Panel has also taken into account the fact that the draft 2008 NES was only ever issued in draft form, and it was never made operative. It is not for the Panel to speculate as to why it was not taken through the full range of consultation and decision-making to be made operative. But what can be taken into account is that the 'naturalising' methodology has no binding statutory force.

57. And the Panel was not persuaded either that it was a reliable base against which to impose such hard practical effects as irrigation cut-offs with their devastating financial impacts on production, when a valid practical, tested and measured alternative methodology was available which was used for setting limits in the PMEP. That was particularly so when the artificially constructed or 'naturalised' flows are compared to the hard practical factual base upon which the daily flow rates and aquifer levels were set in the PMEP.

58. We also accept that daily flow rates, in particular for a surface water FMU like the Wairau, have no definitive 'natural' precisely measurable constant figure. That is because a range of natural and man-made influences can affect exact flow rates on any particular day depending on the time of day the rate is measured. And for aquifers, drawdown effects from irrigation pumping usage throughout a day (or night even) can make for potentially significant fluctuations in aquifer levels.

59. For surface flows in the Wairau, one example alone shows that the nature and extent of those fluctuations can be very graphic. At the Branch River catchment some 40-50 kilometres up the Wairau Valley from the crucial flow rate measurement point at Barnetts Bank is the Trustpower hydro scheme. It is essentially a run of the river scheme with limited storage capacity. However, it has sufficient storage that its releases of stored water can be varied to maximise the return on hydro power generated to enable releases to be planned to coincide with high electricity income return periods. Commonly that might occur with two or three day separation periods between releases.

60. Depending on both quantity and duration of releases from the Branch Scheme the increases in downstream flow rates can vary significantly in the lower reaches, but releases can commonly increase the flow rate downstream significantly for a period of time. Sometimes at low flow rates that can be by a factor of nearly double the residual flow rate.

61. One of the arguments raised in relation to these issues by Fish & Game was that a serious risk to natural habitat can arise if a flow rate is set so low as to result in 'flat-lining' of flows which are unnatural. The Panel struggled to understand how such a proposition could be seriously advanced in relation to the Wairau. The frequent Trustpower releases from the Branch power

scheme alone remove any reality to 'flat-lining' risk. They are significant flows of up to approximately 5 cumecs in volume. Normally the fluctuations are about 20% of flow which when compared to lower flow levels will often be close in volume to the low flows themselves. In addition irrigation takes also cause fluctuations of significant sizes necessitating the policy response in Policy 5.2.6 of a daily average for flow assessment as follows:

> *Policy 5.2.6 – For rivers, establish whether the flow has reached the management flows set in the Marlborough Environment Plan on the basis of 24 hour averages (midnight to midnight).*

62. Such fluctuations make the measurement of daily flow rates and decisions as to cut-offs very challenging. But flow rate monitoring of measured surface flows at low levels, and actual measurement of aquifer levels can still get much closer to reality than a calculated annualised 'naturalising' of flows by adding back in calculated volumes on an annualised basis.

63. A further, major apparent flaw in the evidence as to attempted 'naturalising' of flows was the lack of any realistic attempt to quantify the effects on surface flows of the significant infiltration which occurred to the Wairau Aquifer from natural processes, and how that was impacted by the re-watering that occurred through the diversion of Waihopai waters into the Gibsons Creek system as part of the Southern Valleys Irrigation Scheme (SVIS). In general terms it was described to the Panel that up to two thirds of the flow upstream of the Waihopai junction could be absorbed into the aquifer between there and the Barnett's Bank recorder position near Tuamarina.

    Similarly, the effects on surface flows of forestry plantings, (which in recent years have expanded into the upper Waihopai catchments in a major way), and the harvesting of mature forests, (which is now occurring on a significant basis in various catchments such as the Wairau and Pelorus), were not well addressed in the 'naturalising' approach. Yet those effects are likely to be potentially significant and complex on surface flows downstream.

64. Given all of the complexities of the various major inputs and extractions, both natural and man-made, into and from surface flows, the Panel accepts that a considerable level of experienced observation and judgment is required to set cut-off flow rates or levels in such a markedly fluctuating scene. In the Panel's view, use of close long term observations and recording of actual outcomes is far more reliable as a base when assessing and setting flow volume limits and aquifer levels, than attempting a well-nigh impossible task of trying to artificially re-create a 'naturalised' flow or level.

65. The PMEP cut-off limits have been set based on the experienced judgment of objective Council engineering staff with decades of experience.

66. The Marlborough region is fortunate to have had the same professional senior staff objectively observing and managing these resources for some decades. Professional hydrological personnel such as Mr Peter Davidson and Mr Val Wadsworth have had decades of experienced observation of actual measurements over a range of seasonal effects and drawdown pressures, to be able to respectively develop the aquifer level and surface flow cut-off levels so as to maintain a level of ecological sustainability. They have had the added advantage of being able to set those rates and levels in close consultation with Mr Peter Hamill a highly experienced freshwater ecologist, who similarly has had the benefit of practical in-stream observations and research in Marlborough's rivers for decades over a range of seasonal and drawdown effects.

67. A report as to the minimum surface flows required to sustain the Wairau in-river ecology at a level which maximised habitat for trout was advanced by Fish & Game in the form of a Cawthron report 2505 prepared by J. Hay & J.N. Hayes in 2014 addressing the Wairau River Sustainable Flow regime based on a cut-off of takes measured at 8 cumecs at Barnetts Bank. That report by two experts in trout habitats and species concluded that increased flows above 8 cumecs would provide much enhanced in-stream habitat conditions for trout. The Panel also had before it a report by J.D.Stark (Stark Environmental Report 2014) which commented on the Cawthron report by Hay & Hayes. The Stark report agreed with the base proposition in the Cawthron report that increased flows would provide better in-stream habitat.

68. However, significantly the Stark report also concluded that while the lower cut-off might mean a lesser number of individual trout may be able to be sustained in such low flow conditions, that did not mean there would be a change in species composition or a loss of species such as trout inhabiting the river in overall terms. The Section 42A Report at paragraph 303 made it plain that Mr Hamill agreed with those conclusions.

69. The Panel had before it evidence from Fish & Game of the gathering of trout in large numbers (approx. 300) in a deep pool at the mouth of the Waikakaho 2019 in severe drought conditions. Fish & Game advanced that fact as being indicative of a serious problem with low flows at or about the 8 cumec volume.

70. However, that evidence accords with other evidence from the Stark report and Mr Hamill that such outcomes were to be expected, i.e. that in low flow conditions trout will either head for higher flows upriver, (upstream of where natural reduction in flows occur into Wairau

aquifer), or will seek refuge in deeper colder water where colder subsurface flows enter the Wairau from, in this case, the Waikakaho gravels.

71. Mr Hamill's views were particularly persuasive with the Panel when he emphasised that if the 8 cumec cut-off had not worked there would be evidence of serious prejudice to trout fishery in the Wairau, or widespread trout mortality, and that there is an absence of any such evidence. In fact to the contrary, the evidence is that the trout fishery in the Wairau is still healthy, and according to Mr Hamill the natural fishery is also resilient and bounces back after each drought event.

72. Furthermore, the Panel has had the benefit of being able to assess Mr Hamill's views against the outcome and reliability of their joint hydrological and ecological management of these fluctuating physical factors by reference to other objective factual markers.

73. One of the strongest arguments against propositions that the Wairau levels are fixed too low is the very evidence that Fish & Game have provided of the Wairau being a nationally significant trout fishery and, most importantly, continuing to be so. Similarly, too, in respect of their arguments about the levels of the Pelorus smaller catchment flows.

74. Particularly given the increase in return frequency of lower flow rates in the last two decades, if the Fish & Game proposition was correct, one would have expected there to have been a very strong body of evidence available of widespread obvious trout mortality, or at the least, of massively reduced trout population figures showing up on drift dives or on catch records. No such dramatic or strong body or evidence of those types of outcomes was provided. And that is probably not too surprising given the evidence the Panel heard of the ability of trout to move upriver in low flow conditions, or to seek refuge beside streams with underground flows such as the Waikakaho, or to be sustained by intermittent releases from the Branch power scheme.

75. Whatever may be the reasons for trout survival, the outcome is clear from the Fish & Game evidence that a strong sustainable nationally significant trout fishery has been maintained in the Wairau over recent decades even with a low flow cut-off of 8 cumecs. That situation of a continued strong trout fishery would not exist had the Council's minimum flow rate been too low. That reality provides strong objective support for the proposition advanced by the report writers that the 8 cumecs cut-off provided for in the PMEP has worked over recent years in protecting the habitat for trout sufficiently to enable an international fishery in the Wairau to be maintained.

76. The Panel was not persuaded by the evidence of Ms Watson or the other Fish & Game witnesses that the artificial 'restructure' involved in her attempt at 'naturalising' flows was either accurate or sufficiently reliable to rely upon, or that there was even any need to attempt to apply such a 'naturalising' approach.

77. Similar conclusions were reached by the Panel in respect of the conflicting evidence in respect of flows in the Pelorus and Kaituna systems. The long experience of the report writers in the Pelorus feeder catchments in the upper Rai system and the Kaituna was similarly persuasive, supported again by evidence of a sustained trout fishery of importance once again in the Pelorus, despite commonly recurring periods where some of the feeder catchments dried out over lengthy distances. The Panel accepted the evidence of Mr Hamill in that respect.

78. The thrust of his and Mr Wadsworth's evidence was that those Rai sub-catchments had relatively restricted small, thin aquifers and in sustained drought periods, regardless of effects of irrigation use, would dry up for lengthy distances. (And the same conclusions applied for the Kaituna). While those events naturally would result in some limited mortality for fish species and other in-river fauna, both natural and introduced which were caught in the last remnant pools of dry river stretches, the great bulk of the population survived by either withdrawing up or downstream to higher flow areas, or in the case of some particularly resilient native species, by survival in wetted remnant gravel or mud areas. When flows recovered the full riverbed length would be re-occupied.

79. In short, the report writers' evidence was that the species in these rivers had methods of adapting to inevitable periods where surface river flows ceased and the volumes at low flows were so small that the cut-off levels fixed in the PMEP, which were conservative, had little real effect on extending the duration of dry riverbed periods and probably none in reality on the length of dry river beds in physical terms.

80. In the Awatere catchment once again the evidence of long-term close observation of closely controlled cut-off limits was highly persuasive for the Panel. The limits in that catchment did not really come under serious criticism as they have been proven to work in practice, and as far as Fish & Game were concerned that fishery is also adversely affected by the heavy siltation load carried in the Awatere.

81. As to surface flows Policies 5.2.4, 5.2.5, 5.2.11, 5.2.12 and 5.2.13 as they combine with Appendices 5 and 6 are retained as notified.

Request by users for decreased cut-off levels or volumes

82. As described earlier, several submitters at the other end of the spectrum asserted that cut-offs for takes from aquifers based on the surface flow volumes or aquifer levels in the Wairau were too harsh and/or unfair or illogically inflexible.

83. Alternatively, others suggested that their particular activities were so sensitive to any cut-off in supply that they should be treated differently and be allowed what some submitters described as a 'survival' allocation.

84. The Panel's views on the arguments about cut-offs fixed in relation to surface flows in the Wairau are really sufficiently described above that they do not need repeating. The levels have been fixed based on long expert experience of what minimum flow levels are needed to be maintained so as to maintain Te Mana o te Wai or the sustainability of natural habitats and riverine fauna.

85. The criticisms of the cut-off levels for aquifers were predominantly in respect of two separate issues – the unfairness asserted as to cut off aquifer levels for the Springs aquifers when the Wairau aquifer had no aquifer level cut-offs; and the second – the illogicality of cut-off levels when extractions in the southern valleys aquifers may not be directly affecting the relationship between aquifer levels and surface flows.

Wairau aquifer and Springs FMUs issue

Policy 5.6.2 - Manage the potential for groundwater takes in proximity to spring-fed streams on the Wairau Plain to cause a recession of the position of headwaters of the streams by establishing aquifer minimums below which the taking of groundwater must cease.

86. The treatment of the identification of the interlinked aquifers under the Wairau Plain is achieved in the PMEP by overlay mapping of different FMUs in Volume 4 under the title of Freshwater Management Unit Map 1. The naming of individual aquifers on that map are as follows:

> *Wairau Aquifer – the largest physical aquifer area encompassing the northern plain area from the Wairau/Waihopai junction to the sea*
>
> *Lower Waihopai – FMU includes surface flows as well as some areas of aquifer*
>
> *Omaka River – which includes part of the aquifer system surrounding Woodbourne.*
>
> *Omaka Aquifer – western most Southern Valleys aquifer*
>
> *Brancott- Southern Valleys aquifer immediately adjacent to east of Omaka*
>
> *Benmorven – Southern Valleys aquifer adjacent to east of Brancott*

Southern Springs – Wairau aquifer adjacent to north of Benmorven

Taylor – FMU includes surface flows as well as some areas of aquifer

Rarangi Shallow – includes some overlap with north east corner of Wairau aquifer.

Riverlands – FMU includes aquifers in Riverlands area

87. However, the overlay Freshwater Management Unit Map 3 provides more detail of the Wairau Aquifer breaking it down further with the following FMU identifiers being mapped in the central Wairau Aquifer area from north to south:

Northern Springs Sector

Central Springs FMU

Urban Springs FMU

88. The boundaries of these FMUs do not follow strict road lines or river lines as between the Northern Sector and the Central Springs. The northern boundary of the Northern Springs aquifer uses as its eastern boundary the line of SH 1. The southern boundary uses the junction of Murrays Road, Mills and Ford Road and SH 1 as the easternmost start point, and then follows a straight line to the west to almost intersect with Hammerichs Road just below its intersection with Giffords Lane.

89. The southern boundary of the Southern Springs uses the line of Old Renwick Road and Lansdowne Street as the boundary with the Urban Springs FMU to the south. To the east it uses the line of SH 1.

90. The hydrological evidence was that all of these aquifers, including the Wairau Aquifer, are directly inter-related, but that the Springs aquifers have different sensitivities in ecological terms in that they break out to the surface of the plain forming surface flows downstream, such as Spring Creek. These aquifers also provide water supply for numerous aquifer sourced rivers, streams and creeks of a similar nature to Spring Creek, or supplement other surface flows from underground spring sources sourced from the various aquifers.

91. The PMEP has cut-off levels for these three Springs aquifers but the Wairau Aquifer does not have a cut-off level set yet as there is inadequate data held by Council as to the rates and volumes of takes because of a lack of metering of those factors until recent years when renewals of take permits have enabled the imposition of conditions requiring metering. Particularly in the case of the Northern Springs Sector and Central Springs FMU, their monitoring wells are respectively within the Wairau Aquifer or very close to its boundary in

terms of above ground distance, and they and the Wairau Urban Springs aquifers all have levels set requiring cut-offs to protect surface water flows, whereas the Wairau Aquifer does not.

92. The practical result of the differentiation in treatment of the various aquifer cut-off levels or flows was described graphically in evidence by Mr James Jones. He described how in the Rapaura area in high summer drought conditions one could drive down Hammerichs Road and see desperately dry land and crops to the east within the Northern or Central Springs FMUs unable to be irrigated as levels requiring cut-off had been hit.

Yet identical land and crops to the west within the Wairau Aquifer FMU, only a hundred metres or so away in an upstream direction, were still being irrigated because the Wairau Aquifer does not have cut-off levels set yet. The same outcome occurs, of course, for the Wairau Urban Springs aquifer where cut-offs can occur while takes still continue from the Wairau Aquifer.

93. (A different issue arises further to the east immediately adjacent to the sea where the Wairau Aquifer is divided into three FMUs in overlay Freshwater Management Unit Map 3. Those FMUs are identified as follows from north to south:

Wairau Aquifer Coastal North FMU

Wairau Aquifer Coastal Central FMU

Wairau Aquifer Coastal South FMU

94. However, the principal rationale for those FMUs having cut-off levels set is to protect against over-allocation given the risk that might lead to of devastating adverse effects of salt-water intrusion – see Policy 5.2.12.)

95. A common characteristic, however, for both the coastal and springs aquifers is that once again over decades practical close observations have occurred by highly experienced Council staff of the relationship between the aquifer levels and sustainability of surface flows on the one hand for the Springs aquifers, and on the other for the coastal aquifers the relationship between aquifer levels and the pressures needed to be maintained within them to ensure salt-water intrusion effects do not move inland.

96. In other words the levels needed to be maintained so as to ensure maintenance of Te Mana o te Wai within the aquifers and the sustainability of the surface flows that they provide for, or the aquifer pressures that need to be sustained to avoid inland movement of salt water, have

been able to be assessed and fixed based on those decades of experienced observation and measurement.

97. The Panel accepted the criticism from many submitters that on the face of matters it was unfair to have no aquifer level set for cut-offs of takes from the main Wairau Aquifer when other adjacent aquifers had cut-off levels set. That was explained by the report writers as being the unfortunate result of historical takes not always being metered and hence there was not the accuracy of take information available across the whole of the Wairau Aquifer to be able to set a similarly protective aquifer level cut off just yet. However, as renewals of consents have been occurring, meters have been required to be installed and during the term of the PMEP it is expected sufficient data will be able to be gathered with sufficient accuracy to enable a more appropriate level to be set.

98. The Council has adopted already as a public record of commitment, the following programme to address this gap in the aquifer level setting for the Wairau Aquifer which Policy B1 of the NPSFM requires to be set:

Progressive Implementation Programme for Implementing Policy B1 of the National Policy Statement: Freshwater Management 2014

Wairau Aquifer Minimum Water Level

Stage	Description	Due Date
Stage 1	Assessment of information held to identify gaps in knowledge.	31 December 2015
Stage 2	Technical investigations to collect, analyse and report data that will support the establishment of an environmental water level for the Wairau Aquifer. The work will include gathering water use information, further investigations of the mechanism in which the Wairau Aquifer is recharged from the Wairau River and the development of a fully calibrated model for running management options.	31 December 2020
Stage 3	Preparation and notification of plan changes to introduce a Wairau Aquifer minimum water level. If necessary, the plan changes will include methods and timeframes for applying minimum level restrictions to water users.	31 December 2024

99. The apparent inequity that can result in the interim, with cut-offs in the Springs aquifers sometimes occurring while cut-offs are not required in the Wairau Aquifer, is unfortunate. However, it is a situation that should prove to be short-lived, as it is expected that sufficient Wairau Aquifer data will be available by 2024 for the setting of an appropriate Wairau Aquifer cut-off level by plan change process.

100. Because of the possibility of this inequity arising in the interim, which undermines public confidence in the Springs aquifer level settings, the Panel urges Council to give priority in

resourcing the work needed to assist with the gathering of data and planning to support an early plan change process to set an appropriate Wairau Aquifer cut-off level.

101. Having considered all these issues the Panel accepts that there is not sufficiently accurate data available to attempt at the moment to set such a definitive cut off level in the Wairau Aquifer and that that will have to await the Plan change process which Council is obligated to carry out to comply with the NPSFM, and which it has already committed publically to a timeline to achieve.

102. The Panel has decided, though, that a new policy and method should be inserted as recommended by the report writers to link the setting of a minimum aquifer level for the Wairau FMU to a review of the notified levels established for the three Springs FMUs and to record a new Method for limit setting in the Wairau Aquifer by including a reference in the Plan to the Progressive Implementation Programme. The Panel made some limited amendments to the recommended wording for the explanatory statement for the new policy and method so that the decision was they should read as set out in the following decision:

Decision

103. That the cut-off levels in the Springs aquifers remain as notified in the PMEP and submissions seeking their deletion or amendment to enable greater use be rejected.

104. Insert a new policy and explanatory text as to process for setting of a new minimum aquifer level in the Wairau Aquifer as follows with the new policy following on Policy 5.2.4:

To implement a programme of investigation in order to establish minimum flows and/or levels for the Wairau Aquifer FMU in accordance with Policy 5.2.4 and Policy 5.2.11 by 2024, including a review of the minimum levels already established for Wairau Aquifer Urban Springs FMU, Wairau Aquifer Central Springs FMU and Wairau Aquifer North Springs FMU.

Policy B1 of the NPSFM requires the Council to set water quantity environmental flows and/or levels for all Freshwater Management Units. Environmental flows and/or levels are defined in the NPSFM as a type of limit which describes the amount of water in a freshwater management unit, and must include an allocation limit and a minimum flow or level.

At the time of notification of the MEP, the Council did not hold the resource use and environmental data required to set a minimum flow or level for the recharge sector of the Wairau Aquifer FMU. For this reason, the Council adopted a programme of progressive implementation that was publicly notified on 2 April 2015. That programme sets a date of 2024 as a target for establishing this minimum flow or level.

In recognition of the hydraulic connections within the wider Wairau Aquifer FMU, a review of the minimum levels in Schedule 3 of Appendix 6 of the MEP for the Wairau Aquifer Urban Springs FMU, Wairau Aquifer Central Springs FMU and Wairau Aquifer North Springs FMU will occur alongside the programme of investigation for establishing the minimum flow or level for the recharge sector of the Wairau Aquifer FMU.

This policy establishes a commitment to a progressive programme of investigation to collect and analyse environmental data required to establish the minimum flow or level. The minimum flow or level of the Wairau Aquifer FMU will be added to the MEP by plan change or upon review.

If, as a consequence of the review of the minimum levels for the Wairau Aquifer Urban Springs FMU, Wairau Aquifer Central Springs FMU or Wairau Aquifer North Springs FMU, changes to those levels are required, this will also be amended in the MEP by plan change or upon review.

This policy assists to give effect to Policy B1 of the NPSFM and the Council's Programme of Staged Implementation adopted under Policy E1 the NPSFM."

105. And a new Method as follows:

5.M.x – Setting of Environmental Flows and/or Levels

Where the Council has established a Progressive Implementation Programme under Policy E1 of the NPSFM for the establishment or review of minimum flows or levels, the Council will work with all relevant parties including, but not limited to, Marlborough's tangata whenua iwi, water user groups, industry groups, resource users and community organisations to determine any minimum flows or levels to be incorporated or amended by plan change to the MEP.

Southern Valleys Aquifers cut-off levels issue

106. The second issue raised by the submissions was most strongly expressed by the very experienced groundwater hydrologist Mr Peter Callander. The thrust of his evidence was that the setting of levels in the southern valleys to protect surface flows impacted illogically or unreasonably in some cases. He accepted the levels set were appropriate for those users wishing to take water from the aquifers in locations or strata where the abstraction could be shown to have a potential direct adverse drawdown effect on the surface flows.

107. However, the point he made forcefully was that various factors including distance from the surface flows, low transmissivity strata, artesian pressures or vertically or horizontally capped aquifer lenses amongst other issues, could result in abstraction at particular locations not causing any discernible drawdown effect on surface flows. His evidence on that lack of

potential direct effects in some locations was compelling, and he asserted that the PMEP rules should allow for discretionary consents to be sought even when the overall aquifer levels for cut-offs had been hit, provided evidence could be adduced to demonstrate a lack of direct drawdown effects on surface flows from particular abstractions.

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108. Mr Davidson accepted that in terms of direct drawdown effects Mr Callander was correct that there will be some well locations where it may be possible on step drawdown testing to demonstrate a lack of immediate direct drawdown on surface flows or other wells. However, the thrust of his response was that on the present uncertain state of knowledge of the interrelationship of the Wairau and southern aquifers and surface flows throughout the southern valleys areas, and the rates of recovery or otherwise in the southern aquifers, a more conservative approach was needed to address potential cumulative effects on aquifers. That was essential because of the realities that aquifer recovery rates in the southern areas in particular had the potential to be slow, particularly for the Ben Morven Aquifer, and there was scientific uncertainty as to the linkages or otherwise between the various aquifers and their relationship with the Wairau Aquifer and the cumulative effects of takes on all those issues

Consideration

109. The Panel accepts Mr Callander's point that an absence of direct drawdown effects on surface flows and other wells may be able to be demonstrated by some applicants.

110. However, aquifer management in this southern valleys area is far from being able to be considered at a settled state in terms of the scientific base to an understanding of the broader effects of uncontrolled drawdowns in drought conditions when surface flows have either ceased or are near that state. That is particularly the case where the evidence was that recharge of aquifers like the Ben Morven Aquifer is very slow and apparently from very old water some hundreds of years old, the exact source of which is as yet undefined.

111. So long as that overall state of uncertainty exists the Panel is of the view that the more conservative approach contained in the PMEP notified cut off levels should be maintained. That at least provides a greater certainty based on experienced observation experience that aquifers protected at that level can indeed recover over the recharge period.

112. Once again management of these aquifers can potentially be refined as increased metered data becomes available to Council but on the present level of uncertainty as to cumulative effects the Panel prefers the conservative precautionary approach taken in the PMEP which it

believes accords with both the concept of Te Mana o te Wai, and the precautionary approach suggested in the NPSFM 2017 where uncertainty exists.

Decision

113. The cut-off levels for water takes for both surface flows and aquifer levels in the southern valleys remain as notified and submissions seeking their amendment are rejected.

Values to be protected - Policies 5.2.1, 5.2.2, 5.2.3, 5.2.4 & 5.2.11 & Appendix 5

Policy 5.2.1 – Maintain or enhance the natural and human use values supported by freshwater bodies.

Policy 5.2.2 – Give priority to protecting the mauri of freshwater and freshwater flows/levels.

Policy 5.2.3 – Protect the significant values of specifically identified freshwater bodies by classifying the taking, damming or diversion of water in these waterbodies as a prohibited activity.

Policy 5.2.4 – Set specific environmental flows and/or levels for Freshwater Management Units dominated by rivers, lakes and wetlands to:

(a) protect the mauri of the waterbody;

(b) protect instream habitat and ecology;

(c) maintain fish passage and fish spawning grounds;

(d) preserve the natural character of the river;

(e) maintain water quality;

(f) provide for adequate groundwater recharge where the river is physically connected to an aquifer or groundwater; and

(g) maintain amenity values.

Policy 5.2.11 – Set specific minimum levels for Freshwater Management Units dominated by aquifers to:

(a) prevent physical damage to the structure of the aquifer;

(b) prevent headwater recession of spring flows;

(c) prevent a landward shift in the seawater/freshwater interface and the potential for saltwater contamination of the aquifer;

(d) maintain natural and human use values of rivers and wetlands where groundwater is physically connected and contributes significantly to flow in the surface waterbody;

(e) maintain groundwater quality; and

(f) prevent long-term decline in aquifer levels that compromises the matters set out in (a) to (e).

114. Appendix 5 in Schedule 1 identifies the values of 60 Water Resource Units (WRUs) which are mapped on the overlay Freshwater Management Unit – Map 5 Volume 4 of the PMEP and also ascribes water quality classifications to those WRUs by the use of nine abbreviations such as NS for Natural State, C for Cultural or F for fisheries.

115. Appendix 5 Schedule 2 sets out detailed water quality attributes as minima standards or parameters for the water quality attributable to each of the classification types in Schedule 1.

116. The combination of Appendix 5 then with the policies set out above are intended to ensure the mauri and/or life supporting capacity is maintained at flows or levels and qualities for the identified values for all WRUs.

117. In considering the varying propositions advanced from those different points on the spectrum of views of submitters the Panel also had to consider the detail as to values identified in the NPSFM 2017. It essentially adopts the approach of identifying compulsory national values which Policy CA2 (c) requires each regional council to include in its plans, and other national values which the regional council can include as it "considers appropriate". Appendix One of the NPSFM then sets out separately the Compulsory National Values and the Other National Values.

118. Included in the latter are confusingly two descriptions of 'mahinga kai'. Other features of those optional values are their wide range in nature. They range over matters such as 'Natural form and character' and 'Water supply', food gathering such as 'Mahinga kai' and 'Fishing' to economic and consumptive uses – including by way of example 'Irrigation, cultivation, and food production' to 'Commercial and industrial use' and 'hydro-electric power generation'.

119. Given the wide range of possible values which the NPSFM enables to be identified as optional national values submissions on the interrelated PMEP policies and Appendix 5 once again ranged across the broad spectrum covered by the NPSFM. The submissions ranged from those seeking a relaxation of flows or levels or of water quality standards to enable greater economic or consumptive uses to those seeking more natural values were increased in a protective manner to maintain or enhance water flows/levels or quality.

120. In general terms the Panel was not persuaded that Appendix 5 required urgent or fundamental amendment, other than as to the need to recognise explicitly the concept of Te Mana o te Wai, and that the PMEP otherwise appropriately protected the compulsory values as required by the NPSFM 2017.

121. The Panel took the view that any changes in the PMEP to Appendix 5 that might be seen as warranted in terms of optional national values were best addressed by broader community engagement over time as circumstances changed or developed. In the course of that type of broader community engagement, which the Panel envisaged would use new Method 5.M.X, the knotty issue of deciding on the adoption of whichever descriptor or 'mahinga kai' might be appropriate could also be explored in a manner which involved iwi as part of the whole community.

122. The final issue then that the Panel needed to address in relation to this suite of policies and appendix provisions was the question of whether Policy 5.2.1 should continue to include 'enhance' or not, i.e. is restoration of values a valid issue?

123. Once again submissions on this point came from widely disparate ends of a spectrum. Some pointed out that Marlborough enjoyed a high level of rivers with water quality which was either pristine or of very high quality so that it was argued to be unnecessary or illogical to have a policy requiring water quality to be enhanced. Others argued that removal of the word 'enhance' would send the wrong message that water bodies which were not at a high quality level did not need enhancement and that maintenance of poor or substandard quality was sufficient.

124. The Panel's considers it was important to adhere to the notified wording of Policy 5.2.1 which being expressed in the alternative or 'maintain or enhance' covered the situation. If water quality was pristine or very high quality then it should be maintained, but if of poorer quality the policy should be for it to be enhanced. That approach accorded with Objective A2 of the NPSFM 2017 which is:

> *Objective A2*
>
> *The overall quality of fresh water within a freshwater management unit is maintained or improved ...*

125. However, the Panel considered amendments to the explanation to Policy 5.2.1. should address these considerations in more detail, while acknowledging also the potential impacts of climate change, as follows:

> *The natural and human use values supported by freshwater bodies in Marlborough are varied, reflecting the diversity of water resources highlighted in Policy 5.1.1. The natural and human use values supported by different waterbodies are identified in Appendix 5. Given their intrinsic value and their significance to the community, the policy seeks to retain the natural and human use values. Objective A2 of the NPSFM 2017 specifies that the overall quality of freshwater is to be 'maintained or improved' and the alternative of 'maintain or enhance' in this policy aims to achieve that Objective. With that alternative wording high quality water bodies can be maintained, but water bodies of lesser quality can and should be enhanced if possible. The potential effects of increased flood induced risks as a result of climate change to water quality through effects such as increased sedimentation from natural or human induced sources also requires an approach that allows for management through consent conditions of enhancement of water quality.*

The development of allocation frameworks contained in the provisions of this chapter has taken into account Objective 5.2 and this policy. The setting of environmental limits established through subsequent policies are intended to retain sufficient flow and/or level to maintain, restore or enhance the natural and human use values of specific freshwater bodies. Maintaining or enhancing natural and human use values were also a relevant consideration in determining the circumstances under which the taking of water could occur without resource consent.

The NPSFM 2017 provides guidance as to the compulsory national values that must be included in Appendix 5 and enables various optional national values to be considered for inclusion. Any changes to be considered to those values will follow a process of community engagement utilising Method 5.M.X.

Some proposals to take, dam or divert water can involve site specific adverse effects on natural and human use values. This policy allows those potential adverse effects to be considered in the determination of any application for resource consent to take, dam or divert water.

Decision

126. That policies 5.2.1, 5.2.2, 5.2.3, 5.2.4 & 5.2.11 & Appendix 5 are retained as notified in the PMEP, and that the submissions in respect of them are only allowed to the extent of the amendments to the explanation to Policy 5.2.1 as above.

Objective 5.2 – 'Sufficient' Flows and/or Levels?

Objective 5.2 – Safeguard the life-supporting capacity of freshwater resources by retaining sufficient flows and/or levels for the natural and human use values supported by waterbodies.

127. Another closely related issue arising in respect of the environmental flows and cut off limits was the focus in some submissions on the use of the term 'by retaining sufficient flows' in Objective 5.2. Some submitters were strongly of the view that the use of that term denigrated from or at the very least downplayed the importance of the aim of maintaining or improving Te Mana o te Wai.

