

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2020-CHC-

**I TE KŌTI O AOTEAROA
ŌTAUTAHI ROHE**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14(1) of the First Schedule
of the Act in relation to the Proposed Marlborough
Environment Plan

BETWEEN **ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED**

Appellant

AND

MARLBOROUGH DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL BY ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED**

Environmental Defence Society Inc
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TO: The Registrar
Environment Court
CHRISTCHURCH

INTRODUCTION

1. The Environmental Defence Society Incorporated (**Appellant**) appeals against part of the decision of Marlborough District Council (**Respondent**) on the Proposed Marlborough Environment Plan (**PMEP**).
2. The Appellant is a not-for-profit environmental advocacy organisation, comprised of resource management professionals who are committed to improving environmental outcomes within New Zealand.
3. The Appellant made a submission on the PMEP.
4. The Appellant is not a trade competitor for the purposes of s308D of the Resource Management Act 1991 (**RMA**).
5. The Appellant received notice of the decision on 21 February 2020. The appeal period was extended to 8 May 2020 by Environment Judge Hassan in a Minute dated 26 March 2020.
6. The decision was made by the Respondent.

PARTS OF THE DECISION BEING APPEALED

7. The parts of the decision being appealed are:
 - a. Volume I – Policy
 - i. Chapter 1: Introduction
 - ii. Chapter 2: Background
 - iii. Chapter 4: Sustainable management of natural and physical resources
 - iv. Chapter 5: Allocation of freshwater resources

- v. Chapter 6: Natural Character
 - vi. Chapter 7: Landscape
 - vii. Chapter 8: Indigenous Biodiversity
 - viii. Chapter 13: Use of the Coastal Environment and the Allocation of Coastal Space
 - ix. Chapter 15: Resource Quality
- b. Volume II – Rules
 - c. Volume III – Appendices

REASONS

General reasons

- 8. The general reasons for the appeal are that parts of the PMEP:
 - a. Do not promote the sustainable management of natural and physical resources under section 5 RMA.
 - b. Do not adequately recognise and provide for matters of national importance under section 6 RMA, in particular sections 6(a), (b) and (c).
 - c. Do not have adequate regard to the matters in section 7 RMA, in particular sections 7(b), (c), (d) and (f).
 - d. Do not discharge the Respondent's functions under sections 30 and 31 RMA.
 - e. Do not give effect to the New Zealand Coastal Policy Statement 2010 (**NZCPS**) and the National Policy Statement on Freshwater Management 2014 (**NPSFM**).
 - f. Are not consistent with integrated management of natural and physical resources, including integration with the Resource Management (National Environmental Standard for Plantation Forestry) Regulations 2017.

Specific reasons

9. Without detracting from the generality of the above, the specific reasons for the appeal, and the relief sought, are set out in Annexure A.
10. In addition to the relief specified in Annexure A, the Appellant seeks any further or other relief necessary to meet its appeal points including consequential rule changes to implement changes to PMEP objectives and policies.

ANNEXURES

11. The following documents are **attached** to this notice:
 - a. Copy of Appellant's appeal (**Annexure A**)
 - b. Copy of Appellant's submission (**Annexure B**)
 - c. Copy of the Appellant's submission to the Hearings Panel (**Annexure C**)
 - d. Copy of the Respondent's decision (**Annexure D**)

DATED 8 May 2020



Cordelia Woodhouse

Signed for and on behalf of the
**ENVIRONMENTAL DEFENCE
SOCIETY INCORPORATED** by its
duly authorised agent