Consideration

128. The Panel took into account the fact that that the NPSFM 2017 uses terminology in its definition of 'environmental flows and/or levels' of ensuring the flows were safeguarded which were 'required' to provide for Te Mana o Te Wai and natural and human use values. The definition in the NPSFM of that phrase uses the phraseology that environmental flows and/or describe the amount of water "...which is required to meet freshwater objectives".

129. On that basis the Panel considered that the use of the word 'required' instead of 'sufficient' would better reflect the intent of the NPSFM and the objective of Objective 5.2.

Decision

130. In addition to the substantive changes to this objective in response to the matters raised by Ngai Tahu in relation to the notified version of this objective, delete the word 'sufficient', and insert 'required' in Objective 5.2 so that the objective reads in full:

Objective 5.2 – Safeguard the life-supporting capacity of freshwater resources by retaining ~~sufficient~~ flows and/or levels required for the natural and human use values supported by waterbodies.

131. As a consequence, the tracked changed version of Objective 5.2 including the changes made to address Te Mana o te Wai and this issue of sufficiency will read:

Objective 5.2 – Recognise Te Mana o te Wai and s~~S~~afeguard the life-supporting capacity of freshwater resources by recognising the connection between water and the broader environment and retaining ~~sufficient~~ flows and/or levels required for the natural and human use values supported by waterbodies.

Flexibility in measuring takes and environmental flows – Policy 5.3.10

Policy 5.3.10 – The instantaneous rate of take from a surface waterbody may exceed the instantaneous equivalent of the maximum daily allocation:
(a) by 20% at any point in time; or
(b) for 20% of the time;
but in both cases the cumulative take over 24 hours (midnight to midnight) must not exceed the daily maximum.

132. Both EDS and Fish & Game submitted against this policy asserting it enabled the maximums in take rate to be exceeded by irrigators particularly in the Wairau FMU[4].

133. There are fluctuations in instantaneous flows which occur at any particular location along the Wairau because of irrigation drawdowns and Branch River releases. As to the impacts of irrigation take effects, they will inevitably be irregular in timing, location and volume. That is because of the very large number of take locations spread out along the length of the river.

134. Moreover, as the explanation to Policy 5.3.10 emphasises, irrigation systems are not designed to necessarily operate on a 24 hour basis. As a consequence the instantaneous rate on a consent will commonly be higher than the rate calculated over a 24 hour period.

135. A further practical point of importance is because of these fluctuations when flows are at or near the minimum level to have that fixed on an instantaneous basis would literally require

[4] EDS (698.26), Fish & Game (509.66)

irrigators to be constantly monitoring river flows to turn on and off their system as the flows fluctuated below the normal level. That would be an unworkable outcome.

136. This policy is designed to enable that continued flexibility for irrigators, while crucially ensuring that in any event the total of the cumulative 24 hour period take cannot exceed the daily maximum consented take. In the Panel's view this policy is worded in a manner that is consistent with the 24 hour averaging approach set in Policy 5.2.6.

Decision

137. That Policy 5.3.10 is retained as notified and the submissions seeking its deletion are rejected.

Environmental Flows & Priority issues – Objective 5.3 and Policy 5.3.1

Objective 5.3 – Enable access to reliable supplies of freshwater

Policy 5.3.1 – To allocate water in the following order of priority:
(a) natural and human use values; then
(b) aquifer recharge; then
(c) domestic and stock water supply; then
(d) municipal water supply; and then
(e) all other takes of water.

138. A closely inter-related issue to those discussed above arose out of submissions on Policy 5.3.1 which gives practical effect to the Objective 5.3 to maintain sustainability, within the limits imposed by the NPSFM directives and the other PMEP Objectives and Policies.

139. A major thrust, identified earlier in the summary of principal issues raised by submissions, came from submissions asserting that particular crops were much more sensitive to a cut off of supply in drought conditions than were other more 'mainstream' crops or activities. Examples included very young newly grafted grape cuttings and hydroponic or glasshouse crops. Amongst those identified were crops such as strawberries, tomatoes and lettuce, to name some of the more major ones, the growers of which appeared before us.

140. The physical in-ground conditions at the time of our hearing on this issue could not have been more dire, as an extended drought was occurring and cut-offs limits were about to be reached imminently.

141. Some of the submitters giving evidence for Hort NZ, such as P.H. Kinzett Limited, Ormond Nurseries Limited and Thymebank, were literally facing a potential cut-off within a day or so. Their evidence was that depending on crop type such a cut-off would lead to crop death and losses within 24 hours for grafted rootstock or at most within five to seven days for other susceptible crops. That would involve losses potentially in the hundreds of thousands of dollars, or possibly if for an extended period, in the millions of dollars. Furthermore, there

would be even greater consequent losses when staff lay-offs and their income loss were taken into account, and other indirect cash-flows ceased for suppliers/contractors reliant on the businesses affected.

142. The evidence was exacerbated even further by the devastating affects described by major viticulturists, such as Pernod Ricard, of young cutting losses which had been planted as new plantings or replacement plantings in the vineyards, if the vines were under two-three years old. The evidence was that extended lack of irrigation could result in extensive losses in the viticulture industry if those new plantings or replacement plantings were lost, and significant ongoing losses would follow as winery supply lessened. Pernod Ricard asserted it would be too costly to consider storage in other locations.

143. Some wineries such as Villa Maria Limited, who asserted they were reliant on sources subject to cut-off levels, also described a devastating economic outcome for them of a strict application of the cut-off limits.

144. All of these submitters sought a relaxation in various forms of the policies and rules in the PMEP so as to enable what were termed 'survival' rates of supply to be available for at risk crops or wineries.

145. However, in the face of the NPSFM 2017 the Panel considered the Council was bound at law to impose surface flow limits and aquifer levels which result in cut-offs as provided for in policies 5.2.5 and 5.2.24 other than for domestic human needs and animal drinking water:

> *Policy 5.2.5 – With the exception of water taken for domestic needs or animal drinking water, prevent the taking of water authorised by resource consent when flows and/or levels in a Freshwater Management Unit are at or below a management flow and/or level set as part of an environmental flow and/or level set in accordance with Policy 5.2.4.*
>
> *Policy 5.2.24 – Impose conditions on water permits to take water requiring users to reduce and cease the authorised take when specified flows and/or levels are reached.*

146. The reality of the application of the NPSFM and regional plans which give effect to it, is that the legal regime for management of water resources recognises that limits must be set to maintain the integrity of water bodies at a minimum sustainable level.

147. If such limits are not imposed the end result would be the type of ecological disaster now faced in Australia in the Darling catchment where water has been taken so far below sustainable limits that the river has literally run dry over extensive distances.

148. As far as wineries such as Villa Maria are concerned the Panel was of the view that the situation was not as extreme as described by the submitter. Apart from anything else the period of cut-offs was unlikely to extend out as far as the peak period of water use by a winery which usually was well after irrigation takes had ceased and natural recovery of aquifer levels had occurred to some extent. Also even in 2019 rainfall broke the drought well before the vintage heavy water demand period arose.

149. Moreover, other options existed such as use of other sources known to be available to it; investigation and greater use of storage water; greater efficiency of water use; investigation of capture and re-use of grey water wash-down water; or private access arrangements directly from Wairau aquifer sources.

150. In terms of the 'survival' exemptions sought, however, the quantities which would be needed cannot be calculated solely on the basis of the needs of existing growers for particular existing crops, because if any such exemptions were allowed, pressure would inevitably mount to allow exemptions for more or new growers, larger crops, or different crops.

151. At some point there has to be a cut-off to maintain the sustainable integrity of surface flows and aquifer structures. Water users have to face up to that reality in their own economic management of their own resources, and plan well ahead for the effect of the application of those limits.

152. That may require the development of highly expensive storage or alternative delivered supplies, but it is not the function of the regional council to make those alternatives available. Storage options, such as in the southern valleys, may require formation of water user groups to develop and plan major or lesser storage options at one or more locations in small feeder catchments, either north or south of the main Wairau River – but again that requires an approach driven by the irrigation user community in consultation with iwi and other community water users. For example, storage of southern valleys water may have an effect on smaller aquifer recharge sources – an issue which needs detailed investigation and consideration. In addition, any such alternative considerations will need to address issues of efficiency in water use and crop rotation planning dates for hydroponic and glass house crops.

153. Some suggestions were made that rationing for 'survival' crops may be possible as cut-off limits loom, but once again if such a solution for particular crops could be agreed upon, that also would have to involve a community driven and agreed approach, not one imposed by the regional council. After all, it is not for the regional council to attempt to decide who in its community must take a financial loss as a result of lack of access to water, and to what extent,

or the type or extent of particularly sensitive crops that may be grown by anyone. Any such outcomes would require broad community consensus, evidence of which was not currently obvious to the PMEP Hearings Panel. That appears to be because the user community has not until now seriously turned its collective or individual minds to those types of alternatives. However, the effects of climate change appear likely to result in more frequent drought periods of possibly longer duration, as a result of which cut-offs to maintain sustainability in both surface flows and aquifer integrity will be more frequent. Given those realities the need for resource users to address potential community responses becomes more pressing.

154. An amendment to the explanation to Policy 5.3.1 as follows was considered by the Panel to be the only avenue open in the PMEP to address such issues:

> *This policy establishes a hierarchy of water uses. The hierarchy reflects the relative value or significance of the uses listed. The term "uses" is broad and extends beyond consumptive use to include intrinsic values, ecosystem services and hydrological functions. The relative priority between the different uses listed in (a) to (e) have been used as the basis for allocating Marlborough's freshwater resources. This does not mean that consumptive use is not valuable or significant, but the application of the policy ensures that critical uses are provided for as a priority.*
>
> *Once those uses are provided for, water can then be made available for the consumptive uses listed in (c) to (e). The application of the policy does influence the reliability of water abstraction for consumptive use. Limits to protect the matters in (a) and (b) will be applied to consumptive water uses. However, those restrictions will be applied progressively, reflecting the relative priority of domestic and stock water supply, municipal water supply and other consumptive takes of water.*
>
> *The only way any other form of prioritisation of access to water could be achieved would be by way of plan change as a result of the development of a proposal resulting from broad community engagement including iwi, utilising the assistance of council facilitation. A method or model for such a community engagement process on any different prioritisation or rationing proposal is contained in Method 5.M.2.*
>
> *Given the NPSFM 2017 directives to protect Te Mana o te Wai and the compulsory national values, such a community engagement process would have to be very broad and on an inclusive basis, particularly involving a water user group or groups to achieve different water access through a range of mechanisms. The process would have to address considerations such as - alternative land use; improved efficiency in water*

application; assessment of soil saturation & field capacity of soils; larger-scale or small-scale storage possibilities; and/or some form of rationing with a higher level cut-off for general irrigation leaving a small pocket of water allocated for agreed 'survival crops'.

155. However, the most the Panel is able to achieve is draw attention in this decision to the reality that limits must be set; and having been set, must be adhered to.

156. It is then incumbent on user groups to explore alternative options or water sources, if any are available, with the assistance of council facilitation. That might result in an agreed outcome of some of those options being brought before Council with a view to a community-supported plan change being considered to put them in place.

157. A final consideration, however, in relation to the hierarchy in Policy 5.3.1 arises out of the Panel's earlier considerations as to the inclusion of the concept of Te Mana o te Wai in the Plan. It is very obvious to the Panel that a consequential inclusion of Te Mana o te Wai is needed as the very first in any hierarchy relating to water resources so it needs to be introduced as subclause (a).

Decision

158. Add as a new clause (a) to Policy 5.3.1 the following:

(a) Te Mana o te Wai

159. Method 5.M.2 is amended as follows:

...flow objectives for each river (see Policy 5.2.16). Water user groups may also co-ordinate voluntary rationing of water takes in any FMU to delay the onset of restrictions imposed as a result of environmental flows or limits set by this Plan. The method of rationing to be considered is at the discretion of the water user group but may include prioritising the application of voluntary rationing between users or uses.

160. The explanation to Policy 5.3.1 is amended as follows:

This policy establishes a hierarchy of water uses. The hierarchy reflects the relative value or significance of the uses listed. The term "uses" is broad and extends beyond consumptive use to include Te Mana o te Wai, intrinsic values, ecosystem services and hydrological functions. The relative priority between the different uses listed in (a) to (fe) have been used as the basis for allocating Marlborough's freshwater resources. This does not mean that consumptive use is not valuable or significant, but the application of the policy ensures that critical uses are provided for as a priority.

Once those uses are provided for, water can then be made available for the consumptive uses listed in (dc) to (fe). The application of the policy does influence the reliability of water abstraction for consumptive use. Limits to protect the matters in (a) to (cb) will be applied to consumptive water uses. However, those restrictions will be applied progressively, reflecting the relative priority of domestic and stock water supply, municipal water supply and other consumptive takes of water.

The only way any other form of prioritisation of access to water could be achieved would be by way of plan change as a result of the development of a proposal resulting from broad community engagement including iwi, utilising the assistance of council facilitation. A method or model for such a community engagement process on any different prioritisation or rationing proposal is contained in Method 5.M.2.

Given the NPSFM 2017 directives to protect Te Mana o te Wai and the compulsory national values, such a community engagement process would have to be very broad and on an inclusive basis, particularly involving a water user group or groups to achieve different water access through a range of mechanisms. The process would have to address considerations such as - alternative land use; improved efficiency in water application; assessment of soil saturation & field capacity of soils; larger-scale or small-scale storage possibilities; and/or some form of rationing with a higher level cut-off for general irrigation leaving a small pocket of water allocated for agreed 'survival crops'.

Methods of maintaining Environmental flows - Rationing, Ballots & Transfer

Policies 5.2.15 & 5.2.16; Issue 5I and Policy 5.9.1; and Policies 5.4.4 and 5.4.5

Policy 5.2.15 – Protect flow variability of rivers by using, where identified as necessary, a system of flow sharing that splits allocation of available water between instream and out-of-stream uses.

Policy 5.2.16 – For resource consent takes from the Waihopai River, Awatere River and other rivers that utilise an upstream flow monitoring site, allocations for the taking of water will be reduced proportionally as flows fall in order to avoid any breach of an environmental flow.

Issue 5I – There is the potential for a new water user to get access to water on a more reliable basis than allocations already made, resulting in inequitable outcomes.

Policy 5.9.1 – Once an allocation limit is reached and that part of the water resource is fully allocated, any water that subsequently becomes free to allocate to other users will only be made available to those users through a system of ballot.

Policy 5.4.4 – Enable access to water that has been allocated but is not currently being utilised by individual water permit holders through the transfer of water permits.

Policy 5.4.5 – When an enhanced transfer system is included in the Marlborough Environment Plan to enable the full or partial transfer of individual water allocations between the holders of water permits to take and use water, this will be provided for as a permitted activity where:

(a) the respective takes are from the same Freshwater Management Unit;

(b) the Freshwater Management Unit has a water allocation limit specified in Schedule 1 of Appendix 6;

(c) the take is not from the Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit or the Riverlands Freshwater Management Unit;

(d) metered take and use data is transferred to the Council by both the transferor and the transferee in real time using telemetry;

(e) the allocation is authorised via a water permit(s) applied for and granted after 9 June 2016;

(f) the transferee holds a water permit to take water if their abstraction point differs from the that of the transferor; and

(g) the transferee holds a water permit to use water.

The duration of the transfer is at the discretion of the transferor and transferee and can be on a temporary basis or for the remaining duration of the water permit.

161. The PMEP contains a number of policies designed to provide some flexibility in the manner in which takes are authorised so as to ameliorate the effects of allocation limits being full, and the effects of environmental cut-offs, but without impinging on the basic approaches that allocation limits cannot be exceeded, and that cut-off flow limits and aquifer levels cannot be breached. Those methods include rationing, ballot systems when allocation limits have been reached, and transfers of the ability to take in differing periods or for differing purposes, or for application of water taken in differing locations.

Rationing

162. The provisions of policies 5.2.15 and 5.2.16 set the scene for a potential rationing approach to water takes:

> *Policy 5.2.15 – Protect flow variability of rivers by using, where identified as necessary, a system of flow sharing that splits allocation of available water between instream and out-of-stream uses.*
>
> *Policy 5.2.16 – For resource consent takes from the Waihopai River, Awatere River and other rivers that utilise an upstream flow monitoring site, allocations for the taking of water will be reduced proportionally as flows fall in order to avoid any breach of an environmental flow.*

163. The necessity for these policies relates to the positioning of the flow monitoring locations in relation to the abstractions caused by irrigation takes. There is a difference in approach necessitated due to the absence of suitable flow monitoring sites downstream of the principal abstraction locations in some catchments. This occurs particularly in the Waihopai and Awatere catchments – in the Wairau the monitoring site at Barnetts Bank is downstream of most abstractions.

164. The policies are designed to ensure that a true flow-sharing occurs between flows needed to be retained in-stream for environmental sustainability and those available for abstraction for out of river uses.

165. The explanation to Policy 5.2.15 explains that rationale:

> *In some circumstances, flow variability above the minimum flow may also be important to sustain the natural and human use values supported by the river. Where this is the case, a system of flow sharing is used to proportionally allocate the water above the minimum flow to both abstractive users and natural and human use values. In other words, a proportion of the water available within the allocation class can be abstracted, while a proportion must be left in the river. The water left in the river will ensure that the taking of water does not reduce river flow to the minimum for an extended period of time. The detail of the flow sharing is river specific and is reflected in the allocation limits and thresholds for taking water in each of the allocation classes.*

166. The explanation to Policy 5.2.16 describes the management method that has been developed in those rivers where the monitoring location is upstream of most abstractions:

> *The management flow that applies in each FMU is the flow measured at the monitoring site, corresponding to an equivalent minimum flow that gives effect to Policy 5.2.4 downstream of abstraction. (Monitoring of flow in the Waihopai and Awatere Rivers over many years has allowed the establishment of a robust relationship between flows at the flow monitoring sites and gauged flows at other locations.)*
>
> *Taking into account the allocation limits, abstraction downstream of the flow monitoring site can result in the non-attainment of the minimum flow that is sought to be achieved downstream. For this reason, the policy requires a proportional reduction in the allocations made by resource consent and consequent rationing of abstraction.*

167. The major issue with the policies are how the flow-sharing is to be fixed and how rationing is to be applied in detail.

168. Those issues led to significant submissions by EDS, Fish & Game, Pernod Ricard, Trustpower, Forest & Bird, DOC, Ngati Kuia and the Awatere Water Users Group (AWUG) amongst others[5]. Most of those submissions sought the retention of Policy 5.2.15 but sought clarification in the Plan as to how flow sharing would occur, i.e. requested criteria; or in relation to Policy 5.2.16 similarly sought more detail to clarify the criteria against which rationing reductions were to be decided and by whom.

[5] EDS (698.20), Fish & Game (509.45), Pernod Ricard (1039.18), Trustpower (1201.33 and .35), Forest & Bird (715.27 and .28), DOC (479.21 and .25), Ngati Kuia (501.02) and AWUG (548.24 and .25)

Section 42A Report

169. The Section 42A Report acknowledged that these submissions raised valid issues that needed consideration and recommended some detail be provided by additional amendments to the explanation to Policy 5.2.15.

170. It also raised the concern, though, that the intention of the PMEP in relation to those catchments with upstream monitoring locations was to *"use water user groups to assist with managing water rationing as water flows drop in these catchments. This is demonstrated by the inclusion of Method 5.M.2 in the MEP, which directly references the use of these groups for the Awatere and Waihopai FMUs."*[6]

171. Attention was also drawn to the reference in the recommended change to the explanation to Policy 5.2.15 that a back-up approach if the user community was unable to agree upon a solution would be to ration abstractions progressively in blocks of 20% of the total class allocation. In the Reply to Evidence, the recommendation of a stepped decrease in take by 20% was withdrawn and instead a recommendation made that the stepped drawdown or rationing of takes should be "as required to protect the minimum flow, and in discussion with water user groups where they exist."

Consideration

172. As to Trustpower's submission that this policy should only apply to consumptive takes the Section 42A Report at paragraph 541 accepted the rationale for that submission was correct, and recommended an exclusion be added to Policy 5.2.16 to exclude non-consumptive takes such as hydro where the water used was returned to the river. The Panel agreed with this recommendation.

173. Using the important example of the Wairau, the Panel noted that the important aspect of the flow-sharing concept in Policy 5.2.15 was that as B Class cut-off occurs at 30 cumecs that meant flows available for Class A down to the A Class cut-off of 8 cumecs would otherwise leave 22 cumecs apparently available. However, the result of this flow-sharing principle contained in the Plan for each class then, for A Class below 30 cumecs and above 8 cumecs only 15 cumecs, is actually able to be allocated on the 2:1 flow share.

174. The Panel agreed with the recommended amendments to the explanation of Policy 5.2.15 suggested at paragraph 533 of the Section 42A Report which capture that approach in more detail.

[6] Paragraph 538

175. The Panel did not agree with the last two paragraphs of the recommended amendments being placed in the explanation to Policy 5.2.15 as this addresses flow sharing issues. The last two paragraphs are far more relevant to Policy 5.2.16 which addresses rationing issues and should be added to the explanation for that policy.

176. Initially at the hearing AWUG opposed the suggestion of a the recommended default of 20% reductions as being too complex as each reduction requires considerable work in the field of irrigation automation systems. The Panel agreed with the evidence that may be impracticable. However, after the hearings closed a letter was received from the AWUG dated 24 June, 2019 requesting its alternatives no longer be adopted because of the Right of Reply recommendation that no specified reduction occur. The letter continued to seek that that discussion occur with the Awatere Water User Group before rationing levels, if any, are set. In the Panel's view that must be done with the overriding aim of setting any reductions at a level 'required to protect the minimum flow'. The Panel's amendments to Method 5.M.2 will ensure the input AWUG seeks occurs.

177. In the Reply to Evidence, the report writers recommended that the percentage rationing reduction approach in the notified plan be replaced by a community agreed rationing reduction. On the basis of the evidence of a reasonable level of cooperation in the Awatere the Panel had confidence to accept that recommendation but the final decision should remain with Council. The report writers' recommendation was therefore amended by the Panel to that extent.

178. The report writers' recommendations with respect to the involvement of water user groups in rationing through Policy 5.2.15 was noted. However, the Panel considered that community involvement in rationing should be voluntary only for the reason given in the previous paragraph. The Panel considered additions to Method 5.M.2 in this regard.

179. As to Method 5.M.2 there are a number of issues where community or user group responses together with iwi responses have been identified in the decisions on water allocation and use as being vital – including these flow-sharing and rationing issues as well as threshold or cut-off limits or levels and the potential priorities as to their application. An amended wording was adopted in the decision above as to priority issues which also took into account the issues faced for community or water user group and iwi solutions in respect of rationing issues. Hence the decision to amend Method 5.M.2 does not need repetition in this section of the decision, apart from recording the additional reason for that amendment.

180. The Panel considered, though, that it was essential the final decision-making on levels of rationing had to be left with the Council, being the objective decision-maker, as to what was 'required to protect minimum flows' – both to ensure protection of Te Mana o te Wai and sustainability. The addition to Method 5.M.2 was regarded as being sufficient safeguard as to ensure that iwi, water user groups and the wider community voices were heard on any rationing considerations before a final decision was made – but against a background that any inability to achieve agreement between those interests did not prevent a final decision in fact being made.

Decision

181. The submissions in respect of Policies 5.2.15 and 5.2.16 are allowed to the extent as follows:

(i) insert amendments to the explanatory statement to Policy 5.2.15 as follows:

Objective AA1 of the NPSFM requires Council to consider and recognise Te Mana o te Wai in the management of fresh water. The establishment of environmental flows for rivers affords protection to natural and human use values by establishing the minimum flow requirements for those uses and values. In some circumstances, flow variability above the minimum flow may also be important to sustain the natural and human use values supported by the river, including Te Mana o te Wai values identified by the community. Where this is the case, a system of flow sharing is used to proportionally allocate the water above the minimum flow to both abstractive users and natural and human use values. In other words, a proportion of the water available within the allocation class can be abstracted, while a proportion must be left in the river. The water left in the river will ensure that the taking of water does not reduce river flow to the minimum for an extended period of time.

Flow sharing will leave one unit of water for instream use for every two units abstracted within a class (referred to as 2:1 flow sharing).

The detail of the flow sharing is river specific and is reflected in the allocation limits and thresholds for taking water in each of the allocation classes. Note, there is no provision for flow sharing within any Class A allocation, as flows below the minimum flow are effectively part of the flow share for Class A.

(ii) Add the following new paragraph to the end of the Explanatory Statement to Policy 5.2.16:

The abstractions will be limited based on flows recorded at the monitoring site to achieve the minimum flow for management purposes as specified in Volume 3, Appendix 6, Schedule 3, plus any environmental flow share within the Class. As flow at the monitoring site falls from

the rationing point in Schedule 3, towards the final cut off point, abstractions will be rationed progressively, with available allocation expressed as a percentage of the consented rate of take as required to protect the minimum flow.

Ballots

Issue 5I – There is the potential for a new water user to get access to water on a more reliable basis than allocations already made, resulting in inequitable outcomes.

Policy 5.9.1 – Once an allocation limit is reached and that part of the water resource is fully allocated, any water that subsequently becomes free to allocate to other users will only be made available to those users through a system of ballot.

182. The submissions on this issue focused on whether tendering or ballots were the best method of providing an equitable allocation of potential rights. The Issue is framed in a manner that reflects the lack of equity that arises from the current RMA 'first-in, first-served' approach.

183. What is offered by this policy is only a ballot approach where as a result of surrenders or acquisition by council further unallocated water becomes available. The options available really come down to three – retention of 'first-in, first-served'; tendering; or ballots.

184. The Panel considered that the first two methods tended to favour those with more resources or deeper pockets. Those with more resources tend to keep a closer eye on what is occurring in the water allocation field and council reactions or review processes, and are more likely to be better placed to be 'first-in' for any unallocated water. Similarly, with tendering those with more resources will have the deeper pockets and be able to place a higher tender.

185. The ballot process on the other hand provides a far more open and level playing field amongst those who may be interested. What is being offered is only a right to apply for a resource consent so if a ballot winner was unsuccessful in an application for consent for any reason then a re-draw of the ballot could occur.

Decision

186. Retain Issue 5I and Policy 5.9.1 as notified and reject any submissions seeking alternative wording.

Transfers – Policies 5.4.4 and 5.4.5

Policy 5.4.4 – Enable access to water that has been allocated but is not currently being utilised by individual water permit holders through the transfer of water permits.

Policy 5.4.5 – When an enhanced transfer system is included in the Marlborough Environment Plan to enable the full or partial transfer of individual water allocations between the holders of water permits to take and use water, this will be provided for as a permitted activity where:

(a) the respective takes are from the same Freshwater Management Unit;

(b) the Freshwater Management Unit has a water allocation limit specified in Schedule 1 of Appendix 6;

(c) the take is not from the Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit or the Riverlands Freshwater Management Unit;

(d) metered take and use data is transferred to the Council by both the transferor and the transferee in real time using telemetry;

(e) the allocation is authorised via a water permit(s) applied for and granted after 9 June 2016;

(f) the transferee holds a water permit to take water if their abstraction point differs from the that of the transferor; and

(g) the transferee holds a water permit to use water.

The duration of the transfer is at the discretion of the transferor and transferee and can be on a temporary basis or for the remaining duration of the water permit.

187. These particular policies are somewhat unique in the PMEP in that they cannot be practically given effect until a further Plan Change has occurred to enable what was described in the PMEP as a system of 'enhanced' transfers of water allocations. As a consequence some submissions sought their deletion on the basis that until the transfer system is actually in place in the PMEP the policies serve no purpose.

188. Other submissions dealt in more detail as to the potential for water to become a tradable commodity.

Consideration

189. As to the challenge in respect of these policies creating a tradeable commodity, the Panel is facing a situation where there is full allocation in most FMU's. In a state of full allocation the only means of new or existing users to gain access to water is through gaining access to water that has already been allocated by means of transfer of water permits. Policy B3 of the NPSFM requires regional plans to state criteria by which '*applications for approval of transfers of water take permits are to be decided, including to improve and maximise the efficient allocation of water.*' It is the NPS, therefore, not this Panel or the PMEP, which is requiring a mechanism of transfer of water take permits.

190. The RMA does not otherwise provide the ability to prevent water permits becoming a tradeable asset as the effects of the quantity of the abstraction have already been considered.

191. The Panel recognises the logic behind those submissions seeking deletion of the policies at this stage before a plan change is proposed to actually introduce the transfer system into the Plan.

192. The Panel was also of the view that some purpose was served by retaining the policies as an indicator of future intent so as to encourage thinking as to greater efficiency of water use, by enabling transfers on a far more flexible basis as to use in terms of timing, location and purpose. With allocation being mostly at its limits in most catchments encouragement is needed of greater efficiency of use. If that can be achieved by a more flexible regime of readily

operated transfers then it should be encouraged by policies in the PMEP – even though there will be significant work and processes needed to develop a workable regime able to be advanced through a Plan Change process.

193. As to the basic question of whether these types of transfers will be beneficial to greater efficiency of use, the Panel's view was that they had the potential to be useful. In some fully allocated situations they could enable access for water to be used which at present is technically on paper 'utilised' in terms of being allocated, but in fact for some time periods may not be being actually utilised – yet possibly could be made available to other users, even if only for very short terms.

194. In those situations complex RMA consent processes may not be needed in terms of environmental outcome as the environmental outcome is already controlled by the fixing of limits/levels.

195. This system could avoid unnecessary cost and delay which otherwise might possibly result in water not being efficiently utilised.

196. It is a system, too, which will ensure the private transactional process is removed from the RMA consent consideration.

197. Method 5.M.2 will be important to ensure the Plan Change process is community or user group driven in conjunction with iwi – aided by Council facilitation.

198. The word 'enhanced' is not seen as useful guide as in RMA terms that word usually denotes an 'enhancement' or improvement of the environment. Transfers of extractive rights to take water for irrigation use might fall in that category in the eyes of some, but to others taking of water does not 'enhance' a surface flow or an aquifer level, and arguably does the opposite.

199. As this is really a process regime concept to encourage efficiency in process and water use, the Panel decided to instead use the term 'streamlined transfers', thus adopting statutory language from a recent RMA Amendment Act as to the streamlining of processes. The concept involves a 'streamlined' transfer process which is not complicated by the necessity to obtain RMA consents for transfers within allocation limits, and the word 'streamlined' appears in those circumstances to be far more apposite.

Decision

200. Policy 5.4.4 remains as notified and Policy 5.4.5 is amended as follows:

Policy 5.4.5 – When ~~an enhanced~~ streamlined transfer system is included in the Marlborough Environment Plan to enable the full or partial transfer of individual water allocations between

the holders of water permits to take and use water, this will be provided for as a permitted activity where:

(a) the respective takes are from the same Freshwater Management Unit;

(b) the Freshwater Management Unit has a water allocation limit specified in Schedule 1 of Appendix 6;

(c) the take is not from the Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit Omaka Aquifer Freshwater Management Unit or the Riverlands Freshwater Management Unit;

(d) metered take and use data is transferred to the Council by both the transferor and the transferee in real time using telemetry;

(e) the allocation is authorised via a water permit(s) applied for and granted after 9 June 2016;

(f) the transferee holds a water permit to take water if their abstraction point differs from the that of the transferor; and

(g) the transferee holds a water permit to use water.

The duration of the transfer is at the discretion of the transferor and transferee and can be on a temporary basis or for the remaining duration of the water permit.

An ~~enhanced~~ streamlined transfer system was not included in the MEP when it was publically notified on 9 June 2016. However, the Council intends to introduce such a system to the MEP through the plan change provisions under First Schedule of the RMA at a later date. Under a system of ~~enhanced~~ streamlined transfer of water permits, water users would have the flexibility to develop their own transfer arrangements. In these circumstances, there is a need for appropriate protections to be put in place to make a system of ~~enhanced~~ streamlined transfer work efficiently and effectively for water users, as well as to protect the reliability of the water resource for existing users. The matters (a) to (f) effectively establish ground rules under which ~~enhanced~~ streamlined transfer can occur. In doing so, this policy gives effect to Policy B3 of the NPSFM. The matters listed above will form the basis of permitted activity standards for the transfer of water permits.

Environmental Flows – reductions on change of use - Policy 5.3.8 (b)

Policy 5.3.8 – Approve water permit applications to continue taking and using surface water when:

(a) a specific minimum flow and allocation limit for the source Freshwater Management Unit is established in the Marlborough Environment Plan;

(a) the Freshwater Management Unit is not over-allocated in terms of the limits set in the Marlborough Environment Plan;

(b) there is to be no change to the intended use of water, or if there is a change in use, this results in a decrease in the rate of take of water; and

(c) the application is made at least three months prior to the expiry of the existing water permit.

201. When considering other submissions on Policy 5.3.8 the Panel noted that sub-clause (b) of the Policy required that if there was a proposed change in the intended use of the water that an applicant would have to demonstrate a reduction in water use.

202. The Panel noted that in broad terms the submission of Irrigation NZ[7], by seeking restricted discretionary status for renewal of take consents, was seeking what the Section 42A Report described as an 'easier pathway' for renewal of consents. In the Panel's view that provides scope to make a change to achieve the same intended result that no increase in the rate of take is provided for on renewal, but by wording (b) to the Policy in a different manner. The Panel has made this decision against a background awareness of the policies both in the Plan and the NPSFM which require that in an over allocated FMU that on any renewal of a resource consent a reduction in allocation will have to occur to ensure protection of Te Mana o te Wai and the sustainability of the resource.

Decision

203. Amend sub-clause (b) of Policy 5.3.8 to read as follows:

(b) there is to be no change to the intended use of water, or if there is a change in use, this <u>does not</u> results in a<u>n</u> ~~decrease~~ <u>increase</u> in the rate of take of water;

[7] (778.44)

Environmental Flows – forestry impacts - Policies 5.3.15 & 5.3.16 and Standard 3.3.6.2 (g)

Policy 5.3.15 – Require land use consent for the planting of new commercial forestry in flow sensitive areas.

Policy 5.3.16 – When considering any application for land use consent required as a result of Policy 5.3.15, have regard to the effect of the proposed forestry on river flow (including combined effects with other commercial forestry and carbon sequestration forestry (non-permanent) established after 9 June 2016) and seek to avoid any cumulative reduction in the seven day mean annual low flow of more than 5%.

Standard 3.3.6.2(g)

3.3.6.2. Planting must not be in, or within: ...

(g) an Afforestation Flow Sensitive Site; ...

204. The explanation to Policy 5.3.15 sets out the background concerns which have driven these policies and the standard, and emphasises that it only applies to new conversions of pasture to forestry and does not apply to existing planted areas. The relevant parts of the explanation state:

> *The water resources most at risk are south of the Wairau River and specific Afforestation Flow Sensitive Sites are identified. The identified land receives low rainfall (in comparison to north of the Wairau River) and contributes runoff to smaller catchments. These factors make the water resource supplied by runoff from the land more vulnerable to changes in water yield.*
>
> *The policy does not apply to existing commercial forestry or the replanting of that forest following harvest, as the effects of this forestry on water yield are part of the existing environment.*

205. The areas identified as Afforestation Sensitive sites in the PMEP are to the south of the Wairau:

(i) Wairau Valley Southbank from Ferret Gully (just east of the Wye catchment) to Hillersden stream (west of Wairau Valley township);

(ii) Southern valleys from Omaka to Taylor catchments inclusive;

(iii) Stafford Creek (which flows into the lower Awatere from the north and lies east of SH 1) above the water storage dams;

(iv) Flaxbourne catchment.

206. Many of those areas are well-recognised for a range of reasons in the PMEP as being low-rainfall areas with thin or very small aquifers downstream, and can be contrasted with the high rainfall areas to the north of the Wairau.

207. A number of submissions supported the policies but the generic submission on Issue 5C by Nelson Forests Limited against any provision limiting or controlling commercial forestry planting in particular identified limitations on planting within Afforestation Sensitive sites. For that reason the Section 42A Report has addressed the submission as being opposed to these policies.

208. The thrust of the Nelson Forests Limited opposition, which is a view shared by other forestry industry submitters, asserts that the policy effectively means that Council through a planning mechanism in the PMEP is choosing which industries are entitled to access water supplies. The submission goes so far as to suggest that downstream water users should provide their own storage to mitigate any effects of forestry planting upstream. Further it is argued that afforestation should be encouraged as a necessary outcome of climate change mitigation – because of its carbon absorbing effects. And finally it is asserted that regeneration of native species would have similar effects.

209. EDS on the other hand seek that the policy is extended to all new forestry plantings, not just those in the Afforestation Sensitive catchments.

Section 42A Report

210. The Section 42A Report identified that the areas involved totalled about 711km^2 or about 6.8% of the area covered by the PMEP and importantly that all those areas identified receive less than 1500mm of rainfall where it is recognised that water yield is reduced by forestry planting. On that issue the report referred to the fact that there was by now a considerable volume of scientific studies demonstrating that forestry can reduce mean flow stream output by between 35% and 80% depending upon rainfall levels and the nature of the country involved. Forestry can and does intercept rainfall before it hits the ground. In low rainfall areas the report writer expresses the view that reduction in low flows may be expected to be at the higher end of the spectrum.

211. But even on the figures provided in the report the 5% flow reduction rate specified in Policy 5.3.16 would still allow planting of between 6% and 14% of a catchment.

212. Regeneration of native species is recognised as being theoretically possible but not realistically so. The report writer's view is that in these drier areas native regeneration will be of small species far less likely to intercept rainfall in any volume before it reaches the ground because it will not form a canopy density remotely comparable to plantation forestry.

213. Finally the four zones of Afforestation Sensitive sites each have particularly vulnerable flow sensitive resources downstream of likely areas for forestry conversion. They are in the form of surface capture for storage, or subsurface aquifers, or small surface spring fed streams.

Consideration

214. The Panel noted that this suite of policies and standards was not prohibitory in nature, but rather identified valid issues which required addressing in any consent application involved.

215. The Panel also accepted that the evidence is very strong that in such low rainfall areas a high probability exists of plantation forestry canopy intercepting significant percentages of rainfall before it even reaches the ground and that the root systems will accentuate that reduction in flow effect.

216. Well planned proposals taking those factors into account will still enable some albeit very limited plantings in these areas if the total catchment effect is kept below 5%.

217. Contrary to the arguments raised by the forestry submitters the Panel's view is that the potential risk of adverse effect to sustainability of not controlling flows in these very low rainfall catchments could be very serious. The control measures proposed in the PMEP are not an issue of balancing one extractive use against another. It is a precautionary measure to ensure a recognisable adverse effect on sustainability is avoided. That adverse effect potential exists regardless of whether the purpose of the planting is for production or carbon retention. The effects of potential changes from climate change also warrant this precautionary approach.

218. A different issue of a more technical nature arose from the combination of Policy 5.3.16 and the associated Rule 3.3.6 and Standard 3.3.6.2. Various submissions sought amendment of them to enable replanting of existing forests.

219. The Section 42A Report recommended acceptance of those submissions in respect of replanting by an amendment to the explanatory statement on Policy 5.3.16 and an addition to Standard 3.3.6.2. However, in doing so it addressed the relief it recommended using in part the terminology 'non-permanent sequestration forest'.

220. In other parts of the Panel's broader decision on forestry issues in the Use of the Rural Environment Topic it has deleted references to 'non-permanent' sequestration forestry and consequentially in respect of this Policy and Standard a similar approach is required for consistency. In the same decisions the Panel has changed 'commercial' to 'plantation' and that also needs amendment here.

Decision

221. The submissions seeking the deletion or amendment of Policy 5.3.15 and to delete Policy 5.3.16 and Standard 3.3.6.2 (g) are rejected.

222. Amend Policy 5.3.16 as follows:

Policy 5.3.16 – When considering any application for land use consent required as a result of Policy 5.3.15, have regard to the effect of the proposed forestry on river flow (including combined effects with ~~other commercial~~ existing plantation forestry ~~and carbon sequestration forestry (non-permanent)~~ established after 9 June 2016) and seek to avoid any cumulative reduction in the seven day mean annual low flow of more than 5%.

223. Amend the last sentence explanatory statement to Policy 5.3.16 to read as follows:

Any reduction in flow shall be measured against the seven day mean annual low flow at 9 June 2016, being the date of notification of the MEP, and any assessment of cumulative effects should only consider ~~commercial~~ plantation forestry established after 9 June 2016

224. Amend Standard 3.3.6.2 (g) to read as follows:

(g) an Afforestation Flow Sensitive Site, unless replanting harvested plantation forest that was lawfully established.

Environmental Flows – Diversions & Damming – Policies 5.2.3 and 5.2.18,to 5.2.22

Policy 5.2.3 – Protect the significant values of specifically identified freshwater bodies by classifying the taking, damming or diversion of water in these waterbodies as a prohibited activity.

Policy 5.2.18 – Require resource consent for the diversion of water to enable the potential adverse effects of the diversion to be considered.

Policy 5.2.19 – Have regard to the following matters in determining any resource consent application to divert water:

(a) the purpose of the diversion and any positive effects;

(b) the volume or proportion of flow remaining in-channel and the duration of the diversion;

(c) the effect of the diversion on environmental flows set for the waterbody;

(d) the scale and method of diversion;

(e) any adverse effects on natural and human use values identified in the Marlborough Environment Plan in the reach of the waterbody to be diverted;

(f) any adverse effects on permitted or authorised uses of water; and

(g) any adverse effects on the natural character of the waterbody, including but not restricted to flow patterns and channel shape, form and appearance.

Policy 5.2.20 – Where water is to be dammed to enable the storage of water, encourage the construction and use of "out-of-river" dams in preference to the construction and use of dams within the beds of perennially or intermittently flowing rivers.

Policy 5.2.21 – Ensure any new proposal to dam water within the bed of a river provides for:

(a) effective passage of fish where the migration of indigenous fish species, trout and salmon already occurs past the proposed dam site;

(b) sufficient flow and flow variability downstream of the dam structure to maintain:

(i) existing indigenous fish habitats and the habitats of trout and salmon; and

(ii) permitted or authorised uses of water; and

(iii) flushing flows below the dam;

(c) the natural character of any waterbody downstream of the dam structure; and have regard to the matters in (a) to (c) when considering any resource consent application to continue damming water.

Policy 5.2.22 – In the determination of any resource consent application, have regard to the following effects of damming of water:

(a) the retention of sediment flows and any consequent adverse effect upstream or downstream of the dam structure;

(b) changes in river bed levels and the effects of those changes;

(c) any downstream effects of a breach in the dam wall;

(d) interception of groundwater or groundwater recharge; and

(e) interception of surface water runoff.

225. Many submissions were lodged on these various provisions as to diversions and damming proposals for surface flows once again with a broad spectrum involved. At one end of the spectrum was the approach of submitters led principally in evidential terms by Ngai Tahu who sought that there be a prohibition on in-stream damming activities in main stems and in all the branches of the Awatere catchment because of the interference they caused with the mauri of the waters, or the impact of damming on the concept of Te Mana o te Wai. Ngai Tahu also sought greater controls on the potential mixing of waters in respect of diversions.

226. At the other end of the spectrum were users such as the hydro generators and irrigation users who regarded diversions as beneficial uses of water, and which for hydro at least was not consumptive, and damming as a valuable method of storage of water to enable peak demands to be met.

227. Other submissions took a range of positions between those differing ends of the spectrum of effects on surface flows. Some iwi submitters particularly sought greater account to be required to be taken of issues of significance to iwi on consideration of diversion applications.

Section 42A Report

228. The Section 42A Report drew attention to the fact that a suite of standards also needed to be considered when considering these policies as those standards addressed a number of maters of detail which were significant in assessing the overall impact of the policies.

229. As a consequence the report recommended that Policy 5.2.18 as to diversions remained as notified; that Policy 5.2.19 be amended by adding reference to tangata whenua values; that Policy 5.2.20 as to damming be retained as notified; that Policy 5.2.21 be amended to recognise the potential value of enabling dams without fish by-passes so as to enable

restoration of native species above the dam in certain circumstances and again to include reference to cultural values; and finally, in respect of Policy 5.2.22 in the Final Report inclusion was recommended of references to regard also being had to degradation of mauri, loss of indigenous biodiversity and the positive effects available from damming.

Consideration

230. In terms of the policies the Panel reached the conclusion after hearing all the evidence produced that there were a range of potential activities involving diversions and damming activities which could if well-planned have beneficial as well as obvious adverse effects.

231. Those benefits included, by way of example, those from diversions intended to re-water old stream beds, as in Gibsons Creek, which has had major benefits on aquifer recharge rates in the Wairau aquifers. Moreover, that Scheme has in addition enabled the Southern Valleys Irrigation Scheme (SVIS) which has itself taken pressure off the southern valleys aquifers. That occurred just as those aquifers were struggling to cope with irrigation demands, and recharge rates were declining. In addition the SVIS has enabled the irrigation on a much more sustainable basis of over 5,000 ha of land in the southern valleys providing a significant amount of production from what otherwise would have been water short land.

232. Another example has been the major Branch hydro diversion into the Argyle Pond and canal which has enabled a major generation facility with limited effects – and some of those effects have in fact worked well. Fluctuation flows downstream from the Argyle pond releases have to a significant extent assisted in maintaining sustainable varied flows and hence avoiding cut-offs of takes in the lower Wairau.

233. In terms of dams the principal uses have been for hydro generation in the Waihopai in early years, and more latterly on a widespread basis for high flow storage dams principally for C class water. The development of those dams has meant that again pressure at low flow periods has been relieved utilising water that otherwise would principally have flowed to sea. They have opened up large areas of the Awatere and other southern catchments to increased viticultural and agricultural production on what otherwise would have been seriously dry country.

234. While Ngai Tahu's concerns about effects on the mauri of instream damming are recognised, at the same time the value of those storage dams in supporting a greater biodiversity of flora and fauna in the relatively water short Awatere and southern catchments cannot be overlooked. Evidence was given of many examples of water storage dams providing enhanced habitat for both indigenous flora and fauna in areas and sub-catchments which otherwise

were verging on being barren, and on its own site visits south of Blenheim the Panel observed some of those very obvious restoration qualities at first hand. Particularly persuasive evidence was given in that regard by Dr McConchie about the benefits the well planned Hickman dam on one of the tributaries feeding into Lake Elterwater was able to provide, which enhanced biodiversity values in a manner and to an extent that was unlikely in the natural very dry climate at that location. His positive opinions as to that outcome were supported by Mr Hamill the Section 42A Report writer, based on his own observations of the outcome there.

235. The Panel considers that the existing provisions are not necessarily inconsistent with the concepts of Te Mana o te Wai given that type of positive evidence. The Panel sees it as being important that Te Mana o te Wai is identified specifically in Policy 5.2.21(b) for that reason.

236. As to the issue of fish passage by-passes being required to be considered in every case (Policy 5.2.21(a)), the Panel heard interesting arguments against such a requirement because of the benefits in some smaller sub-catchments of being able to restore habitat for indigenous species. Those species otherwise would be predated by salmonoid species. That arises as a result of the peculiarity of s 7 (h) of the RMA which provides a measure of statutory recognition to the habitat of introduced species of trout and salmon in s 7 (h) of the Act.

237. The Panel also took into account the provisions of cl 43(1) of the Freshwater Fish Passage Regulations 1983. While that provides additional requirements for fish passage on structures in rivers, but those requirements are at the discretion of the Director General (as defined in the Fisheries Act 1983) and can enable dispensations or differing forms of fish facilities which are defined as including fish screens as well as fish passages. The provisions of cl 43 are as follows:

> **43 Dams and diversion structures**
>
> **(1) The Director-General may require that any dam or diversion structure proposed to be built include a fish facility:**
>
> **provided that this requirement shall not apply to any dam or diversion structure subject to a water right issued under the provisions of the Water and Soil Conservation Act 1967 prior to 1 January 1984.**
>
> **(2) Any person proposing to build such a dam or diversion structure shall notify the Director-General and forward a submission seeking the Director-General's approval or dispensation from the requirements of these regulations, shall supply to the Director-General such information as is reasonably required by the Director-General to assist him in deciding his**

requirements (including plans and specifications of the proposed structure and any proposed fish facility).

(3) Should the Director-General consider that the information supplied is inadequate, he shall, within 28 days, advise the applicant as to what further information is required.

238. In land terms introduced species which predate on native species, such as rats and possums, are regarded as pests. However, despite the predation of trout and salmon on native species in our rivers, they are regarded in statutory terms as an asset whose habitat is deserving of particular consideration, (regardless of the irony that part of that habitat consists of indigenous species upon which the trout and salmon predate). Section 7(h) RMA provides that particular regard must be had to:

(h) The protection of the habitat of trout and salmon

239. Notwithstanding that protection there plainly is a value to be recognised from enabling some sub-catchments to provide habitat for indigenous species where they cannot be predated by trout. We were persuaded that the door should be left open to that particular enhancement possibility for indigenous species.

Decision

240. Policy 5.2.21 (a) is amended as follows:

(a) Effective passage of fish where the migration of indigenous fish species, trout and/or salmon already occurs past the proposed dam site, provided that if the purpose of the dam is for the restoration and/or establishment of only native species habitat then fish passage for trout and salmon is not required.

241. In addition the Panel decided that a new sub-clause (iv) was needed at Policy 5.2.21 (b):

(iv) mauri o te wai; and

242. Amend the explanation to Policy 5.2.21 as follows:

Where a dam is proposed to be constructed in the bed of a river in spite of Policy 5.2.19, the policy identifies three matters to be provided for as part of the proposal. It recognises that a dam structure can act as a barrier to fish passage, modify the flow pattern downstream of the dam structure, ~~and~~ alter the natural character and mauri of the river (or other downstream waterbodies) as a result of flow modification. The nature and significance of the adverse effects created by the dam structure will vary depending on the proposed structure, and the nature of the river and the natural and human use values it supports. This policy allows these proposal and site specific factors to be taken into account. ...

Specific issues arising from submissions on diversions and/or damming

243. The Panel also accepted a number of the detailed changes recommended to the suite of standards but in some respects reached different conclusions. Those issues are now addressed.

Lake Elterwater and its tributaries – Policy 5.2.3 & Rule 2.6.4 & Method 5.M.1

Policy 5.2.3 – Protect the significant values of specifically identified freshwater bodies by classifying the taking, damming or diversion of water in these waterbodies as a prohibited activity

Rule 2.6.4. – Take, use, damming or diversion of water from the following waterbodies, including their tributaries:

(a) Acheron River;
(b) Branch River (including downstream of weir to the Wairau River confluence);
(c) Chaytor Significant Wetlands - W127, W128 and W129;
(d) Goulter River;
(e) Goulter Significant Wetland - W35;
(f) Kauauroa Bay Significant Wetland - W1026;
(g) Lake Alexander;
(h) Lake Chalice;
(i) Lake McRae;
(j) Pelorus River upstream of confluence with the Scott Creek;
(k) Pipitea Significant Wetland - W55;
(l) Possum Swamp Stream Significant Wetland - W116;
(m) Rainbow River;
(n) Tarndale Lakes including Bowscale Lake, Fish Lake, Lake Sedgemere and Island Lake;
(o) Upper Wairau Significant Wetland - W580;
(p) Wairau Lagoons Significant Wetland - W1076;
(q) Wairau River upstream of the Hamilton River confluence.

This rule does not apply to a take, use, damming or diversion of water lawfully established prior to 9 June 2016, including the take and use of water for an individual's reasonable domestic needs and the take and use of water for the reasonable drinking water needs of an individual's animals.

5.M.1 Regional rules

Set environmental flows and/or levels for permanently flowing rivers, lakes, wetlands and aquifers to maintain the uses and values supported by the waterbody.

Set allocation limits for each FMU to establish the total amount of water able to be sustainably abstracted from the water resource.

Apply regional rules to regulate the taking, use, damming or diversion of water in accordance with the policies in this chapter. This includes the use of permitted activity rules to enable the taking, use, damming or diversion of water where the activity will not give rise to adverse effects on natural and human use values supported by the waterbody.

A permitted activity rule will enable the construction of bores.

Prohibit the taking, use, damming or diversion of water where those activities would adversely affect the significant values of outstanding water bodies.

Prohibit the taking of water beyond environmental flows/levels and allocation limits set by rules.

Require all resource consents granted for water takes to be measured by pulse emitting meter and recorded by data logger, and require the recorded take and use information to be transferred to the Council by telemetry.

Review water permit conditions to impose or alter environmental flows and levels (or other relevant limits) established by rules in the MEP.

244. Submissions by Mr David Barker and Mr John Hickman featured as being at the opposite ends once again of a spectrum of submitter views as to the treatment that should be accorded the waters, bed and surrounds of this lake, including its contributing tributaries[8].

Evidence

245. Mr Barker who lives adjacent to the Lake and who has an extensive background in conservation and indigenous biodiversity work sought protection of Lake Elterwater's waters, its contributing tributaries and its bed by making any damming, diversion or taking of water a prohibited activity.

246. He instanced the history of degradation of Lake Elterwater which in the past in drought years has had cattle grazing on its surrounds, and sometimes in its bed, crops grown, and even cricket matches played on a pitch. Its surrounds had become invaded by large unkempt growths of various willows and weed species. Yet despite that degraded state, in winter or in wet conditions Mr Barker was able to demonstrate a bountiful use by a wide variety of bird species of the lake's waters, and he also gave evidence of abundant indigenous flora and fauna that could and did in such conditions make use of the lake.

247. Mr Hickman's farm has been in his family for generations and it encompasses significant parts of Lake Elterwater's boundaries. In recent times he has gained a resource consent to construct a large dam containing about 2 million cubic metres in one of the contributing tributaries the development and building of which was carried out with the close advice of Dr McConchie who has hydrological expertise and is experienced in dealing with wetlands.

248. The thrust of Dr McConchie's evidence was that the design and manner of operation of the Hickman dam was actually unusually beneficial to the lake's general habitat because its storage element meant that it was able to release stored water in significant quantities to supplement Lake Elterwater's own levels in low flow periods. Moreover, it was also able to operate as a significant feeder habitat for a wide range of species itself. As mentioned in the previous section of this decision his evidence was supported by Mr Hamill's observations. Their evidence also pointed out that changes in levels during the recent Kaikoura earthquake should assist in retention of more water within the lake.

[8] D Barker (317.2 and .3), J Hickman (455.32)

249. Mr Hickman was also able to describe the general steps that he has taken in recent years to restore the habitats in and around Lake Elterwater. That has occurred both in response to Council pressure as to inappropriate activities such as grazing, cropping and sporting activities in the lake bed, and more positively as a voluntary process as he has undertaken a major effort over some years in fencing off the lake waters, removing weed and willow species, and replanting the surrounds with native species.

Section 42A Report

250. For the rather special reasons described above in relation to Lake Elterwater, Mr Hamill did not favour prohibited status on the tributaries as sought by Mr Barker, but did favour prohibited status in relation to the waters of Lake Elterwater itself. The report drew attention to the important fact that the outlet to the lake was raised by the Kaikoura earthquake meaning that the lake will be dry less frequently and increasing the value of its biodiversity.

Consideration

251. Lake Elterwater is relatively unique in being a significant body of water in high flow years capable of supporting important indigenous species of flora and fauna, but yet it can dry up completely in drought conditions, and on occasion in the past that has occurred in consecutive years. In respect of the waters of the lake itself the Panel agree with the recommendation that prohibited activity status applies. However, in respect off the tributaries the Panel formed a different view.

252. The habitat values and indigenous species that Mr Barker identified are particularly important in these very dry areas of south Marlborough, but the Panel has been satisfied on the evidence from Dr McConchie, Mr Hamill and Mr Hickman that those values have been recognised and responded to in a significant manner by Mr Hickman.

253. The outcome of Mr Hickman's considerable voluntary works, which are major and ongoing, has been a significant improvement in the overall habitat for both indigenous flora and fauna. And the Panel has accepted the evidence of Dr McConchie and Mr Hamill that the design and method of operation of the recently consented major storage dam on a contributing tributary of the lake has benefits also for the habitat of indigenous species in the general locality, and for the habitat health of the lake itself as a supplement to its natural sources.

254. If prohibited status was now to be imposed on any use of the waters of the lake's contributing tributaries the wrong message would be sent to Mr Hickman as to the value accorded to his efforts, and if they cease it is highly likely that the lake and its surrounds in such a harsh dry

environment would lapse back into the weed infested state they suffered from a few years ago.

255. The recent history of this lake and its management has demonstrated that for it to have any opportunity of providing a sustainable habitat for indigenous species of flora and fauna, it needs active management for environmental rehabilitation, and if possible some additional source of water to supplement natural sources.

256. When the Panel considered the various options advocated of straight out prohibition on use of contributing tributary waters as sought by Mr Barker, against the more constructive beneficial effects from Mr Hickman's work and active beneficial management in recent years, the answer as to where the environmental balance should lie fell in favour of declining the request for a prohibition. In terms of sustainability that is the best outcome.

257. The Panel appreciates that this outcome leaves open the opportunity of future proposals for storage use on other contributing tributaries as a discretionary activity. It has been demonstrated by the Hickman consent and development that integrated control can ensure protection of the mana of the wai of the lake by enhancing the Lake levels rather than to detract from them. Obviously such an outcome would be the principal focus of any further consent proposal.

258. Before passing on to record its decision, though, the Panel wishes to express its appreciation of the efforts made both by Mr. Barker and Mr. Hickman in trying to ensure that in resource planning terms the best possible outcome for Lake Elterwater was achieved. On the Panel's perception all submitters were seeking a similar outcome which was a restoration of indigenous biodiversity values in the lake and its surrounds and contributing tributaries.

259. Their differences really came down to a different approach as to how that was best to be achieved – by prohibition on all water use related to the lake and its contributing tributaries, as compared to an active, beneficial management of integrated water and land uses, which on the evidence it has received has been the Panel's preference.

260. However, the Panel does agree with the final reply to evidence recommendation that the waters of Lake Elterwater itself, excluding its contributing tributaries, should be included as item (s) in the prohibited activity rule 2.6.4. Because of the opening words of the Rule include tributaries and exception should also be recorded there.

Decision

261. Policy 5.2.3 remains as notified.

262. That submissions seeking limitations or prohibited activity status for the contributing tributary water of Lake Elterwater be rejected.

263. And add the following clause to the rule:

(s) Lake Elterwater, but not including its contributing tributaries.

Temporary Diversions for significant infrastructure, or for private stopbanks – Policy 5.3.5 & Rules 2.2.18 & 2.3.17

Policy 5.3.5 – Enable the take and use of water where it will have little or no adverse effect on water resources.

2.2.18. Diversion of water associated with the operation of the Drainage Channel Network existing on 9 June 2016, and permitted activities in the Floodway Zone.

2.3.17. Diversion of water associated with the operation of the Drainage Channel Network existing on 9 June 2016.

2.3.17.1. The diversion must not be in, or within 8m of, a Significant Wetland.

2.3.17.2. The diversion must be managed by the Marlborough District Council.

264. Policy 5.3.5 provides the PMEP with the opportunity through Rule 2.2 to provide for a range of permitted activities which have limited if any real adverse effect on water resources. Temporary diversions in relation to Drainage Channel operations is a good example in rule 2.2.18.

265. The existence of this Policy and the associated rule in 2.2 led to a number of requests once more on a wide spectrum. Some submissions sought the deletion of the Policy as opening the door to permitted activity use of water while others sought that their particular activities were included as for the drainage channel operation rule 2.2.18 along with associated standards 2.3.17.1 & 2.

266. NZTA sought that its temporary diversions needed as part of the operation of regionally significant infrastructure, such as temporary diversions, dams or channels to enable roadworks operations to be carried out[9]. This is a common requirement for roadworks particularly in high flow conditions.

267. Ross Davis, an experienced engineer, on behalf of the Davidson Group sought similar relief to allow the diversions to enable the maintenance of private stopbanks. His evidence was that increasingly individual landowners are constructing stopbanks to protect expanding areas of viticulture or other high value operations[10]. That is particularly so on stretches of the Wairau above the Waihopai confluence where the Council has a policy it will no longer maintain stopbanks. His evidence was that to maintain stopbanks temporary diversion was necessary.

[9] NZTA (1002.116-118)
[10] Davidson Group (172.3)

Section 42A Report

268. The Section 42A Report writer in both the original report and in the Reply to Evidence agreed with the requests made by NZTA and recommended that a new permitted activity be provided for in Rule 2.2 with new standards including as Standard 2 a requirement that the diversion must be managed by NZTA. The report recommendation was as follows:

Rule –

Diversion of water associated with the operation and maintenance of roadside drainage channels.

Standard 1 –

The diversion must not be in, or within 8m of, a Significant Wetland.

Standard 2 –

The diversion must be managed by the New Zealand Transport Agency.

Standard 3 –

The diversion must not cause flooding or erosion of private land.

Consideration

269. The panel agreed with NZTA that for regionally significant infrastructure such as the roading network the operator should be able to carry out temporary diversions or damming necessary to enable repair work to existing infrastructure but not for new developments. The latter should remain the subject of normal consent considerations.

270. However, the Panel was cognisant of the fact from other hearings that the majority of Marlborough's roads are in fact managed by Marlborough Roads Limited. Consequently a standard which limited this new recommended permitted activity to just NZTA would only provide part of the solution required to maintain the roading network in Marlborough which must be done both for maintaining public access along Marlborough's roads but enabling that to be done in safety. In addition there are obvious efficiencies and time and cost savings in extending the permitted activity to all managers of the public road networks.

271. In considering the submission the Panel also decided that temporary damming should also be specifically included for the purposes of the works as the common method of controlling water while roadside channels are repaired will be by temporary damming as much as by diversions. So long as a Standard is imposed limiting the duration of the diversion or damming to the purposes of the maintenance works involved adverse effects will be appropriately constrained.

272. As to private stop-banks the Panel was concerned that objective oversight of river control works by the Council is always warranted as private stop-banks could affect other landowners or potentially have effects on downstream Council works in some locations. That being the case permitted activity status is not appropriate.

Decision

273. Add a new permitted activity rule under Rule 2.2 as follows:

2.2.X Temporary damming or diversion of water associated with the operation and maintenance of artificial roadside drainage channels.

274. Add new standards to Standard 2.3 as follows:

2.3.X. Temporary damming or diversion of water associated with the operation and maintenance of artificial roadside drainage channels.

2.3.X.1 The temporary damming or diversion must be managed by the Road Controlling Authority.

2.3.X.2 The temporary damming or diversion must not be in, or within 8m of, a Significant Wetland.

2.3.X.3 The temporary damming or diversion must only be for the purposes of the maintenance works required at the location of the works.

2.3.X.4 The temporary damming or diversion must not cause flooding or erosion of private land.

275. The submission seeking permitted activity status for private stopbank repairs or construction is rejected.

Efficiency of use and storage

Objective 5.4 – Improve the utilisation of scarce water resources.

276. In the course of consideration of debates between submitters as to the allocation limits, and threshold cut-off flow limits, or aquifer levels, a constant theme was the need for users to improve utilisation of water resources which requires the addressing of efficiencies in use and alternative sources of supply. Objective 5.4 specifically identifies improved utilisation as an objective for the PMEP.

277. There was no real dispute between submitters at varying ends of the spectrum as to the wisdom of efficiency of use as a concept. Winery re-use of 'grey' water, leaving 'blue' potable water solely for necessary product uses, is but one example. Others in the field for viticulture involve potential for more precise soil moisture monitoring and responses; potential for

reconsideration of dripper location and frequency, particularly for immature plants; and the general need for detailed review of soil types and volumes needing to be applied – to name but some that have been raised in evidence before the Panel.

278. Other significant opportunities exist as described earlier in the decision on this Chapter in relation to storage opportunities – either communal or individual. When the potential effects of climate change are added to the existing level of over-allocation the crucial need for enhanced storage capacity is obvious.

279. The Panel considers that both these issues of efficiency of use and increased storage are both well within the scope of relief seeking that the PMEP provide greater protection of sustainable flows.