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Annexure A

| Part of decision | Reasons for appeal | Relief |
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| Volume 1 – Policy | | |
| Chapter 1 – Introduction | | |
| Introduction | The introduction should include reference to: - the relationship between national planning instruments and the PMEP - the relationship between different parts of the PMEP | Include a specific reference to national planning instruments and the hierarchical nature of RMA instruments (including the requirement to give effect to higher order instruments). In the alternative, this explanation could be provided in Chapter 2. |
| “At this time, the PMEP does not include the provisions relating to marine farming, which are still subject to review.” | Decision is inconsistent with integrated management. Relevant PMEP provisions (e.g. landscape and ecological overlays and associated policies) should apply even if provisions specific to marine farming policies and rules are still being developed. | Amend to: “At this time, the PMEP does not include policies and rules relating specifically to marine farming, as this chapter is still being developed. However, PMEP objectives, policies and overlays apply to marine farming.” |
| Chapter 2 – Background | | |
| “National standards prevail over existing provisions in plans. A rule in a plan cannot duplicate or conflict with a provision in a national standard.” | This statement does not recognise that plans may be more stringent or lenient than national environmental standards in some circumstances. | Add “National standards prevail over existing provisions in plans <u>except where a more lenient or stringent plan provision is provided for by the standard.</u> ” |
| Chapter 4 – Sustainable management of natural and physical resources | | |
| New Policy 4.2.3 – Matters to have regard to when considering the environmental effects of National Grid activities | This provision is written as a code for national grid effects management and does not identify that additional considerations will apply. | Specify that additional considerations arise from other PMEP policies (in particular, those relating to overlays) |
| New Policy 4.2.4 – Network utilities | The relationship between this policy and overlay policies is not sufficiently clear | Amend to “Reference must also be made to the relevant policy direction in other parts of this plan, for example, where located within an Outstanding Natural Landscape, or involving the removal of indigenous biodiversity, the <u>specific effects management policies framework</u> relating to those <u>areas or values take precedence will be</u> |

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| | | relevant.” |
| 4.M.9 “Rules will be used to enable activities associated with the maintenance, alteration, upgrading, development and replacement of regionally significant infrastructure and network utilities” | It is not always appropriate to enable upgrading and development of regionally significant infrastructure | Amend to “provide for ... in appropriate locations” |
| Issue 4C | The PMEP does not make clear that use and development should occur within environmental limits. | 1. Identify that use and development should only occur within the capacity of the environment and environmental limits. In the alternative, amend introduction to: “use must be managed <u>within environmental limits</u> to sustain ongoing potential for resource use; safeguard life-supporting capacity and address adverse effects on the environment (in accordance with section 5)” |
| Objective 4.3 | The PMEP does not make clear that use and development should occur within environmental limits. | Insert additional Objective 4.3.1 “Use and development occurs with the ability of the environment to safeguard life-supporting capacity” |
| Chapter 5 – Allocation of freshwater resources | | |
| Introduction | Does not refer to phasing out/avoiding over-allocation | Amend to: “Sustainable management of the taking, using, damming or diverting of water means recognising <u>and upholding</u> Te Mana o te Wai, <u>phasing out existing over-allocation and avoiding any further over-allocation, and</u> 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.” |
| Introduction and 5.M.1 | Specificity is needed as to when the provisions relate to a Freshwater Management Unit (“FMU”) | Amend introduction to describe Freshwater Management Units (Appendix 6) and Water |

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| | and when they relate to a Water Resource Unit. The decision states that the Appendix 5 Water Resource Units “for practical purposes relate to the FMUs in Appendix 6” (at [9]) but this relationship is not apparent from the PMEP. | Resource Units (Appendix 5), and their values, and the values yet to be identified through the Policy 5.2.2 process, and how these matters inter-relate. |
| Policies 5.2.1, 5.2.2 and 5.2.3 | Clarification is needed as to when values relate to a Freshwater Management Unit (“FMU”) and when they relate to a Water Resource Unit, and how the value setting process yet to come relates to values already identified in Appendix 5. | <ol style="list-style-type: none"> 1. Amend Policy 5.2.1: “The natural and human use values supported by different waterbodies are identified <u>at the Water Resource Unit scale in Appendix 5,</u>” clarify whether those values also apply at the FMU scale, and provide for FMU value identification if different. 2. Amend Policy 5.2.2 to clarify the relationship between the (yet to be identified) “values they hold for the freshwater bodies in their rohe” and existing values in Appendix 5. 3. Clarify scale at which significant values of waterbodies are assessed under Policy 5.2.3 and how this relates to the FMU value setting process to come. |
| Policy 5.2.4 | <ol style="list-style-type: none"> 1. Section 30 requires maintenance and enhancement. 2. Protection of riparian habitat is important for ecological, cultural and water quality purposes. 3. As above, relationship between waterbody units and their values is not clear. 4. Policy does not provide limits to protect FMU values, c.f. NPSFM Policy B1. | <ol style="list-style-type: none"> 1. Amend sub-clause (c),(e) and (g) to: “maintain <u>and enhance</u>”. 2. Amend sub-clause (b) to “protect instream <u>and riparian</u> habitat and ecology” 3. Clarify relationship between this policy and FMU value and limit-setting. 4. Add new sub-clause requiring that environmental flows and/or levels are set to achieve identified FMU/Water Management Unit values. |
| Policy 5.2.8 (now 5.2.7) and 5.M.2 | The NPSFM includes minimum flow as a non-derogable limit. This should not be able to be changed through a resource consent process. Any variations in limits should be undertaken via a | Amend to specify that changes to minimum flows may only occur by a plan change not through the resource consent process. |