280. The PMEP as notified addressed the issue of storage under Method 5.M.6 but with a heading 'incentives'. In fact that method incentives storage and the importance of storage is such that the heading to the method should be 'storage incentives'. The Panel decided to address the efficiency issue by inserting a new method in Chapter 5 of the PMEP which encourages efficiency of use.

Decision

281. Amend the heading to Method 5.M.6 as follows:

5.M.6 Storage incentives

282. Insert a new method as follows:

5.M.X Efficient Water Use

Encourage efficient water use by sharing information with water users and water user groups. Information gathered through the application of other methods in this Chapter will be provided, including real time water use data and river flow/aquifer level data, the results of research and modelling in terms of reasonable use requirements and sharing information on new technology. The information will be able to be applied by water users to make adjustments to their existing water management regime to ensure the volume and rate of water use match actual water use requirements.

Duration of take & use permits – Policy 5.3.14

Policy 5.3.14 – The duration of water permits to take water will reflect the circumstances of the take and the actual and potential adverse effects, but should generally:

(a) not be less than 30 years when the take is from a water resource:

(i) that has a water allocation limit specified in Schedule 1 of Appendix 6; and

(ii) that has a minimum flow or level specified in Schedule 3 of Appendix 6; and

(iii) that is not over-allocated; or

(b) not be more than ten years when the take is from an over-allocated water resource as specified in Policy 5.5.1; or

(c) not be more than ten years when the take is from a water resource that has a default environmental flow established in accordance with Policies 5.2.7 and 5.2.14.

283. This policy seeks to steer a path between the demands of water users for certainty to allow major capital expenditure to be made with confidence from the certainty of supply, and the concerns by others and Council as the resource manager as to the inability to control take and use of a resource because of existing permits. That concern is exacerbated in that many FMUs are already over-allocated, and by the fact that the effects of climate change may cause current catchment allocations to need review well before permits expire.

284. The submissions received highlighted that range of views with some seeking longer duration permits and others seeking that the policy restrict the duration of permits, particularly as a precautionary matter given the impacts and uncertainty of the effects on water supply as a result of climate change.

Section 42A Report

285. The approach in general terms in the report was to support the policy as notified, but with it being recommended to be amended to include all consumptive diversion permits as well and to amend the terminology of water resource to FMU to reflect the NPS terminology used in the rest of the Plan.

286. The report particularly identified that community water supplies need the certainty of 30 year terms but identified the principal problem as being those situations where FMUs were over-allocated where 10 year terms are warranted until the over-allocation is removed.

Consideration

287. The Panel agreed with the Section 42A Report recommendation that diversions for consumptive purposes are dealt with on an equal basis to take permits. The duration of diversions for consumptive purposes has the same potential effect on the total allocations of water for those purposes as the duration of takes for consumptive purposes, so the policy, if amended, would treat them equally.

288. The effects of climate change in Marlborough on water resources are at present unknown. The fact of large and long catchments such as the Wairau, Branch, Waihopai and the Awatere having sources far distant from irrigated use areas may even mean that rainfall in those more westerly and southerly areas increases, while drought effects become more common to the east.

289. Consideration of ensuring Te Mana o te Wai and sustainability requires a more conservative or precautionary approach than 30 year permits.

290. Until monitoring over ten to twenty year periods produces more reliable patterns of water availability and soil moisture retention rates it is better to limit the duration of take/use consents.

291. At the same time the Panel considered it was necessary to take into account both the level of capital investment reliant on take/use consents and the considerable costs of re-consenting too frequently.

292. The Panel did take into account the irrigation efficiency trials being run by the viticulture industry and their potential to have huge effect on water demand for irrigation for viticulture, but until the results of those trials have been verified in real terms over a range of seasons the Panel was of the view that the precautionary approach it preferred to guard against the effects of climate change was warranted having regard to s.7 (i) of the RMA.

293. The Panel decided that it was appropriate to amend the term in Policy 5.3.14 (a) from 30 years to 20 years taking into account all those considerations.

Decision

294. Amend Policy 5.3.14 as follows:

Policy 5.3.14 – The duration of water permits to take or divert water for consumptive purposes will reflect the circumstances of the take or the diversion and the actual and potential adverse effects, but should generally:

(a) not be less than ~~30~~ 20 years when the take or diversion of water for consumptive purposes is from a Freshwater Management Unit ~~water resource~~:

(i) that has a water allocation limit specified in Schedule 1 of Appendix 6; and

(ii) that has a minimum flow or level specified in Schedule 3 of Appendix 6; and

(iii) that is not over-allocated; or

(b) not be more than ten years when the take or diversion of water for consumptive purposes is from an over-allocated ~~water resource~~ Freshwater Management Units as specified in Policy 5.5.1; or

(c) not be more than ten years when the take or diversion of water for consumptive purposes is from a ~~water resource~~ Freshwater Management Units that has a default environmental flow established in accordance with Policies 5.2.7 and 5.2.14.

295. Add a new paragraph to the end of the explanatory statement to Policy 5.3.14 as follows:

The duration of diversions for consumptive purposes has the same potential effect on the total allocation of water as the duration of takes, so the Policy treats them equally.

Consents – lapse duration – policies 5.4.1 & 5.4.3 and order of policies 5.4.1, 5.4.2 and 5.4.3 in Plan

Policy 5.4.1 – The lapse period for water permits to take water shall be no more than two years.

Policy 5.4.2 – Giving effect to water permits to take and use water will be determined on the basis of the water being taken (and/or stored) for the authorised use and that the take is recorded in accordance with Policy 5.7.4.

Policy 5.4.3 – The lapse period for water permits to use water shall be at least ten years.

296. The statutory regime for lapse periods for water permits to both take and to use water, and their potential as an issue of concern in Marlborough is succinctly described for take permits in the explanatory statement to policy 5.4.1 as follows:

> *The statutory lapse period to commence the exercise of a resource consent is five years. This is a considerable period of time to have water allocated but potentially not used. With increasing scarcity of freshwater resources, it is appropriate to have a shorter lapse period.*

297. The two year lapse period in proposed in Policy 5.4.1 for permits to take water.

298. At first sight that appears to conflict with the extended lapse term for permits to use water contained in Policy 5.4.3 which is ten years. However, the explanatory statement to Policy 5.4.3 makes it clear that the time period proposed is dictated by the 'enhanced' (changed by earlier decision above to 'streamlined') transfer system. The relevant part of the explanatory statement to Policy 5.4.3 states:

> *A user must, as a minimum, hold a water permit to use water (a water permit to take water may not be necessary depending on the method of water distribution). Opportunities to utilise enhanced transfer of water permits may be limited in time. It would therefore be inappropriate to lapse the water permit to use water on the basis*

that no such opportunity arose in the lapse period. For this reason, a long lapse period of ten years is signalled for water permits to use water by this policy. This will ensure that a system of enhanced transfer has the greatest opportunity to function effectively over time.

299. There were a number of submissions seeking either that a longer or shorter lapse period apply to different types of activities each seeking in aid the reduction or increase over the statutory default of five years (s125 RMA) as utilised in one or other of these policies.

Section 42A Report

300. The report writer referred to the fact that Policy 5.4.1 repeated the approach taken in the operative plans which again was specific to water permits because of the allocation pressures under which such permits were granted.

301. As to Policy 5.4.3 the report writer placed weight on the streamlined transfer system as justifying the extension of the statutory default term of 5 years.

Consideration

302. The Panel accepts the recommendations of the report writer that the two policies address matters specific to the stressed environment of location of water permits and that the policies should be restricted to those activities and that they should be retained as notified save for an addition at the start of Policy 5.4.1 allowing for special circumstances.

303. The Panel was of the view that in each case an amendment to the explanatory statements would assist in providing more direction to decision-makers and/or an understanding of why these policies were contained in the Plan.

304. Finally in the course of its consideration of the lapse policies in the Plan 5.4.1 and 5.4.3 it was obvious they should follow each other with the current 5.4.2 being renumbered to Policy 5.4.3.

Decision

305. Amend Policy 5.4.1 by an addition at the start of the Policy so it reads as follows:

Policy 5.4.1 – Unless special circumstances exist that justify a longer period ~~T~~the lapse period for water permits to take water shall be no more than two years.

306. That the explanatory statement to Policy 5.4.1 be amended by adding a new paragraph prior to the last sentence as follows:

... infrastructure and avoiding a situation of other potential users being denied access to reliable water supplies through the consent holder's inaction.

There may be special circumstances which may warrant an extension to this period, and it will be for consent applicants to describe those appropriately for a decision-maker as part of a consent application. For example, a longer lapse period may be justified for regionally significant infrastructure or due to the scale or complexity of the activity for which the water permit is required.

The allocation status of the water resource will be taken into account in terms of considering any applications to extend a lapse period under Section 125(1A) of the RMA.

307. Amend the existing second sentence of the explanatory statement to Policy 5.4.3 to read:

A user must, as a minimum, hold a water permit to use water (a water permit to take water may not be necessary depending on the method of water distribution). To improve the utilisation of scarce water resources the streamlined transfer process for use of water may enable an opportunity to use otherwise unutilised water for limited periods of time. ~~Opportunities to utilise enhanced transfer of water permits may be limited in time~~. It would therefore be inappropriate to lapse the water permit to use water on the basis that no such opportunity arose in the lapse period.

308. Renumber Policy 5.4.2 in the notified Plan as Policy 5.4.3 with notified Policy 5.4.3 being renumbered as Policy 5.4.2.

Content of Policy 5.4.2 as to the meaning of the phrase 'giving effect to'

Policy 5.4.2 – Giving effect to water permits to take and use water will be determined on the basis of the water being taken (and/or stored) for the authorised use and that the take is recorded in accordance with Policy 5.7.4.

309. Pernod Ricard sought that this policy be deleted on the basis that there was considerable case law on the issue[11]. Other submissions essentially took the position amendments to the Policy or the explanation could clarify the issue better.

Section 42A Report

310. The original Section 42A Report had concluded that while the Policy was intended to be helpful it was probably inappropriate and could be deleted, particularly as since the PMEP was notified:

> *...the MDC resource consent department have developed, and had approved in the courts, conditions precedent for water takes that ensure that even though water may have been taken, if the meters and certification have not occurred the consent will lapse.*
>
> *(Paragraph 1318 Original Section 42A Report)*

[11] (1039.42)

311. No submitter particularly addressed the Policy in the hearings in any definitive manner so the Reply to Evidence continued to recommend deletion.

Consideration

312. The Panel decided that in fact the Policy does still serve a purpose in an over-allocated setting to ensure water permits are not left unutilised.

Decision

313. Amend Policy 5.4.2 to include the phrase '...take and/or use...' instead of just '...take and use...'

314. Amend the explanation to the Policy to read as follows:

Section 125(1A)(a) specifies that a resource consent does not lapse if the consent is "given effect to." There was uncertainty during the administration of the previous resource management plans as to what this term meant in the context of a water permit. Many of Marlborough's water resources are fully allocated relative to the limits in this Plan, or are approaching a status of full allocation. There is therefore increasing competition for available water between water users. To avoid the potential for conflict in the community that this competition may cause, and to ensure water already allocated is being used for productive use as intended, it is important to administer the lapse of water permits diligently. To allow this to occur, ~~avoid confusion in the future~~ this policy clearly describes that a water permit is given effect to when, in conjunction with Policy 5.7.4, water is taken from the freshwater resource, the take is measured via an appropriate meter and the water is used for the purpose in which it was granted.

Objective 5.7

Objective 5.7 – The allocation and use of water do not exceed the rate or volume required for any given water use.

Submissions and Section 42A Report

315. A number of submissions were made supporting this Objective but some particularly that by Lion Beer sought that the Objective be reworded to focus encouragement more on methods of allocating water for particular activities. The Section 42A Report did not agree with that and recommended the Objective remain as notified.

Consideration and decision

316. The Panel considered that the point made by Lion was worthy of being reflected in the Objective and decided the Objective 5.7 should be replaced with the following:

Objective 5.7 – To achieve efficient water use for any given activity.

Efficiency of Use & Reference to Irricalc – Policy 5.7.2 & Explanatory Statement & Policy 5.7.3 Explanatory Statement

Policy 5.7.2 – To allocate water on the basis of reasonable demand given the intended use.

> *One of the ways in which efficient use of water can be achieved is by ensuring that the allocation to the user does not exceed that which is reasonably required for the use. In the case of irrigation, the Council will provide users with a tool, "IrriCalc," to estimate water demand for the crop, based on the soil type(s) and climate that exist at the property.*

317. This policy assists to give effect to Policy B4 of the NPSFM.

318. Policies 5.7.2 and 5.7.3 both describe in their Explanations the use of computer methodology, at present primarily in the form of a system called 'Irricalc', which is effectively a tool to ensure that consents to take and use water can be efficiently calculated in terms of quantities needed for particular crops, based on a range of factors including soil types, soil moisture holding characteristics, evapotranspiration rates and climate at particular locations. Some submitters sought that the specific reference to 'Irricalc' in the PMEP should be deleted and a more generic descriptor be provided.

319. The reasons for the request included the lack of control by Council of the methodology and its ability to be changed without going through any formal Plan Change process; the effective practical 'delegation' as a result of control of efficiency of water use to the Irricalc designer/owner; and the effective shutting out of potential other developers of similar methodology and the improvements that they may be able to bring to environmental management.

320. The Section 42A Report writer in the Reply to Evidence on Matter 7 recognised the validity of some of the arguments advanced and recommended that the Policy 5.7.2 wording could be retained but recommended that the notified Explanation to Policy 5.7.2 was amended as follows:

> *One of the ways in which efficient use of water can be achieved is by ensuring that the allocation to the user does not exceed that which is reasonably required for the use. In the case of irrigation, ~~the Council will provide users with a tool, "IrriCalc,"~~ a reasonable use model will be used to estimate water demand for the crop, based on the soil type(s) and climate that exist at the property.*

321. The report also recommended that the following sentence be added to the first paragraph of the Explanation to the Policy:

In the case of non-irrigation uses, the allocation to the user will be assessed on a case-by-case basis.

322. The Panel accepted the recommendations as it agreed the points made by submitters were valid criticisms but considered that some limited changes to the recommended wording were appropriate in the new sentence.

Decision

323. Retain Policy 5.7.2 as notified but amend the Explanation to Policy 5.7.2 to read as follows:

One of the ways in which efficient use of water can be achieved is by ensuring that the allocation to the user does not exceed that which is reasonably required for the use. ~~In the case of~~ For irrigation ~~the Council will provide users with a tool, "IrriCalc,"~~ a reasonable use model will be used to estimate water demand for the crop, based on the soil type(s) and climate that exist at the property.

For non-irrigation uses, the allocation will be assessed on a case-by-case basis.

Efficiency of Use & Reference to Irricalc - Policy 5.7.3 and Explanatory Statement

324. Much the same issues arose in submissions on the explanation to Policy 5.7.3 leading to a recommendation in the Reply to Evidence that references to Irricalc be replaced by generic references to a 'reasonable use model'. The report also recommended a consequential change to Method 5.M.7 as follows:

> *Model the irrigation demand of pasture and crops according to soil type and climate using Irricalc or a similar analysis method approved by Marlborough District Council. The model output will be used as a basis for determining allocations for the use of water. The model will be provided to water users via ~~the E-planning~~ an online tool.*

325. For the same reasons the Panel agreed with those recommendations but with some very limited wording changes.

Decision

326. Retain Policy 5.7.3 as notified but amend paragraphs two, three and four of the explanatory statement to Policy 5.7.3 to read as follows:

~~"IrriCalc"~~ Reasonable use models uses ~~s~~ existing soils information and modelled climate data to provide estimates of water use for all crop types. To ensure efficient use of water for irrigation, the Council will generally not grant water permits to use water for irrigation purposes at a rate that exceeds the reasonable use calculation provided by a reasonable use model. ~~"IrriCalc"~~

Past methods of determining water use allocations have not accounted for the variation in water demand when growing the same crop in different locations and conditions. The use of ~~"IrriCalc"~~ a reasonable use model in the manner described above will therefore result in improvements in the efficient allocation and use of water and assist to give effect to Policy B4 of the NPSFM.

The policy recognises that the calculation is a modelled calculation and may not accurately estimate reasonable use in all circumstances. For this reason, the policy provides resource consent applicants the opportunity to provide property specific information on the factors that influence crop demand that may demonstrate a ~~higher~~ rate that exceeds the calculation provided by the model ~~of water use than IrriCalc would otherwise indicate~~. Examples could include historical measurement of rainfall or the investigation of soil type and plant available water on the property. Regard can be had to such information in determining an appropriate allocation on water permits to use water.

327. As a consequential change amend Method 5.M.7 to read as follows:

Model the irrigation demand of pasture and crops according to soil type and climate using Irricalc or a similar reasonable use model. The model output will be used as a basis for determining allocations for the use of water. The model will be provided to water users via ~~the E-planning~~ an online tool.

B Class Water Allocation in the Pelorus FMUs

328. Fish & Game sought various amendments to the class allocations in respect of the lower Pelorus, Rai, Opouri, Tunakino, Ronga and Kaituna rivers. In part the amendments they sought arose from their challenge to the sustainable levels in those rivers and their related challenge particularly to the 'short term' water allocations. The allocation of B class was sought to be removed although in some later positions adopted for some of the FMUs it was sought there be a removal of short term water from A class to a new B class allocation.

Section 42A Report

329. In respect of A class allocation issues the Panel agreed with the reasoning and recommendations of the report writers.

330. In relation to the B class allocations, the factual position outlined to the Panel by the report was that in most, if not all, of those FMUs the A class was fully allocated, but there had been no applications for any uptake of B class water since the Plan was notified.

331. In respect of the B class issue, the report writers said that they were 'taking a neutral position on whether the B class, as notified for each FMU, is retained'

Consideration

332. The Panel took the view that the B class allocations in the Plan are designed to ensure some ability to provide for access to a water resource for utilisation purposes in periods of higher flow. It is for that reason that the minimum flow for the cessation of B class takes is fixed at a higher level than that for A class takes.

333. Fish & Game essentially were advancing the proposition that all of these rivers suffered varying periods of low flows and that if further allocations even of B class water were to be made the consequence would be adverse in effects terms for the river and its associated ecology. The report writers' view was that because there was no apparent current demand for B class water there was no immediately obvious need to make provision for a B class allocation. It is implicit also from the evidence heard in relation to these catchments as well as the Wairau catchments that all experts are agreed that in terms of Te Mana o te Wai the more water that is left in a river the better the outcome in natural environmental terms. However, that of course does not take into account the various human use values which are recognised in the NPSFM provided sustainability is maintained by fixing appropriate allocation levels.

334. Mr Hamill's evidence was that the allocation of Class B waters was fixed in relation to minimum flow levels, which he was satisfied on the basis of his decades of experience, were sufficient to ensure sustainability of the instream ecology.

335. The only argument in favour of making no Class B allocation provision for these FMUs is the general proposition referred to above that more water left in the river the better for its health. Whilst, as we have said, that is always an attractive argument, to accept it here in relation to a possible B class allocation would be to deny the prospect of potential future unknown uses for some one or more of the human use values identified in the NPSFM. Part II RMA requires provision for the needs, not only of the present generation, but also for future generations. In a situation where little if any class A water is available for further allocation it would be contrary to that general RMA purpose to have no provision for a B class allocation.

336. For those reasons the Panel accepts that the minimum flow level settings for the B class allocation in these FMUs is appropriate to protect sustainability and as a consequence that there is scope for a B class allocation in each FMU proposed in the notified plan.

Decision

337. The submissions requesting that there be no B class allocation in the Pelorus, Rai, Opouri, Tunakino, Ronga and Kaituna FMUs are rejected.

Water Allocation – Limited Issues

338. The earlier part of this decision on allocation of water resources has canvassed in a detailed manner the more significant issues where the Panel assessed that there was a considerable level of public interest in the issue, Plan provision, or decision the subject of the submission/s; or where significant input by way of submission and evidence was received. Some issues have also been addressed in that detailed way because the Panel has taken a significantly different view on a major issue from that recommended in the Section 42A Report processes, even if there was not considerable submitter input.

339. By contrast, this final part of the decision on allocation of water resources addresses more limited issues. They include those which have not involved significant input by way of submission or evidence, or may not have involved major public interest issues, but where recommendations by the Section 42A Report writer/s have not been accepted by the Panel in whole, or in part; or where recommendations made by the report writer/s have been essentially accepted by the Panel, but with some modifications, or by completely different provisions being adopted by the Panel.

340. The result is that only limited discussion is needed in this part of the decision. That discussion is limited to a summary of what issue/s underlie the recommendation/s made; the detail of the recommendations made; and finally, the reasons why the recommendation/s have been rejected, or accepted in part, or why changes have been made.

341. In some cases those summaries will be very brief and others more extended. For clarity and ease of locating any issue dealt with in that manner, each separate issue will have its own sub-header and reference to the Plan provision involved.

Chapter 5 Introduction – Climate Change issues

342. The Friends of Nelson Haven submission sought that reference be made in the Introduction to the potential effects of climate change on the availability of the water resource in Marlborough[12].

343. The Section 42A Report was neutral about the need to include that in Chapter 5 given that the issue of climate change is the subject of its own Chapter in the Plan. Moreover, the report drew attention to the fact that the potential effects of climate change on Marlborough's water resources are at present still largely unknown particularly as the headwaters of one of its

[12] (716.41)

major catchments, the Wairau, are located in the west where increased rainfall is predicted to be likely to occur.

344. The Panel acknowledged that there is still a state of uncertainty as to rainfall effects of climate change, and as a consequence the availability of water resources in Marlborough, but still felt the issue is so significant in terms of potential effects one way or the other, that it should be mentioned in the Introduction to Chapter 5.

Decision

345. Insert as a new final paragraph in the Introduction to Chapter 5 the following paragraph:

Provisions are included in Chapter X that address the potential implications of climate change in the context of water allocation and use.

Prohibited activity status Exemptions for some activities – Policy 5.2.3

Policy 5.2.3 – Protect the significant values of specifically identified freshwater bodies by classifying the taking, damming or diversion of water in these waterbodies as a prohibited activity.

346. A number of submissions drew attention to the need to ensure existing activities with s.14 RMA protection were not classified as prohibited activities meaning that could not seek to re-consent.

347. The Section 42A Report recognised the validity of that position and said it was recognised in the rules and did not need repeating as an exemption in the policy because policies can be weakened by the presence of too many exemptions undermining the purpose of the policy. However, the final reply to Evidence did suggest a possible wording addition in the explanation to the policy to link with the rule treatment as follows:

> *It is also appropriate to exclude any taking, damming or diversion of water lawfully established prior to the notification of the Plan from this prohibition.*

348. The Panel agreed with the basic reasons for the recommendation and its wording save for a deletion of the recommended opening words and a slight re-adjustment of the order of the recommended wording.

Decision

349. Amend the Explanatory Statement to Policy 5.2.3 by adding a final sentence to read as follows:

Taking, damming or diversion of water lawfully established prior to 9 June, 2016 is also excluded from this prohibition.

Flow-sharing and non–consumptive uses – Policy 5.2.16

Policy 5.2.16 – For resource consent takes from the Waihopai River, Awatere River and other rivers that utilise an upstream flow monitoring site, allocations for the taking of water will be reduced proportionally as flows fall in order to avoid any breach of an environmental flow.

350. Trustpower which operates the Waihopai power station sought that this policy have an exemption for non-consumptive uses where the same volume of water is returned to the river flow as occurs with its Waihopai scheme[13]. The wording it suggested was:

> *This Policy does not apply to existing non-consumptive takes related to regionally significant infrastructure.*

351. The Section 42A Report recommended that exemption be adopted but also recommended the Explanation to the Policy refer to the amended Explanation to Policy 5.2.15 which the report had recommended.

352. The Panel agrees with the change to Policy 5.2.16 but as it has itself amended the wording and placement of changes as between the Explanatory Statements to Policies 5.2.15 and 5.2.16 the last recommendation is not accepted as being necessary.

Decision

353. Add the following sentence to Policy 5.2.16:

This Policy does not apply to existing non-consumptive takes related to regionally significant infrastructure

Tangata Whenua, Mauri and Te Mana o te Wai considerations - Introduction to Chapter 5 (Paragraphs one & two) & Policies 5.2.19, 5.2.21 & 5.2.22 &

Introduction

Much of the Council's resource management work involves managing resources that are in the public domain. Marlborough has a considerable coastline, large areas of land in Crown ownership and extensive freshwater resources. The Council frequently allocates or authorises the use of these natural resources for private benefit, especially resources in the coastal marine area, rivers, riverbeds and aquifers.

354. A number of submissions by iwi sought greater acknowledgment in the Introduction that water was a taonga. The Section 42A Report acknowledged that, and recommended an amendment to that effect in paragraph one of the Introduction[14].

355. The Panel agreed with that recommendation and its only change to the recommended amendment was to add reference to 'Marlborough's' tangata whenua iwi for consistency throughout the Plan provisions.

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[13] (1201.35)

[14] Section 42A Report, pages 90 and 91

Decision

356. Amend the first paragraph of the Introduction to Chapter 5 as follows:

Introduction

Much of the Council's resource management work involves managing resources that are in the public domain. Marlborough has a considerable coastline, large areas of land in Crown ownership and extensive freshwater resources. Water is a taonga and is essential to all as a life-source. Water is also essential for mahinga kai, and holds particular significance to Marlborough's tangata whenua iwi. The Council frequently allocates or authorises the use of these natural resources for private benefit, especially resources in the coastal marine area, rivers, riverbeds and aquifers.

Te Mana o te Wai - Introduction paragraph two

357. As part of its response to submission requests to strengthen the Introduction to Chapter 5 to recognise the NPSFM emphasis on sustainability the section 42A report had recommended the insertion of a new second paragraph as follows:

> *Sustainable management of the taking, using, damming or diverting of water means safeguarding the life-supporting capacity of freshwater resources, and ensuring there are sufficient flows and/or levels to retain the natural and human use values supported by waterbodies.*

358. While the Panel agreed with that recommendation since the Plan was notified the NPSFM 2017 has introduced the Te Mana o te Wai concept and as set out earlier in this decision effect must be given to that in this Plan. As a consequential recognition of Te Mana o te Wai as required by the NPSFM the Panel decided to insert reference to that concept in the new recommended paragraph to the Introduction.

Decision

359. A new second paragraph is to be inserted in the Introduction to Chapter 5 to read as follows:

Sustainable management of the taking, using, damming or diverting of water means recognising Te Mana o te Wai and safeguarding the life-supporting capacity of freshwater resources, and ensuring there are sufficient flows and/or levels to retain the natural and human use values supported by waterbodies.

Tangata whenua values – Policy 5.2.19

Policy 5.2.19 – Have regard to the following matters in determining any resource consent application to divert water:

(a) the purpose of the diversion and any positive effects;

(b) the volume or proportion of flow remaining in-channel and the duration of the diversion;

(c) the effect of the diversion on environmental flows set for the waterbody;

(d) the scale and method of diversion;

(e) any adverse effects on natural and human use values identified in the Marlborough Environment Plan in the reach of the waterbody to be diverted;

(f) any adverse effects on permitted or authorised uses of water; and

(g) any adverse effects on the natural character of the waterbody, including but not restricted to flow patterns and channel shape, form and appearance.

360. Submissions by Ngāti Toa and Ngai Tahu specifically, and indirectly by Ngāti Kuia, sought that this policy include reference to tangata whenua values.[15]

361. The Section 42A Report effectively concluded that this reference was unnecessary as sub-clause (c) referred to effects of any diversion on environmental flows having to be considered and those flows had been set amongst other things to address flows set to protect mauri (Policy 5.2.4(a). Then through Policy 5.2.19 cultural values are captured by the phrase 'natural and human use' values. However, the report writer adopted a neutral position if the Panel wished to reinforce those considerations.

362. While the general MEP approach is that each chapter in the Plan must be read taking into account tangata whenua values addressed in Chapter 3 in relation to this policy the Panel considers the request made for a specific reference is particularly apposite given the strongly held views by most iwi submitters in principle against allowing the mixing of waters and the consequent effect on the mauri of individual water bodies.

Decision

363. Amend Policy 5.2.19 by including a new sub-clause (a) as follows and re-numbering the existing sub-clauses:

Any adverse effects on Marlborough's tangata whenua iwi values associated with the waterbody, including mahinga kai

[15] (166.22 and .62)

Mauri - Policy 5.2.21

Policy 5.2.21 – Ensure any new proposal to dam water within the bed of a river provides for:
(a) effective passage of fish where the migration of indigenous fish species, trout and salmon already occurs past the proposed dam site;
(b) sufficient flow and flow variability downstream of the dam structure to maintain:
(i) existing indigenous fish habitats and the habitats of trout and salmon; and
(ii) permitted or authorised uses of water; and
(iii) flushing flows below the dam;
(c) the natural character of any waterbody downstream of the dam structure; and
have regard to the matters in (a) to (c) when considering any resource consent application to continue damming water.

364. A closely related submission was made by Ngāti Toa and Ngāti Kuia in relation to this Policy 5.2.21 where they sought inclusion of a sub-clause (iv) in sub-clause (b) to the Policy to specifically refer to maintaining the 'mauri' of the dam waters.

365. In this case, however, the Section 42A Report did support the specific reference being included as a new sub-clause (iv).

366. The Panel in its consideration thought that it would be helpful for the word 'mauri' to be specifically tied into the 'wai' by making that reference. It also considered that an amendment should be made to the Explanatory Statement to Policy 5.2.21 to contain reference to the 'mauri' of the river.

Decision

367. Amend Policy 5.2.21 by inserting the following additional sub-clause in Policy 5.2.21 (b):

(iv) mauri o te wai;

368. Amend the Explanatory Statement to Policy 5.2.21 as follows:

Where a dam is proposed to be constructed in the bed of a river in spite of Policy 5.2.19, the policy identifies three matters to be provided for as part of the proposal. It recognises that a dam structure can act as a barrier to fish passage, modify the flow pattern downstream of the dam structure, ~~and~~ alter the natural character and mauri of the river (or other downstream waterbodies) as a result of flow modification. The nature and significance of the adverse effects created by the dam structure will vary depending on the proposed structure, and the nature of the river and the natural and human use values it supports. This policy allows these proposal and site specific factors to be taken into account. ...

Damming – effects on 'mauri' – Policy 5.2.22

Policy 5.2.22 – In the determination of any resource consent application, have regard to the following effects of damming of water:

(a) the retention of sediment flows and any consequent adverse effect upstream or downstream of the dam structure;

(b) changes in river bed levels and the effects of those changes;

(c) any downstream effects of a breach in the dam wall;

(d) interception of groundwater or groundwater recharge; and

(e) interception of surface water runoff.

369. Ngāti Kuia in its submission sought similarly that protection against 'degradation of mauri' be specifically referred to in this Policy. The report writer took a similar view as to that request as for Policy 5.2.21.[16]

370. Again the Panel preferred to expand the reference to so that it was to degradation of the 'mauri of the wai' to specifically refer to the water body affected.

Decision

371. Amend Policy 5.2.22 by adding in a further sub-clause as follows:

(x). degradation of the mauri o te wai.

Temporary dams – Policy 5.2.22 and Rule 2.7.1

2.7.1. Alteration, repair or maintenance of an existing structure in, on or over the bed of a lake or river.

372. Trustpower and others raised in submissions the need to ensure that Policy 5.2.22 did not have the practical effect of preventing the use of temporary dams as part of river works in riverbeds to carry out necessary maintenance of significant infrastructure, and for that reason sought a specific provision for temporary dams to enable necessary maintenance work on existing structures, and the release of any associated detritus when the temporary dam was removed.[17]

373. The Reply to Evidence acknowledged that need, as had the original report. It recommended the following wording amendment for rule 2.7.1:

> *2.7.1. Alteration, repair or maintenance, including the temporary damming of water, of an existing structure in, on or over the bed of a lake or river.*

374. The Panel agreed with that recommendation but considered that a slightly different wording was required.

[16] (501.10)
[17] (1201.38)

Decision

375. Amend rule 2.7.1 to read:

2.7.1. Alteration, repair or maintenance of an existing structure, including any associated temporary damming of water or release of detritus, in, on or over the bed of a lake or river.

376. Amend Standard 2.9.1 heading as a consequence to read:

2.9.1 Alteration, repair or maintenance of an existing structure, including any associated temporary damming of water or release of detritus, in, on or over the bed of a lake or river.

Efficiency of use – Objective 5.4

Objective 5.4 – Improve the utilisation of scarce water resources.

377. This Objective and following policies seek to encourage better utilisation of water resources which are over-allocated. A number of submissions particularly sought that the explanation to the Objective make it clearer what is intended by this Objective and supporting policies. The Section 42A Report did not agree any amendment was needed to the notified version.

378. After considering the submissions the Panel decided some greater clarity could be provided by an amendment as follows to focus on the issue of better utilisation of scarce resources rather than on gaining access to other sources.

Decision

379. Amend the explanatory statement to Objective 5.4 so that it reads:

In a state of full allocation of water resources, and given the implications of full allocation for potential users under the NPSFM, it is essential that ~~an alternative method to gain access to water is found to meet future demand~~ better utilisation of scarce water resources occurs to enable access to water to meet future demand.

Provision for non-irrigation uses – Policy 5.7.2

Policy 5.7.2 – To allocate water on the basis of reasonable demand given the intended use.

380. A number of submissions raised concerns that the Plan needed to specifically acknowledge the demand for water use from non-irrigation users as much as from irrigation users and that this Policy or its explanation provided that opportunity. The Section 42A Report agreed with that and recommended a wording for the Explanation that commenced "In the case of non-irrigation uses...".

Decision

381. The Panel would prefer to slightly amend the opening words to that recommendation so the addition to the explanation reads, as an addition to the end of the first paragraph:

For non-irrigation uses, the allocation to the user will be assessed on a case-by case basis.

Methods of measurement – Policy 5.7.4 and Method 5.M.1

Policy 5.7.4 – Require water permit holders to measure their water take with a pulse emitting meter, to record water take and use with a data logger, and to transfer the recorded water take and use information by the use of telemetry. Alternative methods of measurement, recording or transfer that provide the Marlborough District Council with accurate water take and use data may be considered.

5.M.1 Regional rules

...

Require all resource consents granted for water takes to be measured by pulse emitting meter and recorded by data logger, and require the recorded take and use information to be transferred to the Council by telemetry.

...

382. A number of submitters on Policy 5.4.7 drew attention to the fact that data measurement and communication methods as with all IT resources have rapidly changed and developed and that the Plan should allow more flexibility. More generic wording as to measurement methods, logging and communication was sought.

383. The Section 42A Report recognised that reality and made a number of recommendations to the wording of the Policy, its explanation and the Method. However the report also recommended a new definition be included for 'telemetry'.

384. The Panel agreed with all the recommended changes save that it did not see the need to add a definition of 'telemetry' which is self-explanatory and it made some minor wording changes to the Method recommended wording.

Decision

385. Policy 5.7.4 is amended as follows –

Policy 5.7.4 – Require water permit holders to measure, ~~their water take with a pulse emitting meter, to record water take and use with a data logger, and to transfer the recorded water take and use information by the use of telemetry~~ record and transfer the information from their water take using a meter and data management system that is capable of recording real time information, and transmitting this to the Marlborough District Council via telemetry. Alternative methods of measurement, recording or transfer that provide the Marlborough District Council with accurate water take and use data may be considered.

386. Amend the second sentence of the last paragraph of the explanation associated with Policy 5.7.4 is amended as follows –

~~*Data loggers*~~ *Data management systems that are capable of recording real time information provide accurate water take records and their use avoids the need for manual readings.*

387. Amend the seventh paragraph of Method 5.M.1 as a consequential change to read:

Require all resource consents granted ~~for~~ to take and use water ~~takes~~ to be measured by using a meter and data management system that is capable of recording real time information ~~pulse emitting meter and recorded by data logger~~, and require the recorded take and use information to be transferred to the Council by telemetry.

Frost protection issue – Policy 5.7.8

Policy 5.7.8 – Approve applications to take and use water for frost fighting purposes only where there are no effective alternative methods for frost control on the property.

388. Frost fighting using water involves the use of very large quantities of water. A number of submitters supported this policy because of the very large water quantities for relatively small areas of protection compared to other methods such as wind machines. Pernod Ricard and Hort NZ on the other hand sought recognition that in some circumstances water for frost protection may be the only method available, or that close proximity of sensitive uses such as residential occupants may make other methods of frost protection impracticable.

389. In the Reply to evidence the report writer suggested that the best response to evidence of the impacts of close residential development limiting other frost fighting options was to add a sentence to the explanation to Policy 5.7.8 as follows:

> *It is also noted that restrictions on the use of alternatives due to proximity to residential activity may mean the use of water can be considered in other circumstances.*

390. 36C. The Panel did not wish to see any lessening of the policy principle militating against frost protection using water because of the large quantities involved in areas where resources may be over allocated. It was prepared to agree with the recommended sentence in the explanation to policy 5.7.8 but wished to change the reference to 'other circumstances' to read 'in those limited circumstances' so as to tie the proposed use to the demonstrable need.

Decision

391. Amend the explanatory statement to Policy 5.7.8 by including an additional sentence at the end of the first paragraph, to read:

It is also noted that restrictions on the use of alternatives due to proximity to residential activity may mean the use of water can be considered in those limited circumstances.

Storage and ecosystem health issues – Policy 5.8.1

Policy 5.8.1 – Encourage the storage of water as an effective response to seasonal water availability issues.

392. The EDS submission raised the issue in respect of this Policy 5.8.1 that it overweighted the benefits of storage and use of water without balancing the potential adverse impacts on ecosystem health that could arise if the storage methods were not well controlled, through effects of decreased flows or on water quality as a result of the increased use.[18]

393. The report took the view that the limits elsewhere in the Plan on take and use had inbuilt limits and standards which were designed to ensure those sustainability issues were protected. As a consequence retention of te Policy in its notified form was recommended.

394. The Panel considered that the EDS point had merit and that an amendment could and should be made to ensure that balance with sustainability issues was maintained for storage take and use.

Decision

395. Add a phrase to Policy 5.8.1 so that it reads:

Policy 5.8.1 – Encourage the storage of water as an effective response to seasonal water availability issues, <u>while safeguarding ecosystem health</u>.

Storage options for different classes of water – Policy 5.8.3

Policy 5.8.3 – Water may be stored at times other than those specified in Policy 5.8.2 to provide water users with greater flexibility to manage water use on-site, provided that the rate of take does not exceed the authorised daily rate of take for irrigation purposes.

396. A number of submissions were supportive of this Policy 5.8.3 but some sought amendments to specify that Class A & B waters could be taken in addition to the water available for storage under Policy 5.82 , which in its explanatory statement is identified as being intended to be supplied mainly from Class C allocated waters.

397. The Section 42A Report pointed out that the Explanation to Policy 5.8.3 already referred to the Class A & B water option being available in some circumstances and gives the example of that being particularly in periods of high turbidity in the water, as often occurs in the Awatere at lower flow periods when C Class water is not available for storage. It was stressed that the Class system in the Plan was a method intended to enable effect to be given to various policies in the Plan as to allocation limits.

398. However, the report also stressed that while the Class system could also be used to enable effect to be given to Policies as to environmental limits, the problem is that those policies are

[18] (698.35)

expressed in terms of whether flows are too high or too low, or aquifers levels too low. The report writer was concerned that specifying Classes in storage policies could restrict the flexibility to give effect to policies related to environmental flow protection. As a consequence the report writer did not recommend any change.

399. The Panel accepts the points made by the report writer but considers the explanation to the Policy can be amended to provide more clarity.

Decision

400. Amend paragraph two of the explanatory statement to Policy 5.8.3 as follows:

~~The policy also recognises that~~ Class A and Class B were primarily created to enable access to water as instantaneous takes. Significant abstraction of water over the irrigation season for storage purposes over and above the rate of take for irrigation purposes has the potential to adversely affect the reliability of existing takes of water (by drawing down river flow/aquifer level at a faster rate than would otherwise have been the case).

Definition of 'Municipal Water Supply' – Volume 2 Chapter 25

Municipal water supply means any water supply owned, managed or administered by the Marlborough District Council

401. The Section 42A Report had recommended acceptance of an amendment to this definition by inserting in the middle of the definition the words "other than a supply exclusively providing an irrigation water supply" after the phrase '...any water supply...' because Council may well hold ownership or manage or administer such exclusive irrigation water supply systems such as the SVIS Scheme.

402. The Panel agreed with that recommendation but preferred to see the addition added at the end of the definition not in the middle of it.

Decision

403. Amend the definition of Municipal Water Supply to read:

means any water supply owned, managed or administered by the Marlborough District Council, other than a supply exclusively providing an irrigation water supply.

Dust Suppression Permitted Activity request – Rule 2.2

404. Rule 2.2 lists the permitted activities in the General Rules but does not identify the take and use of water for dust suppression. Particularly with its roading maintenance and development

activities in mind Marlborough Roads Limited sought that take and use of water for those purposes be added to the permitted activity list in 2.2.[19]

405. The Panel accepts, as did the Section 42A Report that dust suppression using water was an activity commonly for roading activities which can generate significant dust and cause adverse effects to others, let alone a potential traffic hazard.

406. The Panel agreed with the recommendation to allow up to 20 m^3 per day on gravel roads but also sought to impose a standard of 5% of the instantaneous flow of a river if that was the point source of the water taken. The Panel took the view that the limitation on quantity was all that was needed in the field as measurement of instantaneous flows is not easy.

407. Nor did the Panel accept the recommendation that the take relate to the 'road site' as the limitation is on the amount of water so the Panel changed the wording recommended to read 'per water body'.

Decision

408. Add to the list of permitted activities in Rule 2.2 the following:

x. Take and use of water for the purposes of dust suppression on gravel roads up to 20m^3 per water body per day.

Standard 1 – The take must not occur on more than 90 days within any 12 month period.

Standard 2 – The take must not be from a Water Resource Unit with a Natural State water quality classification, or a Significant Wetland.

Standard 3 – "Dust suppression on gravel roads must be undertaken by, or on behalf of the Marlborough District Council or the road controlling authority.

Permitted activity status for firefighting training purposes – Rule 2.2.8

2.2.8. Take and use of water for fire-fighting purposes.

409. FENZ and NZDF in respect of Woodbourne Airbase sought permitted activity status to take and use water not only for emergency firefighting but also for training purposes.[20]

410. The Section 42A Report accepted the need for the emergency firefighting purpose and also in the end for training purposes, but its recommendation was to name only the New Zealand fire Service for that purpose.

[19] (967.9 and .10)
[20] FENZ (993.18) and NZDF, further submission on 993.18

411. The Panel accepts other bodies such as NZDF at Woodbourne have fire services which need to train. It has decided for that reason to expand the description of those entitled to use water for firefighting training purposes.

Decision

412. Amend Rule 2.2.8 by adding as follows:

2.2.8 Take and use of water for fire-fighting purposes and firefighting training (when undertaken by Fire and Emergency New Zealand, New Zealand Defence Force, or any other nationally recognised agency authorised to undertake firefighting activities.)

Take & Use for Temporary Water Treatment Units – Addition to Rules 2.2 & 2.3

413. The NZDF raised in its submission the need for it to take and use water on exercises or emergencies for water treatment purposes using its portable treatment units.

414. The Section 42A Report recommended such a provision in the final reply to evidence as follows:

> *Rule – "The take, use and discharge to land of surface water for the reasonable use of water treatment units."*
>
> *Standard 1 – "The instantaneous take rate must not exceed 5% of the river flow at the point of take at any time."*
>
> *Standard 2 – "The take must not be from a Water Resource Unit with a Natural State water quality classification, or a Significant Wetland."*
>
> *Standard 3 – "The take, use and discharge must be conducted by the New Zealand Defence Force."*
>
> *Standard 4 – "The take must not occur for more than five consecutive days."*

415. The Panel agrees with the recommendation save for the deletion of the word 'reasonable' from the rule and standard. That word is inappropriate for a rule or standard as it contains an unquantifiable discretion and provides no certainty.

416. The Section 42A Report had recommended as a new Standard 1 a limitation that the instantaneous take rate must not exceed 5% of the river flow at the point of take at any time. This is a common standard utilised in the Plan for other activities where it is not possible to impose fixed quantity limits by way of control. Whilst in relation to dust suppression this standard was not imposed because of that difficulty. It is not feasible to impose a quantity limit on fire fighting activities and for that reason the general form of standard recommended is accepted.

Decision

417. Insert a new rule under Rule 2.2 as follows:

The take, use and discharge to land of surface water for the use of water treatment units

418. Amend the standards in Standard 2.3 by inserting new standards as follows:

2.3.x.1 The instantaneous take rate must not exceed 5% of the river flow at the point of take at any time.

2.3.x.2 The take must not be from a Water Resource Unit with a Natural State water quality classification, or a Significant Wetland.

2.3.x.3 The take, use and discharge must be conducted by the New Zealand Defence Force.

2.3.x.4 The take must not occur for more than five consecutive days.

Redundant rules – Rule 2.2.7 & Standard 2.3.7

2.2.7. Take and use of water from the Wairau Aquifer Freshwater Management Unit up to 15m3 per day for any purpose until 9 June 2017.

2.3.7. Take and use of water from the Wairau Aquifer Freshwater Management Unit up to 15m3 per day or any purpose until 9 June 2017.

2.3.7.1. The take and use of water must have been a lawfully established permitted activity prior to 9 June 2016.

419. Rule 2.2.7 and is related Standard 2.3.7 and 2.3.7.1 were in the notified version of the Plan to avoid the immediate effects of a rule affecting water for a year until 9 June 2017 to allow resource users time to ensure they had made any necessary applications to continue existing takes at sustainable rates.

420. As the Section 42A Report pointed out once that 'window' of opportunity had expired the rule and standards became redundant. The Panel agrees and that being the case no point is served by retaining those provisions. However, for reasons that were not clear the report did not recommend their deletion, which the Panel sees as being common sense.

Decision

421. Delete Rule 2.2.7 and Standard 2.37 and consequentially Standard 2.3.7.1.

Prohibited Activity Rule 2.6.4

422. This rule provides for prohibited activity status in respect of a large number of water bodies with the introductory wording as to the prohibited activities and the and concluding words as to exemptions being as follows:

2.6.4. Take, use, damming or diversion of water from the following waterbodies, including their tributaries:

(a)...(a list of water bodies follows)

This rule does not apply to a take, use, damming or diversion of water lawfully established prior to 9 June 2016, including the take and use of water for an individual's reasonable domestic needs and the take and use of water for the reasonable drinking water needs of an individual's animals.

423. The submission of Fire and Emergency New Zealand (FENZ) sought an exemption in respect of firefighting activities to be added to the drinking water needs.[21]

424. The Section 42A Report recommended that as s 14(3)(c) RMA only provided for the firefighting exemption water taken or used for emergency or training purposes that the Plan exemption should not be allowed for damming or diversions for those purposes.

425. The Panel took the view that firefighting may well require urgent steps to dam or divert water in a water short area like Marlborough to provide a water source to fight a fire, e.g. such as a temporary pond for helicopters to be able to use monsoon buckets, and that the prohibited activity rule should not apply to those activities either.

426. There is no specific permitted activity rule enabling such temporary damming or diversions specifically for fire-fighting purposes, whereas there is such a specific rule for permitted activity for the take and use for fire fighting in Rule 2.2.8 (which reflects the statutory provision in s 14(3)(e) RMA, the activities would be emergency works for which subsequent consent could be sought under 330A RMA, if needed. The Panel was of the view that the exemption from prohibited activity status would remove uncertainty as to the legal ability to carry out such emergency works or to use s 330A later.

Decision

427. Add to the exemption wording at the end of Rule 2.6.4:

This rule does not apply to a take, use, damming or diversion of water lawfully established prior to 9 June 2016, including the take and use of water for an individual's reasonable domestic needs, ~~and~~ the take and use of water for the reasonable drinking water needs of an individual's animals, and the take, use, damming or diversion of water for firefighting purposes.

[21] (993.19)

Rule 2.6.4 (b) - Branch River

2.6.4. Take, use, damming or diversion of water from the following waterbodies, including their tributaries:

(a) Acheron River;

(b) Branch River (including downstream of weir to the Wairau River confluence); ....

428. NZTA's submission sought an exemption to enable it to carry out works downstream of the weir for the offtake of water into the Argyle canal for the power scheme to enable the maintenance of the SH 63 bridge and its support structures.[22]

429. That bridge is an important part of the regional significant infrastructure and the Panel accepted the need for the exemption which the original Section 42A Report also did. However, the original report & reply to Evidence both suggested it be added as an exemption at the end of the rule.

430. As the exemption is only intended to relate to this particular bridge and river the Panel thought it preferable to provide for the exemption in 2.6.4 (b) itself.

Decision

431. Amend Rule 2.6.4 (b) to read as follows:

2.6.4. Take, use, damming or diversion of water from the following waterbodies, including their tributaries:

(a) Acheron River;

(b) Branch River (including downstream of weir to the Wairau River confluence) provided that the rule does not apply to the take, use, or diversion of water associated with the maintenance or upgrade of the State Highway 63 road bridge over the Branch River; ....

Clarence River reference in Rule 2.6.5 and elsewhere in the PMEP

2.6.5. Damming of water in the following waterbodies, including their tributaries:

(a) Awatere River above Medway River (excluding tributaries not specified in this rule);

(b) Clarence River;

(c) ....

432. Ngai Tahu sought in their submission that this reference to the 'Clarence' be amended to refer to the 'Waiau-toa/Clarence River' as that name change has occurred officially.[23]

433. The Panel agrees with that as did the Section 42A Report. However, the Panel also directs that a consequential change is made in that nomenclature wherever reference is made to the 'Clarence' throughout the Plan.

[22] (1002.19)
[23] (1189.115)

Decision

434. Amend the reference to 'Clarence' to the 'Waiau-toa/Clarence River' both in Rule 2.6.5 and as a consequential change at any location where that name appears throughout the MEP.

Dam wall height standard request – Standards 3.3.19 & 4.3.18

435. The Davidson Group Limited submission on this issue sought that additional safety requirements should be included in Standard 3.3.19 – in particular that a Standard from the Wairau Awatere Resource Management Plan (WARMP) should be carried over into the PMEP controlling dam wall height at 4m as a standard. The point made in the submission was that a small dam on a big highly-ephemeral catchment was not protected in terms of height of dam wall as a permitted activity.[24]

436. The Addendum Report did not express any particular view pointing out that if the submission was addressing only dams in ephemeral rivers then they were not a permitted activity as Rule 3.1.19 only permitted off-river dams. At the hearing Mr Ross Davis for the submitter made it clear the concern was generic and not related solely to dams in ephemeral valleys. In the Reply to evidence on the Addendum report issues the Section 42A comment was simply that the report writers did not have the expertise to provide an expert response.

437. The Panel accepted the evidence of Mr Davis as an experienced engineer with long experience in Marlborough of dam construction that this issue of dam height should be controlled as it was in the WARMP.

Decision

438. Add a new standard in Standard 3.3.19 for the Rural Zone and Standard 4.3.18 for the Coastal Environment Zone as follows:

The dam must be less than 4m in height, measured from base to crest.

Ōpaoa River monitoring site location – Appendix 6 Schedule 3

439. The monitoring site for flow levels in the notified PMEP was expressed in the first column as being in respect of the 'Ōpaoa (below O'Dwyers Road). The monitoring site location was expressed simply as 'Hutcheson Street' – and the minimum flow was specified as being '1.500 m^3/s adjacent Sec 1 SO 417530'.

440. MDC in a submission sought there was more precision by seeking to change the descriptor of the FMU involved in the Ōpaoa to reflect the river flow being monitored as being from Mills and Ford Road to the confluence of the Ōpaoa and Taylor rivers.[25]

[24] (172.5)
[25] (91.258)

441. The Section 42A Report in its recommendation inaccurately quoted the notified version for the Ōpaoa stipulating instead a minimum flow of '0.500 m3/s' but at a different monitoring site 'below the confluence of the Ōpaoa and Taylor rivers'. Some other changes were also recommended which did not make a lot of sense to the Panel.

442. At the hearing the Section 42A Report writers agreed the matter needed clarification and the Reply to Evidence was issued with changes detailed. Unfortunately, however, Murphy's Law applied and some new errors crept into the final recommendations. Those final recommendations, though, did still convey sufficiently the basic intent of the recommendations, enabling the Panel to make a final decision clarifying the issue.

Decision

443. The relevant columns in Appendix 6 Schedule 3 as it relates to the Ōpaoa are reworded as follows:

*Freshwater Management Unit (FMU) **	*Class*	*Minimum Flow or Level (Management Purpose)*	*Monitoring Site or Method ***	*Management Flow or Level *** (Management Method)*
Ōpaoa (below Mills and Ford Road to the confluence of the Ōpaoa and Taylor Rivers)	*n/a*	*Minimum of 0.500m^3/s at Ōpaoa River immediately above the confluence of the Ōpaoa and Taylor Rivers*	*Hutcheson Street*	*Fully restricted below 1.000m^3/s*
Ōpaoa (below ~~O'Dwyers Road~~ the confluence of the Ōpaoa and Taylor Rivers)	*~~A~~ n/a*	*Minimum of 1.500m^3/s adjacent to Section 1 SO 417530*	*Hutcheson Street*	*Fully restricted below 1.000m^3/s*

Maintenance of sustainability of all water bodies – 5.AER.3

Anticipated environmental result	Monitoring effectiveness
5.AER.3 Maintenance of the significant values of outstanding water bodies.	Reassessment of waterbody values at the time of the next review of the MEP.

444. Friends of Nelson Haven submitted that this AER as worded fails to ensure that a recognised environmental impact of the Plan was to ensure the survival of all water bodies not just significant ones.[26]

445. The report writer agreed with that submission on that point and recommended an amendment to both columns as follows:

5.AER.3

Maintenance of the significant values of ~~outstanding waterbodies~~ wetlands.

446. And for the monitoring effectiveness method second column:

Reassessment of ~~waterbody~~ Significant Wetland values at the time of the next review of the PMEP.

447. The Panel agreed with the general thrust of the Friends' submission but did not accept the recommendation to change the AER from a consideration of water bodies to a consideration of wetlands.

Decision

448. Amend the first column in 5.AER.3 as follows and retain the second column as notified.

5.AER.3 *Maintenance of the significant values of ~~outstanding~~ waterbodies.*	*Reassessment of waterbody values at the time of the next review of the MEP.*

[26] (716.54)

5. Allocation of ~~Public~~ Freshwater Resources

Comment [1]: Topic 11

Introduction

Much of the Council's resource management work involves managing resources that are in the public domain. Marlborough has a considerable coastline, large areas of land in Crown ownership and extensive freshwater resources. Water is a taonga and is essential to all as a life-source. Water is also essential for mahinga kai, and holds particular significance to Marlborough's tangata whenua iwi. The Council frequently allocates or authorises the use of these natural resources for private benefit, especially resources in the coastal marine area, rivers, riverbeds and aquifers.

Sustainable management of the taking, using, damming or diverting of water means recognising Te Mana o te Wai and safeguarding the life-supporting capacity of freshwater resources, and ensuring there are sufficient flows and/or levels to retain the natural and human use values supported by waterbodies.

Comment [2]: Topic 4

Allocating rights to use public resources has become a fundamental part of the overall fabric of Marlborough's social and economic wellbeing. For example, our viticulture industry, which contributes significantly to Marlborough's economy, relies on access to freshwater resources from rivers and aquifers. Other examples include the many moorings, boatsheds and jetties throughout the Sounds, all of which contribute to the social wellbeing of residents and holidaymakers. The allocation of freshwater is also integral to the health and safety of people and communities, for example, the allocation of water for human consumption.

Comment [3]: Topic 4

The importance of the community and visitors being able to continue to use and develop these natural resources within the constraints of the Resource Management Act 1991 (RMA) cannot be underestimated. Any significant reduction or change in approach to resource use could have significant implications for Marlborough's economic, cultural and social wellbeing. However, a healthy economy which relies on the environment, must be premised on a healthy environment. The two main areas where allocation of public resources is considered to be an issue are rights to occupy space in the coastal marine area, and rights to take and use freshwater.

Comment [4]: Topic 4

The environmental flows and levels set in accordance with the provisions of Chapter 5 are based on hydrological records collated up to the notification of the PMEP. If data collected over the life of the Plan demonstrates that catchment/aquifer yield has changed as a result of climate change, then there may be the need to review the environmental flows and levels contained in Appendix 6. Any change to the operative environmental flows and levels deemed necessary as a result of the review will be made via plan changes.

Comment [5]: Topic 16

Provisions are included in Chapter 19 that address the potential implications of climate change in the context of water allocation and use.

Comment [6]: Topic 4

Issue 5A – The diversity of water resources makes it difficult to achieve uniformity in water allocation and water use management regimes across the District.

Marlborough's geology, topography, land cover and climate vary dramatically across the district. This results in a diverse array of rivers and aquifers, evident in the size of catchments/aquifers, the length of rivers through the catchment, the spatial extent and depth of aquifers, the flow of water through the river/aquifer, water availability (and variation in water availability) and the natural and human use values that the waterbodies support. Although the objectives of the Marlborough Environment Plan (MEP) establish consistent objectives across all water resources, the means to achieve these outcomes will necessarily differ due to the above variation. It is

therefore difficult to achieve consistent approaches to managing water resources across Marlborough. The lack of consistency can create frustration, especially for water users who access water from more than one water resource.

[RPS]

Objective 5.1 – Water allocation and water use management regimes reflect hydrological and environmental conditions within each water resource.

If the management applied to the taking and use of water does not reflect the hydrological and environmental conditions that exist in each water resource, one of two things may happen: water users could be unnecessarily restricted in taking or using that water, or taking and use of water may result in adverse effects on the natural and human use values supported by the freshwater resource. These are inappropriate outcomes given the value of water in terms of its contribution to social, economic and cultural wellbeing and its life-supporting capacity. It is therefore essential that the management applied to any water resource is fit for purpose in order to achieve sustainable outcomes.

[RPS, R]

Policy 5.1.1 – Define and use freshwater management units to apply appropriate management to the taking and use of water within each water resource.

To ensure that the management applied to the taking and use of water is appropriate to the hydrological and environmental circumstances, it is necessary to distinguish between the different catchments and aquifers that exist in Marlborough. The Council will achieve this by identifying Freshwater Management Units (FMUs), which will be based on the hydrological characteristics of each water resource and the natural and human use values supported by the waterbody/bodies. These freshwater management units are identified in the MEP. This approach also gives effect to the National Objectives Framework of the National Policy Statement Freshwater Management 2014 (NPSFM), which requires the Council to identify freshwater management units.

[RPS, R]

Policy 5.1.2 – Recognise that the taking of water and the use of water are two distinct activities and where resource consent application is to be granted, separate water permits for each activity will be granted.

Most water taken from rivers or aquifers involves a subsequent consumptive use of that water, predominantly for irrigation of crops. Section 14 of the RMA treats the subsequent use of water as a distinct activity to the taking of the water in the first place. This is because the two activities have different potential adverse effects on the surrounding environment. The adverse effects of taking water tend to relate to the direct or indirect effects on the natural and human use values supported by the waterbody from which the water has been taken and on other people taking water from that resource. The efficiency of water use is a relevant consideration for the use of water, especially as the resource from which the water has been taken approaches full allocation. In these circumstances, inefficient water use could potentially deprive other users from accessing the water resource. This policy records that the Council will require applications for water permits to authorise the taking of water and the use of water separately. The distinct adverse effects of each of the activities will be managed through the separate applications.

Issue 5B – The taking, damming or diversion of water can compromise the life-supporting capacity of rivers, lakes, aquifers and wetlands.

Marlborough's freshwater bodies sustain a diverse range of natural and human use values. These values include the cultural and spiritual values of Marlborough's tangata whenua iwi; opportunities for passive and active recreation; the provision of habitat for indigenous flora and fauna, trout and salmon; a contribution to Marlborough's distinctive landscape and natural character; and the provision of a source of drinking water. In summary, the water that flows in

rivers or that is contained in aquifers, lakes and wetlands sustains Marlborough's community and environment.

Marlborough's freshwater bodies are also utilised as an important source of water for a range of uses, including irrigation, industrial, commercial and frost fighting. This water use relies on the taking, damming and/or diversion of water. These activities all have the potential to change the characteristics of the flow or level of water in the waterbody. The taking of water removes water from the river, aquifer, lake or wetland, reducing flow or level. The diversion of water out of a river, and associated riverbed modifications, changes the natural flow pattern and can also reduce flow or level. The damming of water retains water behind the dam structure potentially changing the character of the waterbody upstream and downstream of the dam structure.

Although natural and human use values have some resilience to natural changes in water flow and/or level, the taking, damming and diversion of water have the potential to significantly change the flow or level characteristics of waterbodies. Such changes can adversely affect the natural and human use values that rely on the water in the waterbody. Those effects could be as a result of one person's activity or the cumulative effect of multiple water users. The effects could be experienced in the short-term but also have the potential to become permanent, for example where there is a loss of habitat.

Any loss of natural and human use values, either short-term or long-term, will have an impact on the community and the intrinsic values of the environment.

[RPS, R]

Objective 5.2 – Recognise Te Mana o te Wai and ~~S~~safeguard the life-supporting capacity of freshwater resources by recognising the connection between water and the broader environment and retaining ~~sufficient~~ flows and/or levels required for the natural and human use values supported by waterbodies.

The natural and human use values supported by Marlborough's freshwater bodies are important to retain given their contribution to the social, economic and cultural wellbeing of the community. In addition, the values can also have significance as a matter of national importance under Section 6 of the RMA, which must be recognised and provided for. Objectives AA1 and B1 of the NPSFM ~~also~~ requires Council to recognise and consider Te Mana o te Wai in the management of fresh water, and to safeguard the life-supporting capacity, ecosystem processes and indigenous species of freshwater resources. ~~to be safeguarded.~~ Objective 5.2 reflects the need to recognise Te Mana o te Wai and safeguard the life-supporting capacity of Marlborough's freshwater bodies when managing the taking, damming or diversion of water.

Comment [7]: Topic 4

Natural and human use values

[RPS, R]

Policy 5.2.1 – Maintain or enhance the natural and human use values supported by freshwater bodies.

The natural and human use values supported by freshwater bodies in Marlborough are varied, reflecting the diversity of water resources highlighted in Policy 5.1.1. The natural and human use values supported by different waterbodies are identified in Appendix 5. Given their intrinsic value and their significance to the community, the policy seeks to retain the natural and human use values.

The development of allocation frameworks contained in the provisions of this chapter has taken into account Objective 5.2 and this policy. The setting of environmental limits established through subsequent policies, are intended to retain sufficient flow and/or level to maintain, restore and ~~or~~ enhance the natural and human use values of specific freshwater bodies. Maintaining or enhancing natural and human use values were also a relevant consideration in determining the circumstances under which the taking of water could occur without resource consent.

Some proposals to take, dam or divert water can involve site specific adverse effects on natural and human use values. This policy allows those potential adverse effects to be considered in the determination of any application for resource consent to take, dam or divert water.

Comment [8]: Topic 4

[RPS, R]

Policy 5.2.2 – Recognising Te Mana o Te Wai, ~~G~~gives priority to the integrated and holistic well-being ~~protecting the mauri~~ of freshwater ~~and freshwater flows/levels~~.

The National Policy Statement for Freshwater Management 2017 (NPSFM) provides councils with direction on how freshwater is to be managed through an objective and policy framework. Objective 5.2 requires councils to consider and recognise Te Mana o te Wai in freshwater management, and the policy requires councils to consider and recognise Te Mana o te Wai when making or changing regional policy statements and plans, noting that:

(a) Te Mana o te Wai recognises the connection between water and the broader environment – Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people); and

(b) values identified through engagement and discussion with the community, including tangata whenua, must inform the setting of freshwater objectives and limits.

~~Mauri is the term used by Marlborough's tangata whenua iwi to describe the cultural concept that all natural resources have a lifeforce. This lifeforce (wairua) is derived from the physical attributes of the resource as well as the spiritual association iwi have with natural resources. Water is considered to be particularly significant to iwi in this regard as it sustains all life. Papā-tū-ā-nuku (Mother Earth) supports all people, flora and fauna, and waterbodies represent the blood vessels that supply nourishment to her, and through her, to all living things.~~

~~Marlborough's tangata whenua iwi feel that there is a lack of understanding in the community and by decision makers that water has wairua. It is their view that land and water are therefore used and managed in ways that do not recognise the spiritual significance of the resource. As a result,~~ To achieve this, council and communities, including Marlborough's tangata whenua iwi, will come together and discuss what values they hold for the freshwater bodies in their rohe (geographical area) or areas of statutory acknowledgement, and set freshwater objectives and limits in response to this. This will include identifying what Te Mana o te Wai means to the Marlborough community. Marlborough's tangata whenua iwi often use terms like mauri to describe the cultural concept that all natural resources have a lifeforce. This lifeforce (wairua) is derived from the physical attributes of the resource as well as the spiritual association iwi have with natural resources. ~~t~~The taking, damming or diversion of water can adversely affect the mauri of water. ~~Of particular concern is the impact of reduced flow on the ability of each iwi to support traditional uses and values. Given the whakapapa link between Māori and water, the flows/levels in waterbodies are a reflection of the health of the tangata whenua. Marlborough's tangata whenua iwi wish to avoid making any waterbody waimate (where water flow/level becomes so degraded that it loses its mauri).~~

Te Mana o te Wai will assist in building a greater understanding amongst the community of the integrated and inter-connectedness of values and their role in managing freshwater resources.

Regard was had to protecting the mauri of freshwater and freshwater bodies when establishing the allocation frameworks and permitted activity rules contained in the provisions of this chapter, Te Mana o te Wai will build on this process.

Comment [9]: Topic 4

[R]

Policy 5.2.3 – Protect the significant values of specifically identified freshwater bodies by classifying the taking, damming or diversion of water in these waterbodies as a prohibited activity.

There are freshwater bodies in Marlborough that are in an unmodified state or a state close to unmodified. These water bodies retain high or very high natural character. In these circumstances, it is considered appropriate to preserve the natural character by preventing the

taking, damming or diversion of water. This is reflected in regional rules that prohibit specific activities in these waterbodies that have significant values.

Taking, damming or diversion of water lawfully established prior to 9 June 2016 is also excluded from this prohibition.

Comment [10]: Topic 4

Setting of environmental limits

[R]

Policy 5.2.4 – Set specific environmental flows and/or levels for Freshwater Management Units dominated by rivers, lakes and wetlands to:

(a) protect the mauri of the waterbody;

(b) protect instream habitat and ecology;

(c) maintain fish passage and fish spawning grounds;

(d) preserve the natural character of the river;

(e) maintain water quality;

(f) provide for adequate groundwater recharge where the river is physically connected to an aquifer or groundwater; ~~and~~

(g) maintain amenity values; and

(h) enable natural flushes in rivers to occur.

Policy B1 of the NPSFM requires the Council to set environmental flows and/or levels for all FMUs. An environmental flow or level includes an allocation limit and a minimum flow or level. This is a complex task given the diversity in the natural and human use values supported by rivers, lakes and wetlands and the variation in the flow/level required to maintain those values. This policy sets out the matters that have been considered in the process of setting the environmental flows/levels established in the MEP. The environmental flows/levels are intended to provide sufficient water to sustain the matters identified in (a) to (g).

~~[R]~~

~~**Policy 5.2.5 – With the exception of water taken for domestic needs or animal drinking water, prevent the taking of water authorised by resource consent when flows and/or levels in a Freshwater Management Unit are at or below a management flow and/or level set as part of an environmental flow and/or level set in accordance with Policy 5.2.4.**~~

~~Water users will not be able to continue taking water once in a Freshwater Management Unit flows and/or levels reach the management flows/levels established in the MEP. Any such abstraction would result in an adverse effect on the life-supporting capacity of the waterbody. The policy will be implemented by way of a condition(s) of resource consent.~~

~~Water taken for domestic needs or animal drinking water is exempt from the policy given the contribution they make to sustaining the community.~~

[R]

Policy 5.2.6~~5~~ – For rivers, establish whether the flow has reached the management flows set in the Marlborough Environment Plan on the basis of 24 hour averages (midnight to midnight).

This policy establishes the basis on which management flows for rivers will be administered. A 24 hour average evens out short-term fluctuations in river flow and represents a pragmatic time period. Any shorter period is not administratively efficient as water users could be required to cease abstraction multiple times within a day while the flow fluctuates above and below the relevant management flow. Midnight to midnight reflects a working day and the timing allows water users to make decisions for managing their operations on the following day.

[R]

Policy 5.2.~~7~~6 – Where there is insufficient environmental data to establish the flow requirements of natural and human use values, use a default minimum flow of 80% of the seven day mean annual low flow for rivers with a mean flow greater than 5m³/s and 90% of the seven day mean annual low flow for rivers with a mean flow less than 5m³/s.

Policy B1 NPSFM requires the Council to set environmental flows for all FMUs, which includes minimum flows. The Council monitors flow in rivers from which there is a demand for water, but does not necessarily monitor flow in rivers from which there is no or little demand. In some cases, this means that there is insufficient hydrological information and other relevant environmental data to establish a specific minimum flow for the river. In these circumstances, a default has been applied to meet the requirements of the NPSFM. The relevant minimum flow in these circumstances will be applied as the management flow in a condition of resource consent.

[R]

Policy 5.2.~~8~~7 – Consider proposals to set a minimum flow for a river that varies from the default minimum flow established by Policy 5.2.~~7~~ 6 on a case-by-case basis, including through the resource consent process. Policies 5.2.1 to 5.2.4 will be utilised to assist the determination of any such proposal.

The default minimum flow set for rivers in accordance with Policy 5.2.~~7~~ 6 may not provide adequate protection to the natural and human use values supported by a river or may unnecessarily constrain the taking of water from the river. This policy provides an opportunity for any person to provide the Council with specific information that may justify a higher or lower minimum flow. In these circumstances it is appropriate that Policies 5.2.1 to 5.2.4 are utilised to make this judgement.

[R]

Policy 5.2.~~9~~8 – Have regard to the adverse effects of the proposed instantaneous rate of take from any river, except an ephemerally flowing river, if that rate of take exceeds or is likely to exceed 5% of river flow at any time.

The minimum flows set for rivers manage the cumulative effects of taking water on natural and human use values. However, it remains possible for a take at a discrete location to have a significant adverse effect on flow immediately downstream of the point of abstraction. The risk is probably greatest in the upper part of a catchment due to lower flow that tends to occur in those reaches. This policy allows decision makers to have regard to the adverse effects of an individual take in certain circumstances irrespective of the minimum flows established in the MEP. ~~The~~where the proposed rate of abstraction ~~must be~~is calculated to exceed 5% of the river flow at the point of abstraction. Flows in excess of this threshold are considered to have the potential to adversely affect natural and human use values. The policy only applies if the river is perennially or intermittently flowing.

Comment [11]: Topic 4

[R]

Policy 5.2.~~10~~9 – Have regard to the importance of flow connection to maintaining natural and human use values when considering resource consent applications to take water from intermittently flowing rivers, including:

- **(a) the timing and duration of that flow connection;**
- **(b) the physical extent of any disconnection in flow; and**
- **(c) any adverse effects on connected aquifers.**

Even though some rivers do not have surface flow at all times, there may still be circumstances where the flow connection is important in maintaining natural and human use values. For example, flow at a critical time of year may be important to facilitate the migration of indigenous fish, trout or salmon upstream or downstream. The policy allows the importance of flow connection to be considered when determining a resource consent application to take water from an intermittently flowing water body. The matters set out in (a) to (c) are those that are relevant to this consideration. Matters (a) and (b) relate to changes in the temporal and spatial extent of any

disconnection, while matter (c) recognises that the intermittent flow may recharge connected aquifers. The changes created by the taking of water in this regard must be considered in light of any adverse effect on natural and human use values.

[R]

Policy 5.2.~~11~~10 – Set specific minimum levels for Freshwater Management Units dominated by aquifers to:

(a) prevent physical damage to the structure of the aquifer;

(b) prevent headwater recession of spring flows;

(c) prevent a landward shift in the seawater/freshwater interface and the potential for saltwater contamination of the aquifer;

(d) maintain natural and human use values of rivers and wetlands where groundwater is physically connected and contributes significantly to flow in the surface waterbody;

(e) maintain groundwater quality; and

(f) prevent long-term decline in aquifer levels that compromises the matters set out in (a) to (e).

Policy B1 of the NPSFM requires the Council to set environmental levels for all FMUs, including minimum levels. This is a complex task for aquifers given the range of factors that influence rates of aquifer recharge and the difficulties determining the effect of abstraction on groundwater levels. This includes lags in response to either recharge and/or abstraction. This policy sets out the matters that have been considered in the process of setting the minimum levels in the MEP for FMUs dominated by aquifers. The minimum levels are intended to achieve the matters in (a) to (f) and therefore protect the sustainability of the FMUs in the long-term.

[R]

Policy 5.2.11 - To implement a programme of investigation in order to establish minimum flows and/or levels for the Wairau Aquifer FMU in accordance with Policy 5.2.4 and Policy 5.2.10 by 2024, including a review of the minimum levels already established for Wairau Aquifer Urban Springs FMU, Wairau Aquifer Central Springs FMU and Wairau Aquifer North Springs FMU.

Policy B1 of the NPSFM requires the Council to set water quantity environmental flows and/or levels for all Freshwater Management Units. Environmental flows and/or levels are defined in the NPSFM as a type of limit which describes the amount of water in a freshwater management unit, and must include an allocation limit and a minimum flow or level.

At the time of notification of the MEP, the Council did not hold the resource use and environmental data required to set a minimum flow or level for the recharge sector of the Wairau Aquifer FMU. For this reason, the Council adopted a programme of progressive implementation that was publicly notified on 2 April 2015. That programme sets a date of 2024 as a target for establishing this minimum flow or level.

In recognition of the hydraulic connections within the wider Wairau Aquifer FMU, a review of the minimum levels in Schedule 3 of Appendix 6 of the MEP for the Wairau Aquifer Urban Springs FMU, Wairau Aquifer Central Springs FMU and Wairau Aquifer North Springs FMU will occur alongside the programme of investigation for establishing the minimum flow or level for the recharge sector of the Wairau Aquifer FMU.

This policy establishes a commitment to a progressive programme of investigation to collect and analyse environmental data required to establish the minimum flow or level. The minimum flow or level of the Wairau Aquifer FMU will be added to the MEP by plan change or upon review.

If, as a consequence of the review of the minimum levels for the Wairau Aquifer Urban Springs FMU, Wairau Aquifer Central Springs FMU or Wairau Aquifer North Springs FMU, changes to those levels are required, this will also be amended in the MEP by plan change or upon review.

This policy assists to give effect to Policy B1 of the NPSFM and the Council's Programme of Staged Implementation adopted under Policy E1 the NPSFM.

Comment [12]: Topic 4

[R]

Policy 5.2.12 – Set conductivity limits for Freshwater Management Units dominated by aquifers adjoining the coast to manage the potential for saltwater contamination of the aquifer.

One of the potential effects of taking water from FMUs adjoining the coast is the potential within an aquifer to reduce water pressures at the interface between freshwater and salt water. Reduced pressures will result in a landward shift of the interface, creating the potential for salt water intrusion into the aquifer. Any salt water intrusion will adversely affect the ability to use the groundwater and is likely to result in long-term effects.

Conductivity is an indicative measure of the salt levels in groundwater. The setting of conductivity limits for FMUs adjoining the coast is intended to ensure the taking of water from aquifers does not shift the interface. A warning system is also in place to detect signs of salt water intrusion. Limits will be imposed by way of conditions on resource consents, and due to the nature of the potential effects of abstraction in the coastal area, restrictions will be based on reducing actual water taken rather than that allocated through the resource consent.

[R]

Policy 5.2.13 – With the exception of water taken for domestic needs or animal drinking water, prevent the taking of water authorised by resource consent when flows and/or levels in a Freshwater Management Unit are at or below a management flow and/or level set as part of an environmental flow and/or level set in accordance with Policy 5.2.4.

Comment [13]: Topic 4

Water users will not be able to continue taking water once in a Freshwater Management Unit flows and/or levels reach the management flows/levels established in the MEP. Any such abstraction would result in an adverse effect on the life-supporting capacity of the waterbody. The policy will be implemented by way of a condition(s) of resource consent.

Water taken for domestic needs or animal drinking water is exempt from the policy given the contribution they make to sustaining the community.

Allocation of water

[R]

Policy 5.2.~~13~~ 14 – Limit the total amount of water available to be taken from any freshwater management unit and avoid allocating water (through the resource consent process) beyond the limit set.

Policy B1 NPSFM requires the Council to set environmental flows and/or levels for all FMUs. These levels include an allocation limit, a limit on the total amount of water that can be allocated within any FMU. Policy 5.2.14~~3~~ gives effect to Policy B1 of the NPSFM by establishing allocation limits for each FMU through regional rules. For those water resources that have multiple allocation classes, an allocation limit is set for each class.

Policy B5 of the NPSFM specifies that the Council must not make decisions that will likely result in future over-allocation. This means that the Council cannot continue to allocate water once the cumulative level of allocation from a FMU reaches the allocation limit set in rules. For this reason, any further allocation of water from the FMU should be avoided (unless explicitly provided for in another allocation class).

Environmental flows and/or levels include allocation limits and minimum flows/levels, and both are set to provide for and/or achieve the matters expressed in Policies 5.2.4 and 5.2.8.

[R]

Policy 5.2.~~14~~ 15 – Where there is insufficient environmental data to establish an allocation limit for a river, use a default allocation limit of 50% of the seven day mean annual low flow for rivers with a mean flow greater than 5m³/s and 30% of the seven day mean annual low flow for rivers with a mean flow less than 5m³/s.

Policy B1 NPSFM requires the Council to set environmental flows for all FMUs, which includes allocation limits. The Council monitors flow in rivers from which there is a demand for water, but does not necessarily monitor flow in rivers from which there is no or little demand. In some cases, this means that there is insufficient hydrological information and other relevant environmental data to establish a specific allocation limit for the river. In these circumstances, a default has been applied to meet the requirements of the NPSFM. The relevant allocation limit in these circumstances will be applied as a condition of resource consent.

[R]

Policy 5.2.~~15~~ 16 – Protect flow variability of rivers by using, where identified as necessary, a system of flow sharing that splits allocation of available water between instream and out-of-stream uses.

Objective AA1 of the NPSFM requires Council to recognise and consider Te Mana o te Wai in the management of fresh water. The establishment of environmental flows for rivers affords protection to natural and human use values by establishing the minimum flow requirements for those uses and values. In some circumstances, flow variability above the minimum flow may also be important to sustain the natural and human use values supported by the river, including Te Mana o te Wai values identified by the community. Where this is the case, a system of flow sharing is used to proportionally allocate the water above the minimum flow to both abstractive users and natural and human use values. In other words, a proportion of the water available within the allocation class can be abstracted, while a proportion must be left in the river. The water left in the river will ensure that the taking of water does not reduce river flow to the minimum for an extended period of time. Flow sharing will leave one unit of water for instream use for every two units abstracted within a class (referred to as 2:1 flow sharing).

The detail of the flow sharing is river specific and is reflected in the allocation limits and thresholds for taking water in each of the allocation classes.

Note:

That there is no provision for flow sharing within any Class A allocation, as flows below the minimum flow are effectively part of the flow share for Class A.

Comment [14]: Topic 11

[R]

Policy 5.2.~~16~~ 17 – For resource consent takes from the Waihopai River, Awatere River and other rivers that utilise an upstream flow monitoring site, allocations for the taking of water will be reduced proportionally as flows fall in order to avoid any breach of an environmental flow. This Policy does not apply to existing non-consumptive takes related to regionally significant infrastructure.

When monitoring of river flow occurs downstream of abstraction of water from the river, the effect of abstraction on river flow can be measured. In the Waihopai FMU and Awatere FMU, the monitoring of river flow occurs predominantly upstream of abstraction due to the absence of suitable flow monitoring sites further downstream. The management flow that applies in each FMU is the flow measured at the monitoring site, corresponding to an equivalent minimum flow that gives effect to Policy 5.2.4 downstream of abstraction. (Monitoring of flow in the Waihopai and Awatere Rivers over many years has allowed the establishment of a robust relationship between flows at the flow monitoring sites and gauged flows at other locations.)

Taking into account the allocation limits, abstraction downstream of the flow monitoring site can result in the non-attainment of the minimum flow that is sought to be achieved downstream. For this reason, the policy requires a proportional reduction in the allocations made by resource consent and consequent rationing of abstraction.

The abstractions will be limited based on flows recorded at the monitoring site to achieve the minimum flow for management purposes as specified in Volume 3, Appendix 6, Schedule 3, plus any environmental flow share within the Class. As flow at the monitoring site falls from the rationing point in Schedule 3, towards the final cut off point, abstractions will be rationed progressively, with available allocation expressed as a percentage of the consented rate of take as required to protect the minimum flow.

[R]

Policy 5.2.~~17~~ 18 – Implement water restrictions for water users serviced by municipal water supplies when the management flows/levels for the resource from which the water is taken are reached.

At times of water restriction it is important that all of the community respond to the vulnerability of water resources. The potential impacts on the natural and human use values of waterbodies can be heightened at times of low flow and/or water levels. While restrictions are imposed through conditions of consents on non-urban water users, it is also appropriate that urban water users accessing municipal water supplies take measures to reduce water usage during times of low flows and/or levels. This policy will be implemented by the Council's Assets and Services Department as managers of the District's municipal water supplies.

Diversion of water

[R]

Policy 5.2.~~18~~ 19 – Require resource consent for the diversion of water to enable the potential adverse effects of the diversion to be considered.

The diversion of water from its natural course has the potential to adversely affect the natural and human use values supported by the waterbody and existing water users downstream of the diversion. At its worst, there may not be sufficient water downstream to sustain the values and uses. The nature, severity and significance of the potential adverse effects will be circumstantial and will depend on the nature of the waterbody and the type of diversion, as well as the natural and human use values and other uses currently supported downstream of the proposed diversion. To ensure that the potential adverse effects can be accurately identified and assessed, diversions of water will generally require resource consent. The specific circumstances of the proposed diversion can then be considered in the determination of any application for water permit.

[R]

Policy 5.2.~~19~~ 20 – Have regard to the following matters in determining any resource consent application to divert water:

(a) any adverse effects on Marlborough's tangata whenua iwi values associated with the waterbody, including mahinga kai.

Comment [15]: Topic 4

(a~~b~~b) the purpose of the diversion and any positive effects;

(~~b~~bc) the volume or proportion of flow remaining in-channel and the duration of the diversion;

(~~c~~cd) the effect of the diversion on environmental flows set for the waterbody;

(~~d~~de) the scale and method of diversion;

(~~e~~ef) any adverse effects on natural and human use values identified in the Marlborough Environment Plan in the reach of the waterbody to be diverted;

(~~f~~fg) any adverse effects on permitted or authorised uses of water; and

(~~g~~h) any adverse effects on the natural character of the waterbody, including but not restricted to flow patterns and channel shape, form and appearance.

The matters listed in (~~e~~f) to (~~g~~h) are the potential adverse effects created by the diversion of water. The nature, severity and significance of the potential adverse effects are influenced by the matters listed in (a) to (~~d~~e). The consideration of the matters listed in the policy will allow a determination to be made as to whether the proposed diversion of water is sustainable.

Damming of water

[R]

Policy 5.2.~~20~~ 21 – Where water is to be dammed to enable the storage of water, encourage the construction and use of "out-of-river" dams in preference to the construction and use of dams within the beds of perennially or intermittently flowing rivers.

The damming of water to store water is a key response to temporary and seasonal shortages of water for irrigation purposes. Stored water provides a reservoir that can be accessed when other supplies are constrained or restricted. The policies and methods under Objective 5.8 focus on the positive effects of storing water.

Storage can involve the interception of run-off by damming ephemeral water bodies, the damming of intermittently or permanently flowing water bodies or the placement of abstracted water in purpose-built reservoirs on land. Dams constructed on riverbeds create the potential for a range of adverse effects (see Policies 5.2.~~21~~ 22 and 5.2.~~22~~ 23 for more detail) that may not be created when water is placed in reservoirs on land. For this reason, the construction of reservoirs on land is preferred to dams within the bed of rivers. However, the policy does not prohibit the construction of dams within the bed of rivers: applications for resource consent can still be made and will be considered having regard to Policies 5.2.~~21~~ 22 and 5.2.~~22~~23. However, district rules will create an incentive to utilise "out-of-river" dams for any water storage proposal.

Comment [16]: Topic 14

A decision maker may also utilise this policy to consider alternatives to the use of dams within the bed of rivers. The extent to which this consideration is necessary will also rely on the significance of the potential adverse effects of the damming of water as assessed under Policies 5.2.~~21~~ 22 and 5.2.~~22~~23.

[R]

Policy 5.2.~~21~~ 22 – Ensure any new proposal to dam water within the bed of a river provides for:

(a) effective passage of fish where the migration of indigenous fish species, trout and/or salmon already occurs past the proposed dam site provided that if the purpose of the dam is for the restoration and/or establishment of only native species habitat then fish passage for trout and salmon is not required;

(b) sufficient flow and flow variability downstream of the dam structure to maintain:

(i) existing indigenous fish habitats and the habitats of trout and salmon; and

(ii) permitted or authorised uses of water; ~~and~~

(iii) flushing flows below the dam;

(iv) mauri o te wai; and

Comment [17]: Topic 4

(c) the natural character of any waterbody downstream of the dam structure; and

have regard to the matters in (a) to (c) when considering any resource consent application to continue damming water.

Where a dam is proposed to be constructed in the bed of a river in spite of Policy 5.2.~~19~~21, the policy identifies three matters to be provided for as part of the proposal. It recognises that a dam structure can act as a barrier to fish passage, modify the flow pattern downstream of the dam structure ~~and~~, alter the natural character and mauri of the river of the river (or other downstream

Comment [18]: Topic 13

waterbodies) as a result of flow modification. The nature and significance of the adverse effects created by the dam structure will vary depending on the proposed structure, and the nature of the river and the natural and human use values it supports. This policy allows these proposal and site specific factors to be taken into account.

This policy can also be applied to applications for resource consent to continue damming water (i.e. existing dams). Given the existing dam structure, there may be limits to the extent to which the matters in (a) to (c) can be provided for. For this reason, the policy direction is to have regard to the matters, rather than provide for them. However, opportunities to remedy or mitigate the existing adverse effects may exist and can be addressed via conditions imposed on the grant of the resource consent.

[R]

Policy 5.2.~~22~~ 23 – In the determination of any resource consent application, have regard to the following effects of damming of water:

- **(a) the retention of sediment flows and any consequent adverse effect upstream or downstream of the dam structure;**
- **(b) changes in river bed levels and the effects of those changes;**
- **(c) any downstream effects of a breach in the dam wall;**
- **(d) interception of groundwater or groundwater recharge; ~~and~~**
- **(e) interception of surface water run-off;**
- **(f) loss of indigenous biodiversity;**
- **(g) the positive effects of the damming; and**
- **(h) the degradation of mauri o te wai.**

Comment [19]: Topic 14

Comment [20]: Topic 4

In addition to the matters identified in Policy 5.2.~~21~~22, there are a range of other potential adverse effects of damming water in the bed of a river or on land. These effects are identified in (a) to (~~e~~h) of this policy. Regard will be had to these effects in determining a resource consent application to dam water.

Water shortage direction

[R]

Policy 5.2.~~23~~ 24 – Where necessary, utilise water shortage directions to manage the adverse effects of serious temporary shortages of water on natural and human use values supported by the waterbody.

Section 329 of the RMA allows the Council to issue a notice to apportion, restrict or suspend the taking, use, damming or diversion of water to address a serious temporary shortage of water. The policy identifies that in addition to the management applied through other policies in this chapter, the Council will also consider the option of using a water shortage direction. The circumstances of the shortage will have to be sufficient to justify the additional apportionment, restriction or suspension over and above that already applied in the rules of the MEP.

Other

[R]

Policy 5.2.~~24~~ 25 – Impose conditions on water permits to take water requiring users to reduce and cease the authorised take when specified flows and/or levels are reached.

Conditions will be imposed on the grant of new resource consents (whether to continue taking water or to take water for the first time) requiring abstraction to cease when limits set in the MEP are reached. The environmental flows and limits are established by rules in the MEP in accordance with Policies 5.2.4, 5.2.~~7~~ 6 and 5.2.~~11~~10.

[R]

Policy 5.2.~~25~~ 26 – Where necessary, review the conditions of existing water permits authorising the taking of water within 24 months of the Marlborough Environment Plan (or any subsequent plan changes) becoming operative to ensure that relevant environmental flows and levels are met.

For many water resources, environmental flows or levels will be established for the first time. In other cases, environmental flows or levels established in previous planning documents, or on an ad hoc basis through the resource consent process in the absence of such plan limits, have been modified upon review. Where the ongoing exercise of those water permits will result in the non-attainment of Objective 5.2 due to the absence of limits or due to adherence to previous limits, then it is appropriate to consider imposing the limits set by the MEP. This will be achieved by undertaking a review of resource consent conditions in accordance with Section 128(1)(b) of the RMA. Such reviews can only occur once the rules setting the environmental flows or levels become operative. The policy signals that the reviews will occur within a set time period after the operative date.

Plan changes subsequent to the MEP becoming operative may also introduce new limits or may modify existing limits. The policy can also apply in this situation once the plan change becomes operative.

[R]

5.M.1 - Setting community values – Te Mana o te Wai

Council will work with communities, including Marlborough's tangata whenua iwi, to identify values and use them to inform the setting of freshwater objectives and limits.

Comment [21]: Topic 4

[R]

5.M.2 - Setting of Environmental Flows and/or Levels.

Where the Council has established a Progressive Implementation Programme under Policy E1 of the NPSFM for the establishment or review of minimum flow or levels, the Council will work with all relevant parties including, but not limited to, Marlborough's tangata whenua iwi, water user groups, industry groups, resource users and community organisations to determine any minimum flow or level to be incorporated or amended by plan change to the MEP.

Comment [22]: Topic 4

Issue 5C – Marlborough's social and economic wellbeing relies on an adequate supply of freshwater.

Water is considered Marlborough's most important natural resource. Over time our communities have come to rely upon freshwater in the district's rivers, lakes, wetlands and aquifers. This freshwater, particularly from aquifers, is the source of the drinking water that sustains many of Marlborough's rural and urban communities and provides an essential contribution to health standards within those communities. Freshwater also critically supports primary production in Marlborough, particularly for irrigation of land and crops in our dry climate, and is heavily used for commercial and industrial purposes. The economic value of that water to Marlborough's economy was estimated at $1.1 billion in 2011, 77% of which was contributed through primary production. Reductions in the supply of water would therefore have significant implications for Marlborough's social and economic wellbeing.

[R]

Objective 5.3 – Enable access to reliable supplies of freshwater

For the reasons identified in Issue 5C, enabling access to freshwater in Marlborough's rivers, lakes, wetlands and aquifers is one of the Council's most important functions. A reliable and suitable water supply maintains community health standards and can result in significant

improvements in primary production, commercial and industrial outputs. This objective is considered necessary in order to ensure Marlborough's social and economic vitality.

[R]

Policy 5.3.1 – To allocate water in the following order of priority:

(a) Te Mana o te Wai

(a~~b~~) natural and human use values; then

(~~b~~c) aquifer recharge; then

(c~~d~~) domestic and stock water supply; then

(d~~e~~) municipal water supply; and then

(e~~f~~) all other takes of water.

This policy establishes a hierarchy of water uses. The hierarchy reflects the relative value or significance of the uses listed. The term "uses" is broad and extends beyond consumptive use to include Te Mana o te Wai, intrinsic values, ecosystem services and hydrological functions. The relative priority between the different uses listed in (a) to (~~e~~f) have been used as the basis for allocating Marlborough's freshwater resources. This does not mean that consumptive use is not valuable or significant, but the application of the policy ensures that critical uses are provided for as a priority. Once those uses are provided for, water can then be made available for the consumptive uses listed in (d~~c~~) to (f~~e~~). The application of the policy does influence the reliability of water abstraction for consumptive use. Limits to protect the matters in (a) and (~~b~~c) will be applied to consumptive water uses. However, those restrictions will be applied progressively, reflecting the relative priority of domestic and stock water supply, municipal water supply and other consumptive takes of water. The term "uses" is broad and extends beyond consumptive use to include Te Mana o te Wai, intrinsic values, ecosystem services and hydrological functions.

Comment [23]: Topic 4

The only way any other form of prioritisation of access to water could be achieved would be by way of plan change as a result of the development of a proposal resulting from broad community engagement including iwi, utilising the assistance of council facilitation. A method or model for such a community engagement process on any different prioritisation or rationing proposal is contained in Method 5.M.2.

Given the NPSFM 2017 directives to protect Te Mana o te Wai and the compulsory national values, such a community engagement process would have to be very broad and on an inclusive basis, particularly involving a water user group or groups to achieve different water access through a range of mechanisms. The process would have to address considerations such as - alternative land use; improved efficiency in water application; assessment of soil saturation & field capacity of soils; larger-scale or small-scale storage possibilities; and/or some form of rationing with a higher level cut-off for general irrigation leaving a small pocket of water allocated for agreed 'survival crops.

Comment [24]: Topic 4

[R]

Policy 5.3.2 – Provide information to water users about the amount of water available for abstraction and the circumstances under which it is available.

The use of water involves users making investment decisions relating to the establishment, redevelopment, upgrading and maintenance of infrastructure required to take and use that water. It is therefore important that water users are provided with adequate information regarding the volume of water that is expected to be available for out-of-stream use, as this will influence those investment decisions. Rules will identify the volume of water available for consumptive uses in each freshwater management unit.

Equally important are the circumstances under which the water is available for taking. The application of Policies 5.2.4 to 5.2.11 will influence the reliability of the water supply. The consequent rules establishing environmental flows for rivers and levels for aquifers will prevent water from being taken in particular circumstances. It is anticipated that water users will utilise

this information to make informed decisions on the level of risk they are prepared to adopt when making their respective investments.

The information provided to water users will be based upon historical river flow or aquifer level data. However, it is future rainfall that will determine the status of the river flow and aquifer levels, and therefore the availability of water for abstraction. Historical records provide a representation of the reliability of the water allocation but should not be treated as an accurate prediction due to natural variation in rainfall between seasons and within a season.

[R]

Policy 5.3.3 – Confirm and, where they have not previously been set, establish allocation volumes that reflect the safe yield from any Freshwater Management Unit over and above the ~~management~~ minimum flows and/or levels set through the implementation of Policies 5.2.4 and 5.2.10.

Comment [25]: Topic 4

The NPSFM requires the Council to set limits on the allocation of water. Previous planning instruments had established allocation limits for particular rivers and aquifers to ensure the sustainability of the water resource, protect the natural and human use values that the water resource sustains and maintain the reliability of supply for existing water users. These limits have been reviewed and, where appropriate, reconfirmed. Other water resources have not previously had allocation limits and these have now been set. Rules prevent the allocation of water beyond these limits.

For some rivers, two allocation classes are provided for, referred to as Class A and Class B. In many cases, the two classes are carried over from previous planning instruments. Class A water permits have a greater inherent reliability, due to their lower restrictions, than Class B permits. In some cases, a Class B allocation has been provided for the first time in order to provide for growth in demand (within the constraints of the water resource). These allocation classes provide for run-of-the-river irrigation and other instantaneous uses. Allocation moves sequentially through the two allocation classes.

Note that Policy 5.8.2 also provides for a Class C allocation for some water resources, specifically for storage purposes. Class C water can be applied for at any stage.

[R]

Policy 5.3.4 – Establish allocation volumes for municipal water supplies and avoid applying management flows and levels to the taking of water for the purpose of municipal supply.

Municipal water supplies perform the important function of providing water to residential, commercial and industrial activities in Marlborough's urban environments. Without the supply of water, the urban environments would cease to function. It is therefore critical for our social and economic wellbeing that our towns and small settlements have a reliable supply of water. This policy achieves this aim by providing an allocation specifically for the water needs of Blenheim, Picton, Havelock, Renwick and Seddon (including the Awatere community). The allocation volume is set out in rules. This policy also assists to implement Policy 5.3.1 by making municipal water supplies exempt from restrictions that would apply to other consumptive users.

[R]

Policy 5.3.5 – Enable the take and use of water where it will have little or no adverse effect on water resources.

The policy records a principle that users should be entitled to access water with relative ease if the provisions of the MEP determine the abstraction from the water resource to be sustainable. This policy could be applied in two circumstances. The first is through the application of permitted activity rules for the taking of water. Under Section 14 of the RMA, water use can only occur if provided for in a rule or through a resource consent. One of the key functions of the Council is therefore to enable sustainable abstraction of water via the use of permitted activity rules.

Access to water allocated through the provisions of the MEP should also be relatively straight forward. However, one of the potential effects of the taking of water is to adversely affect the reliability of existing water takes accessing the same resource, so called "interference effects." There may also be site specific effects of the taking of water on natural and human use values. For this reason, the rules still require a water permit for takes beyond the low volume uses enabled by permitted activity rules. The resource consent process will enable the adverse effects of any proposed take on another user or on natural and human use values to be taken into account. However, the issue of sustainable levels of abstraction have been determined through the application of Policies 5.2.4 to 5.2.~~16~~17.

There may be circumstances in which it is appropriate for the Council to consider reducing the amount of water able to be taken under the permitted activity rules to assist it to manage extreme shortages of water. This would be achieved by a Water Shortage Direction issued under Section 329 of the RMA. Any such direction would be issued to address the potential for abstraction authorised by permitted activity rule to adversely affect the resource, the natural and human use resources supported by the resource and/or the ability of people to continue taking essential water from the resource (albeit at a lower rate).

[R]

Policy 5.3.6 – Allocate water within any class on a first-in, first-served basis through the resource consent process until the allocation limit is reached for the first time.

This policy establishes the basis on which freshwater will be allocated within any class. This continues the approach utilised under water allocation and use regimes in previous planning documents. Once an allocation limit is reached, then no further water can be allocated within the class. However, water within the class can become available to allocate again. Other provisions in the MEP address that situation (see Issue 5I).

[R]

Policy 5.3.7 – Allocate water to irrigation users on the basis of a nine in ten year water demand for the crop/pasture.

The irrigation of crops and pasture is designed to offset shortages of soil-water experienced over the drier months of the year. The aim is to provide for the water demand of the plant by supplementing rainfall. Crop and pasture demand for water therefore varies season to season and within each season, depending on the amount of rainfall. This policy establishes the basis for which irrigation water will be allocated. Allocating on a "nine years in ten" basis fully meets irrigation requirements on the property nine years out of ten and meets a large part of requirements in the very driest years. This standard recognises that it is difficult to provide for absolute reliability given the potential for extreme fluctuations in climate, but nonetheless seeks to provide a high degree of reliability. This reflects the value of the crop/pasture to the grower. It also reflects the fact that the higher the reliability standard is set, the smaller the total area of land that can be irrigated within the allocation limits set for the resource. The "nine in ten" reliability standard is a balance between the value of irrigation to individual growers and its value to Marlborough collectively.

[R]

Policy 5.3.8 – Approve water permit applications to continue taking and using surface water when:

(a) a specific minimum flow and allocation limit for the source Freshwater Management Unit is established in the Marlborough Environment Plan;

(~~a~~b) the Freshwater Management Unit is not over-allocated in terms of the limits set in the Marlborough Environment Plan;

(~~b~~c) there is to be no change to the intended use of water, or if there is a change in use, this does not result~~s~~ in an ~~decrease~~ increase in the rate of take of water; and

Comment [26]: Topic 4

(~~c~~d) the application is made at least three months prior to the expiry of the existing water permit.

The policy provides criteria for determining water permit applications to continue taking water from the same water resource. If the circumstances set out in (a) to (d) apply, then the existing take and use of water should be granted. Depending on how other policies in the MEP apply to the take, it may be granted with different conditions.

[R]

Policy 5.3.9 – Express any allocation of water for irrigation purposes on the following basis:

	Take of surface water	Take of groundwater	Use of water , except for the Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit or Omaka Aquifer Freshwater Management Unit.	Use of water – Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit or Omaka Aquifer Freshwater Management Unit
Quantity	m^3	m^3	m^3	m^3
Period	24 hours	Annual	Monthly; and Annual	Annual
Method of determination	The maximum daily rate of take shall not exceed the daily volume that fully meets irrigation demand on 90% of the days in the irrigation season, as calculated by using ~~IrriCalc with~~ climate data for the period 1 July 1972 to the most recent year ending 30 June. ~~30 June 2014~~.	The maximum rate of take (m^3/year) in a July-June year shall not exceed the volume that fully meets irrigation demand in 90% of July-June years in the period 1 July 1972 to the most recent year ending 30 June.~~30 June 2014, as calculated by using IrriCalc~~.	The maximum volume of irrigation water use in a calendar month shall be the monthly volume that fully meets irrigation demand in 90% of those months in the period 1 July 1972 to the most recent year ending 30 June;~~30 June 2014, as calculated by using IrriCalc;~~ and The maximum volume of irrigation water use in a July-June year shall be the volume that fully meets irrigation demand in 90% of July-June years in the period 1 July 1972 to the most recent year ending 30 June.~~ 2014, as calculated by using IrriCalc.~~	The maximum volume of irrigation water use in a July-June year shall be the volume that fully meets irrigation demand in 90% of July-June years in the period 1 July 1972 to the most recent year ending 30 June.~~30 June 2014, as calculated by using IrriCalc.~~

Comment [27]: Topic 4

This policy sets out how allocations will be expressed on water permits authorising the taking and use of water. A condition will be applied to water permits authorising the taking of surface water, the taking of groundwater and the use of water, setting out the specific allocation for each activity. The application of the policy will ensure consistency in the expression of conditions. Such consistency will assist to reduce the potential for conflict between water users.

[R]

Policy 5.3.10 – The instantaneous rate of take from a surface waterbody may exceed the instantaneous equivalent of the maximum daily allocation:

(a) by 20% at any point in time; or

(b) for 20% of the time;

but in both cases the cumulative take over 24 hours (midnight to midnight) must not exceed the daily maximum.

The infrastructure installed for irrigation from surface water resources is not necessarily set up to operate on a 24 hour basis. In some cases, the authorised allocation is applied over a shorter period (i.e. at an instantaneous rate in litres per second that exceeds the instantaneous equivalent of the maximum daily allocation). This policy provides consent holders with the flexibility to apply the allocated water effectively at this higher rate, provided that the volume of water used over the day does not exceed the daily maximum established through Policy 5.3.9. The higher instantaneous rate of take may occur either at any point over the day or for a proportion of the day. In either case, an exceedance of 20% is considered fair and reasonable in this regard. The limit of 20% also assists to manage interference effects between users and adverse effects on the natural and human use values supported by the river. The irrigation day is set from midnight to midnight.

[R]

Policy 5.3.11 – Have regard to the potential for any take of water to adversely affect the ability of an existing water user to continue taking water and mitigate any adverse effects by limiting, where necessary, the instantaneous rate of take.

A site specific adverse effect of taking water is the potential to influence the efficiency of other water takes from the same resource. The rate of abstraction of water from a river or the method of abstraction may reduce the flow of water past an existing intake or divert water from the intake. Similarly, pumping groundwater from an aquifer draws down aquifer levels in proximity to the bore. Takes located in close proximity to the proposed intake/bore are at greatest risk in this respect. The potential for such "interference effects" exists in spite of the limits set in the MEP.

This policy signals that such adverse effects can be managed by limiting the instantaneous rate of take. Any such limit would be imposed, where necessary, as a condition of the water permit. The potential for any interference effects and the scale of those effects will have to be assessed for any water permit application.

Policy 5.3.12 provides for the construction of bores as a permitted activity. Conditions are set in the relevant rule requiring separation distances between bores in order to further reduce the potential for "interference effects." The separation distance makes it less likely that the drawdown in aquifer level caused by pumping will affect the water level in another bore in the vicinity.

[R]

Policy 5.3.12 – Enable the construction of bores while recognising that this policy does not authorise the taking of water for any purpose other than bore testing.

Bores are used as the means to access water from Marlborough's aquifers. Rules identify that bore construction will be a permitted activity. The construction of a bore has limited potential to cause adverse effects, while still enabling groundwater to be accessed. Although the construction of a bore may be a permitted activity, the abstraction of groundwater for subsequent use may require a water permit (depending on the status of taking water under the rules).

[R]

Policy 5.3.13 – While seeking to manage interference effects between groundwater users, recognise that it is unreasonable to protect an existing take of groundwater when the bore does not fully penetrate the aquifer.

It is not equitable to utilise Policy 5.3.11 to protect the water supply from bores that do not fully penetrate the aquifer. Any such limit would penalise the resource consent applicant for bores that are effectively too shallow. The effect of the policy is that the owner of a shallow well will have to deepen the well or construct a new well in order to protect the reliability of their own water supply.

[R]

Policy 5.3.14 – The duration of water permits to take or divert water for consumptive purposes will reflect the circumstances of the take or the diversion and the actual and potential adverse effects, but should generally:

(a) not be less than ~~30~~ 20 years when the take or diversion for consumptive purposes is from a ~~water resource~~Freshwater Management Unit:

(i) that has a water allocation limit specified in Schedule 1 of Appendix 6; and

(ii) that has a minimum flow or level specified in Schedule 3 of Appendix 6; and

(iii) that is not over-allocated; or

(b) not be more than ten years when the take or diversion of water for consumptive purposes is from an over-allocated ~~water resource~~Freshwater Management Unit as specified in Policy 5.5.1; or

(c) not be more than ten years when the take or diversion of water for consumptive purposes is from a ~~water resource~~Freshwater Management Unit that has a default environmental flow established in accordance with Policies 5.2.7 and 5.2.14.

Comment [28]: Topic 4

This policy assists decision makers to determine the appropriate duration of water permits. The circumstance in (a) reflects a desire by water users for longer water permit terms in order to provide the certainty required to make long-term investment decisions. It also recognises that there is certainty regarding the sustainability of water abstraction from a FMU when limits are set by rules in the MEP. In this circumstance, durations of 30 years are generally considered appropriate.

The circumstances in (b) and (c) reflect situations where there is uncertainty regarding the sustainability of abstraction, either because the resource is over-allocated or because there is a lack of knowledge to set specific environmental flows/levels. A shorter term is an effective means of managing this uncertainty as it allows the sustainability of the existing abstraction to be reassessed against the provisions of a reviewed MEP after its current ten year life.

The policy also recognises that there may be other factors involved with a specific proposal that influence the determination of appropriate duration.

The duration of diversions for consumptive purposes has the same potential effect on the total allocation of water as the duration of takes, so the policy treats them equally.

Comment [29]: Topic 4

[R]

Policy 5.3.15 – Require land use consent for the planting of new ~~commercial~~ plantation forestry in flow sensitive areas.

Comment [30]: Topic 22

Afforestation of land currently in pasture has the potential to reduce water yield in the relevant catchment with consequential effects on the surface water hydrology. Water permits have been granted through the provisions of the MEP and through previous planning documents, with reliabilities based on historical surface water hydrology. If water yield is reduced by afforestation

in the long-term, it creates the potential to reduce the flow reliability that water users have come to depend upon. This could mean that water users become subject to restrictions more frequently than they have been to date.

The water resources most at risk are south of the Wairau River and specific Afforestation Flow Sensitive Sites are identified. The identified land receives low rainfall (in comparison to north of the Wairau River) and contributes run-off to smaller catchments. These factors make the water resource supplied by run-off from the land more vulnerable to changes in water yield.

Comment [31]: Topic 14

Comment [32]: Topic 14

The policy does not apply to existing ~~commercial~~plantation forestry or the replanting of that forest following harvest, as the effects of this forestry on water yield are part of the existing environment.

[R]

Policy 5.3.16 – When considering any application for land use consent required as a result of Policy 5.3.15, have regard to the effect of the proposed forestry on river flow (including combined effects with ~~other~~ existing ~~commercial~~plantation forestry ~~and carbon sequestration forestry (non-permanent)~~ established after 9 June 2016) and seek to avoid any cumulative reduction in the seven day mean annual low flow of more than 5%.

Comment [33]: Topic 4

Comment [34]: Topic 4

The policy provides guidance to determine land use consent applications required as a result of Policy 5.3.15. The threshold protects the reliability of supply for existing water permit holders by limiting the extent of flow modification. The effects of reductions in water yield on reliability are greatest at times of low flow and for this reason the seven day mean annual low flow is used in the policy. It is also important that any assessment of environmental effects considers the cumulative effects of afforestation within a catchment and any opportunities for adverse effects on water yield to be remedied or mitigated.

The establishment of ~~commercial~~plantation forestry prior to the notification of the MEP was permitted in most situations under the provisions of the previous Wairau/Awatere Resource Management Plan. Any reduction in flow shall be measured against the seven day mean annual low flow at 9 June 2016, being the date of notification of the MEP, and any assessment of cumulative effects should only consider ~~commercial~~plantation forestry established after 9 June 2016.

Issue 5D – Many water resources are fully allocated or are approaching full allocation, inhibiting the opportunity to provide for further demand for water resources.

Amounts of water available for abstraction (sometimes called a class) were established between 1995 and 1997 for specific rivers and aquifers. Allocation has progressed relatively smoothly and people have been able to access water reasonably easily through the water permit process. For the Awatere, Wairau and Waihopai Rivers this has involved allocation moving sequentially through a tiered system of allocation classes.

Allocations are approaching or have reached allocation limits for a number of rivers. The NPSFM requires the Council to avoid any future over-allocation; i.e. the Council cannot continue to allocate beyond the limits established by the MEP. Without further intervention, reaching a state of full allocation will seriously affect opportunities for future economic growth. Marlborough's primary and secondary industries rely on freshwater and any constraint on future supply will curtail economic growth in these industries.

[R]

Objective 5.4 – Improve the utilisation of scarce water resources.

In a state of full allocation of water resources, and given the implications of full allocation for potential users under the NPSFM, it is essential that better utilisation of scarce water resources

occurs to enable access to water to meet future demand.~~an alternative method to gain access to water is found to meet future demand.~~

Comment [35]: Topic 4

[R]

Policy 5.4.1 – Unless special circumstances exist that justify a longer period ~~T~~the lapse period for water permits to take water shall be no more than two years.

The statutory lapse period to commence the exercise of a resource consent is five years. This is a considerable period of time to have water allocated but potentially not used. With increasing scarcity of freshwater resources, it is appropriate to have a shorter lapse period. This policy records that the appropriate lapse period is two years, as this period represents a reasonable balance between providing sufficient time for a water permit holder to arrange necessary infrastructure and avoiding a situation of other potential users being denied access to reliable water supplies through the consent holder's inaction. There may be special circumstances which may warrant an extension to this period, and it will be for consent applicants to describe those appropriately for a decision-maker as part of a consent application. For example, a longer lapse period may be justified for regionally significant infrastructure or due to the scale or complexity of the activity for which the water permit is required. The allocation status of the water resource will be taken into account in terms of considering any applications to extend a lapse period under Section 125(1A) of the RMA.

Comment [36]: Topic 4

~~[R]~~

~~**Policy 5.4.2 – Giving effect to water permits to take and use water will be determined on the basis of the water being taken (and/or stored) for the authorised use and that the take is recorded in accordance with Policy 5.7.4.**~~

~~Section 125(1A)(a) specifies that a resource consent does not lapse if the consent is "given effect to." There was uncertainty during the administration of the previous resource management plans as to what this term meant in the context of a water permit. To avoid confusion in the future, this policy clearly describes that a water permit is given effect to when, in conjunction with Policy 7.4, water is taken from the freshwater resource, the take is measured via an appropriate meter and the water is used for the purpose in which it was granted.~~

Comment [37]: Topic 4

[R]

Policy 5.4.~~3~~ 2 – The lapse period for water permits to use water shall be ~~at least ten~~no more than 5 years.

A user must, as a minimum, hold a water permit to use water (a water permit to take water may not be necessary depending on the method of water distribution). To improve the utilisation of scarce water resources the streamlined transfer process for use of water may enable an opportunity to use otherwise unutilised water for limited periods of time~~Opportunities to utilise enhanced transfer of water permits may be limited in time~~. It would therefore be inappropriate to lapse the water permit to use water on the basis that no such opportunity arose in the lapse period. For this reason, a long lapse period of ten years is signalled for water permits to use water by this policy. This will ensure that a system of enhanced transfer has the greatest opportunity to function effectively over time.

Comment [38]: Topic 4

[R]

Policy 5.4.23 – Giving effect to water permits to take and/or use water will be determined on the basis of the water being taken (and/or stored) for the authorised use and that the take is recorded in accordance with Policy 5.7.4.

Section 125(1A)(a) specifies that a resource consent does not lapse if the consent is "given effect to." There was uncertainty during the administration of the previous resource management plans as to what this term meant in the context of a water permit. Many of Marlborough's water resources are fully allocated relative to the limits in this Plan, or are approaching a status of full allocation. There is therefore increasing competition for available water between water users. To avoid the potential for conflict in the community that this competition may cause, and to ensure water already allocated is being used for productive use as intended, it is important to administer

the lapse of water permits diligently. To allow this to occur, this policy clearly describes that a water permit is given effect to when, in conjunction with Policy 5.7.4, water is taken from the freshwater resource, the take is measured via an appropriate meter and the water is used for the purpose in which it was granted.

Comment [39]: Topic 4

[R]

Policy 5.4.4 – Enable access to water that has been allocated but is not currently being utilised by individual water permit holders through the transfer of water permits.

This policy seeks to enable the movement of water between users within a freshwater management unit so that more efficient utilisation of the available water can occur. Through the monitoring of water use authorised by resource consent, it is evident that the actual demand for water is usually less (sometimes considerably so) than the volume of water allocated via the water permit. This is water that could be utilised by other existing users or by potential users that are unable to access water due to a state of full allocation.

[R]

Policy 5.4.5 – When a~~n enhanced~~ streamlined transfer system is included in the Marlborough Environment Plan to enable the full or partial transfer of individual water allocations between the holders of water permits to take and use water, this will be provided for as a permitted activity where:

(a) the respective takes are from the same Freshwater Management Unit;

(b) the Freshwater Management Unit has a water allocation limit specified in Schedule 1 of Appendix 6;

(c) the take is not from the Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit, Omaka Aquifer Freshwater Management Unit or the Riverlands Freshwater Management Unit;

Comment [40]: Topic 4

(d) metered take and use data is transferred to the Council by both the transferor and the transferee in real time using telemetry;

(e) the allocation is authorised via a water permit(s) applied for and granted after 9 June 2016;

(f) the transferee holds a water permit to take water if their abstraction point differs from the that of the transferor; and

(g) the transferee holds a water permit to use water.

The duration of the transfer is at the discretion of the transferor and transferee and can be on a temporary basis or for the remaining duration of the water permit.

A~~n enhanced~~ streamlined transfer system was not included in the MEP when it was publically notified on 9 June 2016. However, the Council intends to introduce such a system to the MEP through the plan change provisions under First Schedule of the RMA at a later date. Under a system of ~~enhanced~~ streamlined transfer of water permits, water users would have the flexibility to develop their own transfer arrangements. In these circumstances, there is a need for appropriate protections to be put in place to make a system of ~~enhanced~~ streamlined transfer work efficiently and effectively for water users, as well as to protect the reliability of the water resource for existing users. The matters (a) to (~~f~~g) effectively establish ground rules under which ~~enhanced~~ streamlined transfer can occur. In doing so, this policy gives effect to Policy B3 of the NPSFM. The matters listed above will form the basis of permitted activity standards for the transfer of water permits.

[R]

Policy 5.4.6 – Provide water users and the community with daily water use information for fully allocated water resources.

This policy commits the Council to providing daily water use information for uses authorised by way of resource consent occurring in fully allocated water resources. The provision of such information will be particularly important when the enhanced transfer system identified in Policy 5.4.5 is introduced to the MEP as this will enable opportunities for the transfer of water between users to be identified by those users.

Issue 5E – The over-allocation of water resources creates a risk that the cumulative abstraction of water from the resource will exceed the safe yield, creating significant adverse effects on natural and human use values and threatening the reliability of existing water uses.

The NPSFM defines over-allocation of water resources as where a water resource has been allocated beyond a limit or is being used to a point where a freshwater objective is no longer being met. Allocation limits are established for water resources through the provisions of the MEP. Where the cumulative abstraction of water by all water users exceeds the allocation limits, the abstraction creates the potential for significant adverse effects. This is because the limits represent the extent of safe yield from the river or aquifer. Water abstracted in excess of the safe yield is likely to not only adversely affect flows in rivers and levels in aquifers, but also the various uses and values that depend upon those river flows and aquifer levels, including abstractive uses. In summary, such abstraction is unsustainable as it threatens the life-supporting capacity of the water resource and, where the adverse effect is long-term, the ability of the water resource to sustain future generations.

Other provisions of the MEP seek to ensure that allocation limits are not exceeded in the future. However, in five aquifers the allocation of water to users through water permit allocations has already exceeded safe yield. These aquifers are identified in Policy 5.5.1. In the Southern Valleys, actual use under those paper allocations has also exceeded safe yield, resulting in significant drawdown of aquifer levels and adverse effects on water users.

[R]

Objective 5.5 – Phase out any over-allocation of water resources.

Objective B2 and Policy B6 of the NPSFM require the Council to phase out over-allocation of water resources. Objective 5.5 of the MEP is designed to give effect to this requirement.

[R]

Policy 5.5.1 – Recognise that the following Freshwater Management Units are over-allocated with respect to limits established in the Marlborough Environment Plan:

(a) Wairau Aquifer;

(b) Benmorven, Brancott and Omaka Aquifer; and

(c) Riverlands.

The water resources set out in the policy have been over-allocated with respect to limits set out in the MEP. The policy provides certainty with respect to the scope of the application of subsequent policies to address over-allocation.

[R]

Policy 5.5.2 – No new water permit will be granted authorising additional abstraction from the water resources identified in Policy 5.5.1 after 9 June 2016.

Water resources identified as over-allocated should not be placed under further stress by additional demand. Any additional demand will not only make existing or potential adverse effects of over-allocation worse, it will make the community's objective of addressing over-allocation more challenging. For this reason, this policy directs that no further water permits to take water from the water resources identified in Policy 5.5.1 should be granted after 9 June 2016 (the date of notification of the MEP). This policy will be implemented by a prohibited activity rule. For the avoidance of doubt, the policy does not apply to any application to continue taking water from the water resource in the same circumstances as previously authorised.

[R]

Policy 5.5.3 – Avoid any additional diversion of water from over-allocated water resources for use on land in other freshwater management units.

Over time, many water users have been innovative in addressing the shortage of water in an area by diverting available water from other water resources. However, diverting water from an over-allocated water resource to another freshwater management unit will not result in sustainable outcomes and is to be avoided.

[R]

Policy 5.5.4 – Progressively resolve over-allocation of the Wairau Aquifer Freshwater Management Unit and Riverlands Freshwater Management Unit by ensuring water permits granted after 9 June 2016 to continue taking water from the Freshwater Management Units reflect the reasonable demand given the intended use.

This policy sets out the means by which the over-allocation of groundwater from the Wairau Aquifer and Riverlands Aquifer will be resolved. The application of the policies to achieve efficient water use (see Policies 5.7.1 to 5.7.6) will reduce the cumulative allocation of water from the Wairau Aquifer over time. By 2025 it is expected that the total allocation authorised by resource consent will reflect the allocation limit. This policy will assist to give effect to Policy B6 of the NPSFM.

[R]

Policy 5.5.5 – Resolve over-allocation of the Benmorven, Brancott and Omaka Aquifer Freshwater Management Units by reducing individual resource consent allocations on a proportional basis, based on the total allocation available relative to each individual's irrigated land area, or equivalent for non-irrigation water uses (excluding domestic and stock water). The reductions will be achieved by reviewing the conditions of the relevant water permits to reallocate the available allocation fairly across all relevant users.

This policy sets out the means by which the over-allocation of groundwater from the Benmorven, Brancott and Omaka Aquifer FMUs will be resolved. A reduction in the allocation that has been granted resource consent, based on reallocating the total allocation available relative to each individual's irrigated land area, is considered to be the most equitable means of reducing total allocation of water from these FMUs. Where water use is for non-irrigation purposes, such as winery or commercial use, the proportion of the reallocation will be calculated to be relative to irrigation water permit holders.

A degree of reduction of allocation has already occurred prior to the notification of the MEP through the processing of some water permits to continue taking water from these resources. Some resource consent applicants have also applied to take less water than the guideline rate under the provisions of the WARMP/MSRMP. These actions will be taken into account in terms of the application of the policy to these specific water permits.

The reductions will be calculated and applied by reviewing the conditions of water permits in accordance with Section 128(1)(b) of the RMA.

Reflecting Policy 5.3.1, no proportional reduction of allocation has been applied to takes used to supply stock or domestic water.

By 2025 it is expected that the total allocation authorised by resource consent will reflect the allocation limit.

Comment [41]: Topic 4

This policy will assist to give effect to Policy B6 of the NPSFM.

Issue 5F – The taking of groundwater in proximity to rivers can individually or collectively reduce flows in the rivers.

For most of Marlborough's water resources, there is exchange of water between rivers and underlying groundwater. Because of this interaction, the taking of groundwater can reduce the flow in the river, termed a "stream depletion" effect. The degree of stream depletion will vary depending on the rate of groundwater pumping, the distance between the point of abstraction and the river and the ability of water to move through the sediments on the river bed and through the adjoining soils. Where groundwater abstraction causes stream depletion effects, there is the ability for the same effects identified in Issue 5B to be created, either in isolation or in combination with other groundwater and/or surface water takes.

[R]

Objective 5.6 – Ensure that the taking of groundwater does not cause significant adverse effects on river flow.

Natural and human use values supported by rivers are flow dependent. Any reductions in river flow caused by groundwater abstraction at times of low flow have the ability to adversely affect the natural and human use values supported by the river. As for direct takes of surface water, the objective with respect to groundwater takes that have stream depletion effects is to maintain the natural and human use values supported by flow in the river.

[R]

Policy 5.6.1 – Unless there is an identified aquifer dominant Freshwater Management Unit, all water within a catchment will be managed as a surface water resource. This means that the minimum flow, management flow and allocation limit established for the river dominant Freshwater Management Unit will also apply to groundwater takes.

In a Marlborough context, an aquifer is a significant body of water stored in the unconsolidated materials below the ground surface. The groundwater occupies the pore space between sand, silt or gravel particles. In many cases, the groundwater associated with rivers does not involve the storage of a significant volume of water and the groundwater is therefore not recognised as an aquifer. In these circumstances, the taking of groundwater has greater potential for stream depletion effects.

This policy directs that the potential adverse effects of groundwater takes will be managed in the same manner as surface water takes. The effect of the policy is two-fold:

- any take of groundwater will be included within the allocation provided from the river; and
- the environmental flow set for the river will apply to any groundwater take.

Aquifers are excluded from the policy as either the volume of stored groundwater has the potential to buffer the effects of groundwater abstraction on flows in rivers or there is sufficient physical separation between a river and underlying aquifer so that no stream depletion effect is caused.

[R]

Policy 5.6.2 – Manage the potential for groundwater takes in proximity to spring-fed streams on the Wairau Plain to cause a recession of the position of headwaters of the streams by establishing aquifer minimums below which the taking of groundwater must cease.

As the slope of the Wairau Plain flattens, groundwater returns to the surface in the form of springs. The largest of these spring systems are Spring Creek, Fultons Creek and Murphys Creek. Although not retaining outstanding natural character, these rivers are still highly valued by the community for the clear water that flows in them and in the case of Fultons Creek and Murphys Creek, the provision of a baseflow of water to sustain the Taylor River during the summer months.

The taking of groundwater in close proximity to spring-fed streams has the potential to cause stream depletion effects. The greatest risk is that abstraction could cause a downstream shift in the position of the headwaters. In order to preserve the remaining natural character of these spring-fed streams and to maintain the amenity values that they support, this policy identifies that groundwater takes close to spring-fed streams will be subject to specific management.

A network of bores has been established across the spring belt of the Wairau Plains to monitor aquifer levels. There is a very good relationship between aquifer level and the position of headwaters of the spring-fed streams and the subsequent flows in the streams. Aquifer environmental levels have been established by regional rule at each of the monitoring bores. The taking of groundwater in the relevant FMU must cease when the level of water in the Wairau Aquifer falls to the specified level.

Issue 5G – Allocating more water than is actually required for any use creates the potential for inefficient use of water. This can compromise the sustainability of the resource and prevent other users accessing water.

Inefficient allocation and use of water is potentially a significant issue in Marlborough, given that many water resources are at or are approaching full allocation. As described in Issue 5D, once allocation limits have been reached, the Council is unable to continue allocating water to other users. Allocating and/or using more water than is required for a particular use represents a lost opportunity for other potential users to gain access to water in a limit based management system. This can occur when water is allocated to a user but is not utilised or is lost through wasteful distribution/application methods. There will be cumulative social, cultural and economic effects from inefficient allocation and use of water once limits have been reached. In particular, as Marlborough relies on water for primary production and the processing of crops, inefficient allocation and/or use of water limits the opportunities for economic growth and employment.

[R]

Objective 5.7 – ~~The allocation and use of water do not exceed the rate or volume required for any given water use~~To achieve efficient water use for any given activity.

Comment [42]: Topic 4

Water is one of Marlborough's most significant natural resources. There is a collective community responsibility to ensure that the greatest social, cultural and economic benefit can be derived from the water available for consumptive use. Efficient allocation and use of water has an important role to play in this respect, as it ensures that water is put to productive use.

[R]

Policy 5.7.1 – When resource consent is to be granted to use water, every proposed use will be authorised by a separate water permit. Categories include municipal, irrigation, industrial, residential, commercial and frost fighting.

This policy identifies that the use of water is a separate activity to the taking of water from a water resource, with the potential for distinct positive and adverse effects. By requiring a separate water permit to authorise the use of water, those effects can be recognised and, where necessary, appropriately managed through the processing of the application in accordance with the provisions of the MEP.

The policy also establishes separate classes of use. This distinction between different uses allows other policies of the MEP to be applied to those uses, including Policy 5.7.5.

[R]

Policy 5.7.2 – To allocate water on the basis of reasonable demand given the intended use.

One of the ways in which efficient use of water can be achieved is by ensuring that the allocation to the user does not exceed that which is reasonably required for the use. For irrigation ~~In the case of irrigation, the Council will provide users with a tool, "IrriCalc,"~~a reasonable use model will be used to estimate water demand for the crop, based on the soil type(s) and climate that exist at the property. For non-irrigation uses, the allocation will be assessed on a case-by-case basis.

Comment [43]: Topic 4

This policy assists to give effect to Policy B4 of the NPSFM.

[R]

Policy 5.7.3 – Water permit applications to use water for irrigation will not be approved when the rate of use exceeds the reasonable use calculation, except where the applicant can demonstrate that they require more water based on property specific information.

Irrigation is used to replace any deficit in soil moisture in order to maintain crop health and growth. Climate and the properties of the soil in which the crop is growing are the main determinants of water availability and therefore irrigation demand. In terms of soils, Plant Available Water (the measure of the difference between field capacity and plant wilting point) is a key influence on crop water demand. The Plant Available Water varies according to soil type.

~~"IrriCalc"~~Reasonable use models use~~s~~ existing soils information and modelled climate data to provide estimates of water use for all crop types. To ensure efficient use of water for irrigation, the Council will generally not grant water permits to use water for irrigation purposes at a rate that exceeds the reasonable use calculation provided by a reasonable use model~~"IrriCalc~~."

Past methods of determining water use allocations have not accounted for the variation in water demand when growing the same crop in different locations and conditions. The use of ~~"IrriCalc"~~a reasonable use model in the manner described above will therefore result in improvements in the efficient allocation and use of water and assist to give effect to Policy B4 of the NPSFM.

The policy recognises that the calculation is a modelled calculation and may not accurately estimate reasonable use in all circumstances. For this reason, the policy provides resource consent applicants the opportunity to provide property specific information on the factors that influence crop demand that may demonstrate a ~~higher~~ rate that exceeds the calculation provided by the model of water use than ~~IrriCalc~~ a reasonable use model would otherwise indicate. Examples could include historical measurement of rainfall or the investigation of soil type and plant available water on the property. Regard can be had to such information in determining an appropriate allocation on water permits to use water.

Comment [44]: Topic 4

[R]

Policy 5.7.4 – Require water permit holders to measure, ~~their water take with a pulse emitting meter, to record water take and use with a data logger, and to transfer the recorded water take and use information by the use of telemetry~~ record and transfer the

information from their water take using a meter and data management system that is capable of recording real time information, and transmitting this to the Marlborough District Council via telemetry. Alternative methods of measurement, recording or transfer that provide the Marlborough District Council with accurate water take and use data may be considered.

Comment [45]: Topic 4

All water takes authorised by way of resource consent are required to be accurately metered. The water use information gained through the measurement of water take and use is important for:

- establishing compliance with the water allocations provided by water permits and the conditions imposed on water take and use (e.g. compliance with water restrictions);
- enabling cumulative rates of take within a freshwater management unit to be accounted for (and reported) as required by Policy CC1 of the NPSFM;
- indicating the extent of water availability at any point in time; and
- establishing or refining a relationship between cumulative rates of water use and the water resource response. In this way, water use information collected through accurate metering assists the Council to review limits set in accordance with provisions of the MEP and refine those limits where necessary.

The policy establishes the requirements with respect to measurement of water takes in Marlborough. Data ~~loggers~~ management systems that are capable of recording real time information provide accurate water take records and their use avoids the need for manual readings. The use of telemetry ensures the transfer of recorded data to the Council in a timely fashion. These efficient means of recording and transferring water take information will also assist to enable the transfer of water permits between users, as provided for under Policy 5.4.4. By providing users with real time information on water user relative to limits, metering establishes the extent of water availability at any point in time.

Comment [46]: Topic 4

[R]

Policy 5.7.5 – Separate measurement will be required to record different categories of water use, but not for different uses within each category. Categories include municipal, irrigation, industrial, residential, commercial and frost fighting.

Reflecting Policy 5.7.1, each different category of water use authorised by water permit must be measured. This policy helps to give effect to Policy CC1 of the NPSFM, which requires the Council to account for the proportion of water taken for each major category of use. Water use information is requested by Central Government on an annual basis for the purposes of national reporting. The categories in the policy reflect the nature of those requests.

[R]

Policy 5.7.6 – Have regard to the efficiency of the proposed method of distribution and/or irrigation in determining resource consent applications to use water for irrigation purposes.

The way in which water is distributed and/or applied to the crop can influence the technical efficiency of water use. Methods or practices of distribution and/or application that are wasteful (relative to crop demand) are inappropriate within a limit-based water management system. When considering a water permit application to use water, it is appropriate that the Council has regard to the nature of the irrigation system to ensure that wasteful water use is avoided. The use of technology and best irrigation practice will be important factors for resource consent applicants to address in their applications. Industry groups may produce guidance material that assists with this task.

[R]

Policy 5.7.7 – Allocate water for domestic needs on the basis of five cubic metres per household per day.

Rules specify that a reasonable abstraction for an individual's domestic needs is five cubic metres per household per day. However, there are water permits authorising the supply to more than one

household that enable the taking of water at higher rates. The exercise of these water permits effectively represents an inefficient use of water. When applications to continue taking domestic water are processed in these circumstances, the allocation provided will be reduced from the previously authorised level to the equivalent of five cubic metres per household per day.

This reduction in allocation will help the Council to address over-allocation in accordance with Policy B6 of the NPSFM while still providing sufficient water to the consent holder for domestic needs. This outcome will ensure that the over-allocation of the water resource is addressed equitably across all water users.

This policy assists to give effect to Policy B4 of the NPSFM.

Frost fighting

[R]

Policy 5.7.8 – Approve applications to take and use water for frost fighting purposes only where there are no effective alternative methods for frost control on the property.

Although the use of water for frost fighting may be efficient for protecting crops, it involves significant volumes of water at very high rates of use (compared to irrigation). For this reason, the use of water for frost fighting is not considered efficient, especially in circumstances where water resources are fully allocated or are approaching full allocation. There are alternatives methods of frost fighting that do not involve the use of water (e.g. wind machines) and the policy identifies that these methods should generally be used in preference. However, the policy also recognises that there are circumstances where alternative methods of frost protection are not effective and in these cases the use of water can be considered.

It is also noted that restrictions on the use of alternatives due to proximity to residential activity may mean the use of water can be considered in those limited circumstances

Comment [47]: Topic 4

This policy assists to give effect to Policy B4 of the NPSFM.

[R]

Policy 5.7.9 – A limitation will be imposed on the maximum rate of use of water for frost fighting purposes of 44 cubic metres per hour per hectare.

This policy assists to give effect to Policy B4 of the NPSFM and sets a maximum rate of water use for frost protection in order to avoid excessive use of water.

[R]

Policy 5.7.10 – Avoid taking water for frost fighting purposes during periods of peak irrigation demand (1 January to 30 April in any calendar year).

Given the significant volume of water involved in frost fighting, it is inappropriate for this water to be taken during the period of peak water demand (January to April). Abstraction of frost fighting water during this period has the potential to adversely affect other users of water. It is also unlikely that frost conditions will exist for most of the time period stated in the policy.

[R]

Policy 5.7.11 – Where water is to be stored for the purpose of frost fighting, require a minimum storage volume equivalent to three days of frost fighting demand. In addition, where water is proposed to be taken to replenish stored water used during a frost event, have regard to effect of the rate of refill on other water permit holders and the natural and human use values supported by the source waterbody.

Stored water is often used to supply water for frost protection given the high water demand. It is reasonable for people to replace the water utilised from the reservoir/dam for frost protection, particularly if subsequent frosts are predicted. The rate of abstraction of water to refill the reservoir/dam can be high and may lead to adverse effects on the natural and human use values supported by the waterbody and on other users of water. For this reason, there should be

sufficient water stored to protect against three consecutive days of frost. This will minimise the need to take water at a significant rate to refill the reservoir for frost fighting on the subsequent day. If a person undertaking frost fighting proposes to refill the reservoir within the three days, then it is appropriate to also consider the effects of the rate of refill.

Issue 5H – Demand for water typically peaks when river flows and aquifer levels are at their lowest, which can cause short-term water availability issues.

Marlborough typically experiences a dry climate with the potential for significant seasonal variation in rainfall. Rainfall over summer months, even in average years, is insufficient to meet the demand of most crops, resulting in a significant increase in the demand for water for irrigation purposes. For the same reasons (low rainfall and high evapo-transpiration), the flow of water in rivers and the levels of aquifers are typically at their lowest over this same period. The imposition of environmental flows/levels to protect the life-supporting capacity of the water resource can result in the restriction or suspension of abstraction from those water resources. The outcome is one in which water users, particularly irrigators, cannot access water at the very time they need it the most. In such circumstances there is the potential for failure of crops, reduced pasture growth or at least reduced yield/production. Given the importance of primary production to Marlborough's social and economic wellbeing, there is a need to find ways to alleviate such short-term water availability issues.

Comment [48]: Topic 4

[R]

Objective 5.8 – Maximise the availability of water within the limits of the resource.

Water availability varies significantly in Marlborough, both in time and location. There are methods by which water that is available at different times of year (due to higher rainfall and lower evapo-transpiration) or available at other locations can be made available to help resolve short-term water availability issues. Examples can include the storage of water and/or augmentation of water resources from other sources. This objective seeks to maximise water availability in order to mitigate the significant negative effects of water shortages, especially for primary production, which relies on water to grow crops. The sustainable yield from the water resource can place natural limits on the ability to achieve this objective, but where there are opportunities to supplement water resources, these will result in a more resilient economy and community.

[R]

Policy 5.8.1 – Encourage the storage of water as an effective response to seasonal water availability issues while safeguarding ecosystem health.

Given Marlborough's dry climate, especially over the summer months, storage of water has been utilised as a common strategy to offset temporary shortages of water for irrigation purposes. Storage has involved the interception of run-off by damming ephemeral water bodies, the damming of intermittently or permanently flowing water bodies and the placement of abstracted water in purpose-built reservoirs. There may also be the potential to augment river flow from the stored water. All of these approaches provide a back-up supply of water that increases water user resilience. For this reason the storage of water is strongly supported.

Comment [49]: Topic 14

In some cases, activity status will assist to encourage the storage of water by providing for activities involved in storing water as a permitted activity or controlled activity.

Damming of intermittently or permanently flowing waterbodies can create the potential for adverse effects. These effects will be considered through Policies 5.2.~~21~~ 22 and 5.2.~~22~~23.

[R]

Policy 5.8.2 – Provide for the abstraction of surface water for storage purposes during periods of higher flow for subsequent use during periods of low flow (and therefore low water availability).

Utilising higher flows in surface waterbodies to offset the shortage of water for irrigation during periods of low flow is an efficient and effective water management mechanism. The abstraction of water during periods of higher flow and the placement of this water into storage have been enabled for some time in Marlborough through Class C water permits. This regime continues under the reviewed resource management framework. It will assist water users to manage water shortages in a limit-based management regime, especially in response to the effect of any suspension of Class A or Class B water permits in accordance with other provisions in the MEP. "Higher flows" will be defined by rules which will set minimum flows below which water cannot be taken for storage through Class C water permits.

[R]

Policy 5.8.3 – Water may be stored at times other than those specified in Policy 5.8.2 to provide water users with greater flexibility to manage water use on-site, provided that the rate of take does not exceed the authorised daily rate of take for irrigation purposes.

Although an explicit C class exists to facilitate access to water for storage purposes under the circumstances set out in Policy 5.8.2, taking water allocated under another class for storage can also be efficient. For example, some rivers experience periods of high turbidity that can make run-of-the-river abstraction particularly difficult due to the effect on irrigation distribution systems. The storage of water during the irrigation season provides for a back-up supply of irrigation water when access to Class C water may otherwise be restricted or where no Class C has been established. There may also be short-term peaks in flow over the irrigation season in response to rainfall events that, while not sufficient to reactivate access to Class C, still create an opportunity to store water. This policy recognises these circumstances by enabling the storage of Class A or Class B water.

~~The policy also recognises that~~ Class A and Class B were primarily created to enable access to water as instantaneous takes. Significant abstraction of water over the irrigation season for storage purposes over and above the rate of take for irrigation purposes has the potential to adversely affect the reliability of existing takes of water (by drawing down river flow/aquifer level at a faster rate than would otherwise have been the case). For this reason, the policy limits the rate of take of water for storage purposes to the authorised daily take for irrigation purposes. This still provides the consent holder with flexibility to decide how water will be used on any given day, but also ensures that the abstraction would have no greater effect on existing users than the daily take solely for irrigation purposes.

Comment [50]: Topic 4

[R]

Policy 5.8.4 – The annual volume of water taken for storage for irrigation purposes shall not exceed a volume equivalent to the authorised rate of take for irrigation purposes for two irrigation seasons for the property or properties to be served by the stored water.

This policy ensures that water taken from a water resource for storage is not excessive relative to the use(s) to which it is eventually to be put. Excessive taking of water to storage ~~of water~~ may frustrate the attempts of other users to access water by fully allocating the C class or through interference effects caused by the rate of take from the source waterbody. The policy provides a threshold for appropriate takes to storage that reflects that the stored water should be sufficient to provide for irrigation needs for two seasons. This is reasonable in Marlborough's dry climate where consecutive dry summers have historically occurred.

Comment [51]: Topic 4

The policy assists to give effect to Policy B4 of the NPSFM.

[R]

Policy 5.8.5 – All water placed in storage should be accurately accounted for.

Although storage is not as such a 'use' of water (as water is stored for pending and subsequent use), it is still important to account for water taken from freshwater bodies for storage purposes as it represents a permanent removal of water from the freshwater resource. This policy does not establish a set methodology for accounting in these circumstances, as there has been, and will continue to be, a wide diversity of distribution systems developed by individual water users in response to the circumstances that exist on their property. The appropriate accounting system will be developed on a case-by-case basis through the resource consent process, but as a minimum requirement must accurately account for water taken from the freshwater resource that would not otherwise be accounted for through the metering requirements established by Policy 5.7.4. Dedicated metering would be one form of measurement, but other methods may also be appropriate.

Issue 5l – There is the potential for a new water user to get access to water on a more reliable basis than allocations already made, resulting in inequitable outcomes.

Freshwater in Marlborough has become a scarce resource in many freshwater management units as resource limits are approached (if not already reached). This results in competition for available water. Policy 5.3.6 identifies that the first in, first served method of allocation is efficient and effective for dealing with this competition prior to allocation limits being reached for the first time.

Once the water resource is fully allocated, there are limited circumstances under which that allocated water could become available for re-allocation. For example, an existing consent to take and use water may lapse, be only partially exercised, or be surrendered. Water users have identified as a concern the ability for existing or potential users to gain access to that water through the first in, first served method of allocation. Water that becomes available will have an inherent reliability depending on when that water was first allocated relative to other subsequent allocations. If the application is granted, the successful applicant may gain access to water under more favourable circumstances than other users granted water later than the original permit was granted. This is considered an inequitable outcome and one that could see the competition for water resulting in community conflict.

[R]

Objective 5.9 – Ensure that water users in the same or similar circumstances are treated in the same manner when it comes to securing access to water.

Water users have a desire to ensure that others in the same or similar circumstances are treated in the same manner with regard to securing access to water through the resource consent process. That does not mean that the outcome of the process will necessarily be the same, as the finite nature of water resources will inevitably result in different outcomes as allocation proceeds on a first in, first served basis. The provisions of the MEP attempt to ensure that there is some certainty about the volume of water available for allocation and the circumstances under which it is available to minimise the potential for conflict in the community. Even so, there will be circumstances under a first in, first served allocation regime that create the potential for a water user to get access to water on a more reliable basis than allocations made previously. This objective seeks to avoid such inequitable outcomes.

[R]

Policy 5.9.1 – Once an allocation limit is reached and that part of the water resource is fully allocated, any water that subsequently becomes free to allocate to other users will only be made available to those users through a system of ballot.

This policy sets out in principle that any water that becomes available to re-allocate shall be allocated via ballot. A ballot is considered by water users to be the most equitable way to determine who should receive the water given the likely competition for the water amongst existing users. It avoids the situation of a person gaining access to water in preference to other potential users based on the nature of the use or because they were first to make an application.

[R]

Policy 5.9.2 – On securing the ballot, the successful ballotter must apply for the necessary water permits to authorise the taking and (if relevant) use of water. Until the successful ballotter(s) secures the necessary water permits, the water resource is considered fully allocated.

The policy sets out what the successful ballotter must do to secure the allocation gained through a ballot. As existing water permits define the spatial extent and rate of use, any proposed additional use would exceed existing allocations expressed in consents to take and use water. This means that a separate water permit would be required to authorise the taking and use of water. This policy secures the ability to make such an application without predetermining the outcome. While this process is underway, the water resource is considered to remain fully allocated to prevent a third party making an application for a water permit that would effectively nullify the result of the ballot.

[R]

Policy 5.9.3 – If required, any ballot will be conducted on the following basis:

(a) at least annually for the calendar year;

(b) if the water permit holder already holds a water permit to take and use water for the same purpose, then they must surrender the original water permit before giving effect to the new water permit; and

(c) if the subsequent water permit application to authorise the taking of water is not made within 12 months of the ballot result or the water permit application is refused, then that water will be re-balloted in the subsequent year.

The matters in (a) to (c) set out procedurally how any ballot to allocate water would be conducted. These matters will therefore guide the ballot process, if any ballot is required.

Methods of implementation

The methods listed below are to be implemented by the Council unless otherwise specified.

[R]

5.M.~~1~~3 Regional rules

Set environmental flows and/or levels for permanently flowing rivers, lakes, wetlands and aquifers to maintain the uses and values supported by the waterbody.

Set allocation limits for each FMU to establish the total amount of water able to be sustainably abstracted from the water resource.

Apply regional rules to regulate the taking, use, damming or diversion of water in accordance with the policies in this chapter. This includes the use of permitted activity rules to enable the taking, use, damming or diversion of water where the activity will not give rise to adverse effects on natural and human use values supported by the waterbody.

A permitted activity rule will enable the construction of bores.

Prohibit the taking, use, damming or diversion of water where those activities would adversely affect the significant values of ~~outstanding~~ water bodies.

Comment [52]: Topic 4

Prohibit the taking of water beyond environmental flows/levels and allocation limits set by rules.

Require all resource consents granted ~~for~~ to take and use water ~~takes~~ to be measured using a meter and data management system that is capable of recording real time information~~by pulse emitting meter and recorded by data logger~~, and require the recorded take and use information to be transferred to the Council by telemetry.

Review water permit conditions to impose or alter environmental flows and levels (or other relevant limits) established by rules in the MEP.

[R]

5.M.25 Water user groups

Encourage the establishment of water user groups to assist the Council to manage water resources. In particular, seek to work with water user groups in the Awatere and Waihopai FMUs to achieve voluntarily rationing of water takes in response to falling flows in order to achieve the flow objectives for each river (see Policy 5.2.167). Water user groups may also co-ordinate voluntary rationing of water takes in any FMU to delay the onset of restrictions imposed as a result of environmental flows or limits set by this Plan. The method of rationing to be considered is at the discretion of the water user group but may include prioritising the application of voluntary rationing between users or uses.

Comment [53]: Topic 4

[R]

5.M.36 Ballot

If water in a fully allocated FMU becomes available for allocation again, the Council will hold a ballot to determine who can make an application to take and use the water. If a water user group exists for the FMU, then the Council will seek to work with it to run the ballot.

[R]

5.M.47 Information

Provide water users and the community with river flow and aquifer level information so that they can make informed decisions with respect to the rationing or cessation of their water take in order to comply with the rules in the MEP.

Provide water users with information on their recorded water use relative to their water permit allocation.

[R]

5.M.58 E-Planning

Deliver Council resource consent, compliance and environmental information functions through digital means via the Council website. Provision of timely information and functions will assist water users to improve their use practices and encourage more efficient use of water.

[R]

5.M.69 Storage Incentives

Comment [54]: Topic 4

Incentivise the storage of water during periods of higher river flow to provide an alternative supply of water during periods of low flow. Incentives include the use of a permitted activity for the use of stored water and a controlled activity for the taking of Class C water.

[R]

5.M.~~7~~10 Modelling

Model the irrigation demand of pasture and crops according to soil type and climate using Irricalc or a similar reasonable use model approved by Marlborough District Council. The model output will be used as a basis for determining allocations for the use of water. The model will be provided to water users via ~~the E-planning~~ an online tool.

Comment [55]: Topic 4

[R]

5.M.~~8~~11 Research

Continue to research the reasonable use requirements of the crops grown in Marlborough. This will include continuing to collect and refine soil information to allow the model to be refined over time.

[R]

5.M.~~9~~12 Advocacy

Encourage water users to undertake soil moisture monitoring on irrigated properties so that irrigation occurs to maintain soil moisture levels. This will result in more responsive and efficient use of water.

[R]

5.M.13 – Efficient Water Use

Encourage efficient water use by sharing information with water users and water user groups. Information gathered through the application of other methods in this Chapter will be provided, including real time water use data and river flow/aquifer level data, the results of research and modelling in terms of reasonable use requirements and sharing information on new technology. The information will be able to be applied by water users to make adjustments to their existing water management regime to ensure the volume and rate of water use match actual water use requirements.

Comment [56]: Topic 4

~~Issue 5J – People want to be able to use and develop the coastal marine area for private benefit.~~

~~The Council's role in managing the resources of the coastal marine area follows from the way in which people's use of the coastal marine area is restricted under the RMA. The RMA prohibits the use or occupation of the coastal marine area unless allowed to by resource consent or rules within a regional coastal plan. (The same situation does not apply to land uses above the mean high water springs mark, where people are allowed to use land unless a district plan rule states they cannot.)~~

~~Management regimes for specific uses and activities in the coastal marine area are included within Chapter 13 - Use of the Coastal Environment. However, provisions in this part of the Marlborough Environment Plan (MEP) deal with higher level concerns about how space in the coastal marine area should be allocated, the degree to which various occupations generate private versus public benefits and the circumstances in which a user should pay to use the space.~~

~~The community has different expectations about the extent of rights able to be enjoyed in using public resources. For some, there is a belief that there is a right to be able to have a jetty and a boatshed fronting a family property in the Marlborough Sounds and multiple moorings for boats. Others believe that there are no such rights. Many such structures have limited benefit for the wider public, yet occupy public space. Conversely, some structures, such as public jetties and launching ramps, do provide enhanced public use of and access to the coast and consequently are of general public benefit.~~

~~The occupation of coastal marine area may effectively prevent other activities from occurring. The extent to which the public are excluded from parts of the coastal marine area varies according to the nature of an authorised activity, whether by resource consent or by a rule in a regional coastal plan. At times there can also be conflict and competition for water space, where uses and activities are not necessarily compatible in the same area.~~

~~Regardless of the type of activity or use proposed in the coastal marine area, in addition to consideration of other effects it is important that the impact on the public interest is considered, as the coastal marine area is a public resource.~~

~~[RPS, C]~~

~~Objective 5.10 – Equitable and sustainable allocation of public space within Marlborough's coastal marine area.~~

~~The control of the occupation of space in the coastal marine area is a specific function of the Council. The Council allocates or allows the right to use public resources for private benefit. This is within the Council's role of promoting the sustainable management of the natural and physical resources of the coastal marine area. The objective is therefore intended to ensure that these resources and their associated qualities remain available for the use, enjoyment and benefit of future generations in a way that minimises adverse effects on the environment, avoids conflicts between users and ensures efficient and beneficial use.~~

~~[RPS, C]~~

~~Policy 5.10.1 – Recognition that there are no inherent rights to be able to use, develop or occupy the coastal marine area.~~

~~Both the RMA and the New Zealand Coastal Policy Statement 2010 (NZCPS) anticipate that appropriate 'use' can be made of the coastal marine area and that this may involve occupation of coastal space for private benefit. Additionally, the Marine and Coastal Area (Takutai Moana) Act 2011 enables public access and recreation in, on, over and across the public foreshore and seabed, as well as general rights of navigation. However, it is important to recognise that the rights to be able to use coastal marine area are not guaranteed in terms of Section 12 of the RMA; rather, use must be enabled by way of a rule in a plan or by resource consent.~~

~~[RPS, C]~~

~~Policy 5.10.2 – The 'first in, first served' method is the default mechanism to be used in the allocation of resources in the coastal marine area. Where competing demand for coastal space becomes apparent, the Marlborough District Council may consider the option of introducing an alternative regime.~~

~~The default process for processing resource consent applications under the RMA is 'first in, first served.' The Council processes resource consent applications in the order they are received, provided they are accompanied by an adequate assessment of environmental effects. Using this approach the Council has to date effectively managed the demand for space in the coastal marine area. However, if competing demand for space becomes an issue, the Council may consider the introduction of other allocation methods. There may also be certain circumstances under which a specific allocation mechanism is introduced to address a specific issue.~~

~~[RPS, C]~~

~~Policy 5.10.3 – Where a right to occupy the coastal marine area is sought, the area of exclusive occupation should be minimised to that necessary and reasonable to undertake the activity, having regard to the public interest.~~

~~Exclusive occupation restricts access to the resource consent holder, who has the right to occupy and therefore alienate public space from public use. However, not all activities require exclusive occupation, meaning that other users may carry out activities in the same space where there is no occupation needed, e.g. recreational boating. Given the public's expectation of being able to use the coastal marine area, the Council considers that exclusive occupation should only be allowed where absolutely necessary.~~

~~[C]~~

~~Policy 5.10.4 – Coastal occupancy charges will be imposed on coastal permits where there is greater private than public benefit arising from occupation of the coastal marine area.~~

Comment [57]: Topic 11

~~The RMA enables the Council to apply a coastal occupancy charge to activities occupying space within the coastal marine area, after having regard to the extent to which public benefits from the coastal marine area are lost or gained and the extent to which private benefit is obtained from the occupation of the coastal marine area. The Council has considered the private and public benefits associated with coastal occupations and has determined that where the private benefit is greater than the public benefit, charging for occupation of coastal space is justified. The assessment of benefits (private/public) is directed to those arising or lost as a consequence of the structure occupying coastal space, not the associated activity that may be facilitated by the structure being present.~~

~~[C]~~

~~Policy 5.10.5 – The Marlborough District Council will waive the need for coastal occupancy charges for the following:~~

- **~~(a) public wharves, jetties, boat ramps and facilities owned by the Marlborough District Council and the Department of Conservation;~~**
- **~~(b) monitoring equipment;~~**
- **~~(c) activities listed as permitted, except for moorings in a Mooring Management Area;~~**
- **~~(d) retaining walls; and~~**
- **~~(e) port and marina activities where resource consents authorised under Section 384A of the Resource Management Act 1991 are in place until such time as those resource consents expire.~~**

~~These waivers exist because the facilities owned by the Council and the Department of Conservation provide a significant level of public benefit as they are used by and available to many people. Retaining walls generally do not occupy significant areas of the coastal marine area to the exclusion of other users, while monitoring equipment is generally very small and often temporary. There are few permitted activities that involve occupation and those that are permitted tend to have a more significant element of public benefit, e.g. navigation aids or public and safety information signs. Although moorings in a Mooring Management Area identified through rules are provided for as a permitted activity in the Coastal Marine Zone (where a relevant bylaw is in place), these moorings are for private benefit and therefore will attract a coastal occupation charge.~~

~~Certain occupation rights are granted to port companies under Section 384A of the RMA. In Marlborough the resource consents granted under this section of the RMA relate to port related commercial undertakings being carried out in the areas of Picton (excluding the area of port in Shakespeare Bay), Waikawa, Havelock, Elaine and Oyster Bays. The RMA appears to exempt these resource consents from attracting coastal occupancy charges until after 30 September 2026.~~

~~[C]~~

~~Policy 5.10.6 – Where there is an application by a resource consent holder to request a waiver (in whole or in part) of a coastal occupation charge, the following circumstances will be considered:~~

- **~~(a) the extent to which the occupation is non-exclusive;~~**
- **~~(b) whether the opportunity to derive public benefit from the occupation is at least the same or greater than if the occupation did not exist;~~**
- **~~(c) whether the occupation is temporary and of a non-recurring nature;~~**
- **~~(d) whether the applicant is a charitable organisation, trust or community or residents association, and if so:~~**

~~(i) the nature of the activities of that organisation; and~~

~~(ii) the responsibilities of that organisation.~~

~~Section 64A(3)(b) of the RMA requires the circumstances when the Council will consider waiving, either in whole or part, coastal occupation charges to be set out in the MEP. These circumstances, set out in a) to d) above, effectively require consideration of the difference between private benefit from an occupation and the public benefit that can accrue from an occupation. For a), where there is exclusive occupation this carries a high degree of private benefit, whereas where the occupation is only temporary there may only be a short-term private benefit. Where trusts, clubs, associations, etc are involved, it is important to understand the nature of the activities and responsibilities of that organisation, including how its purpose relates to the occupation for which a waiver is being sought and the wider public benefits that will accrue from this.~~

~~[C]~~

~~Policy 5.10.7 – The manner in which the level of coastal occupancy charges has been determined is as follows:~~

~~(a) the expenditure related to the Marlborough District Council's role in the sustainable management of Marlborough's coastal marine area has been established;~~

~~(b) the anticipated exemptions and waivers from coastal occupancy charges has been considered;~~

~~(c) the beneficiaries and allocation of costs fairly and equitably amongst beneficiaries has been decided; and~~

~~(d) the appropriate charge for the differing occupations to recover costs has been determined.~~

~~In deciding how to set charges, the Council has used as its starting point the actual expenditure considered necessary to promote the sustainable management of the coastal marine area. The budgeted expenditure for this is described year to year in the Council's Annual Plan for the Environmental Science and Monitoring Group, Environmental Policy Group and Environmental Compliance and Education Group.~~

~~In determining who should meet the cost of sustainably managing the coastal marine environment, an allocation of costs needs to occur between beneficiaries. The Council has considered that a contribution towards the costs should be made by ratepayers (25%) as well as those benefitting from the occupation of public space (75%). The Council has also given consideration to anticipated waivers that may be granted and the number and size of the various occupations. From this assessment, a schedule of charges has been derived and is set out in the Council's Annual Plan.~~

~~[C]~~

~~Policy 5.10.8 - Any coastal occupancy charges collected will be used on the following to promote the sustainable management of the coastal marine area:~~

~~(a) implementation of a Coastal Monitoring Strategy;~~

~~(b) State of the Environment monitoring;~~

~~(c) research in relation to the state and workings of the natural, physical and social aspects of the coastal marine area;~~

~~(d) education and awareness;~~

~~(e) habitat and natural character restoration and enhancement;~~

~~(f) managing marine biosecurity threats;~~

~~(g) maintaining and enhancing public access; and~~

~~(h) formal planning in the Resource Management Act 1991 planning context and strategic planning and overview in relation to the coastal environment.~~

~~The RMA requires that in implementing a coastal occupancy charging regime, any money collected must be used to promote the sustainable management of the coastal marine area. The policy describes those matters on which the revenue collected from imposing charges is to be used, as required by the RMA. Greater detail on these matters can be found in a number of the subsequent chapters of the MEP, including Chapter 6 - Natural Character, Chapter 7 - Landscape, Chapter 8 - Indigenous Biodiversity, Chapter 9 - Public Access and Open Space, Chapter 10 - Heritage Resources, Chapter 13 - Use of the Coastal Environment and Chapter 15 - Resource Quality (Water, Air, Soil).~~

~~Methods of implementation~~

~~The methods listed below are to be implemented by the Council unless otherwise specified.~~

~~[C]~~

~~5.M.10 Regional Rules~~

~~*Include provisions relating to the requirement for coastal occupation charges for port facilities where appropriate, moorings, marinas where appropriate, marine farms, jetties, wharves, boat ramps and slipways, boatsheds and other structures and utilities. Rules will also require discretionary activity applications to be made to enable an assessment of whether an exemption or waiver of any charge should be granted.*~~

~~[C]~~

~~5.M.11 Annual Plan~~

~~*The level of charge to be applied to any activity for which a coastal permit is granted to occupy the coastal marine area is set out in the Council's Annual Plan.*~~

Comment [58]: Topic 11

Anticipated environmental result	Monitoring effectiveness
5.AER.1 Sufficient flow in rivers and adequate groundwater level to sustain natural and human use values supported by these water bodies.	Attainment of environmental flows and levels, as recorded at representative monitoring sites. The record of compliance with environmental flows and levels, as recorded by water meter and published via E-planning.
5.AER.2 Maintenance of spring flows on the Wairau Plain.	Attainment of environmental flows for Spring Creek, Taylor River and Doctors Creek, as measured at representative monitoring sites.
5.AER.3 Maintenance of the significant values of ~~outstanding~~ water bodies.	Reassessment of waterbody values at the time of the next review of the MEP.
5.AER.4 More efficient allocation of water resources.	The number of water permits granted for the use of water on the basis of the reasonable use test.

Comment [59]: Topic 4

Anticipated environmental result	Monitoring effectiveness
5.AER.5 Increased utilisation of allocated water.	Increased use of water, within allocation limits, as recorded by water meter and published via E-planning. Water users transfer water permits from site to site, as recorded by E-planning.
5.AER.6 Reduced conflict between water users.	A reduction in the number of complaints regarding the taking, use, damming and diversion of water.
5.AER.7 Over-allocation of water resources is phased out.	The total amount of water allocated to water users in over-allocated resources does not exceed the allocation limit by 2025.
5.AER.8 Land use change does not reduce water yield in fully allocated FMUs to the extent that it adversely affects the reliability of existing water permits.	No significant increase in the incidence of flow restrictions experienced by water permit holders in fully allocated FMUs.
5.AER.9 Storage of water is increasingly utilised to improve the resilience of water uses.	The record of the number of Class C water permits granted.
5.AER.10 No occurance of sea water intrusion into aquifers.	Conductivity levels as measured by Council's sentinel wells.

Comment [60]: Topic 4