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| | plan change | |
| Policy 5.2.9 (now 5.2.8) | Policy excludes ephemeral waterbodies, contrary to NPSFM and Part 2. | Amend policy and explanation to delete ephemeral waterbody exclusion |
| Policy 5.2.15 (now 5.2.16) | Policy does not provide guidance on when protection of flow variability is required. Decision made minor amendments to the explanatory text relating to flow sharing only. Guidance will make the policy clearer and ensure consistency in assessment and application by decision-makers. | Amend policy to provide direction (for example through criteria) on when protection of flow variability is required. |
| Policy 5.3.4 | Policy makes municipal water supplies exempt from restrictions that apply to other consumptive users. This will not ensure over-allocation is avoided. | Amend policy to ensure municipal water supplies do not result in over-allocation. |
| Policy 5.3.5 | Enables take and use where “little effect” which is inconsistent with limit-setting and management of cumulative effects | Delete policy |
| Policy 5.4.5 | The policy should identify that the intended use of the transferred water must be separately assessed. Different uses will have different effects. | Include additional subclause (b): “the transferee’s intended use is separately assessed and subject to consent to ensure that the environmental effects of that use are assessed and appropriately controlled.” |
| Policy 5.5.5 | Over-allocation means that the amount of water taken from the water body does not leave sufficient water behind for the water body to remain healthy. In this situation the water gained through proportional reductions should not be reallocated to water users but to the waterbody, consistent with Te Mana o Te Wai. | Delete “to reallocate the available allocation fairly across all relevant users.” |
| Objective 5.6 | Is not consistent with avoiding over-allocation | Amend to: <u>“Ensure that the taking of groundwater does not cause limits to be breached.”</u> |
| Policy 5.8.1 | Policy was amended to encourage water storage “ <u>while safeguarding ecosystem health</u> ” but the explanatory text has not been amended. | Amend explanatory text to support amendment to policy by explaining potential effects of water storage on ecosystem health: |

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| | | <p><u>“Storage can have significant adverse effects on ecosystem health either through changes in flow or as a result of the increased use that storage provides for and the effects of that use on water quality. Water storage should not be encouraged unless it is consistent with safeguarding ecosystem health and achieving water quality targets.”</u></p> |
| Chapter 6 - Natural character | | |
| Policy 6.1.1 | <p>Policy 6.1.1(a) should recognise the processes associated with geomorphology, topography and landform. Inclusion of hydrological processes is also required.</p> <p>The Policy also needs to acknowledge the inter-related nature of the attributes in (a) – (c).</p> | <p>Amendment of 6.1.1(a) to read:</p> <p>(a) abiotic systems – <u>natural and</u> physical processes; <u>of</u> geomorphology, topography, landform, <u>hydrology</u> and water quantity/quality.</p> <p>Inclusion of additional sentence following subclause (c):</p> <p><u>“recognising the inter-connected nature of these processes”</u>.</p> |
| Policy 6.2.1 and Policy 6.2.2 | <p>Avoidance of adverse effects on areas of natural character should not be limited to coastal sites.</p> <p>Section 6(a) RMA imposes a duty to preserve the natural character of all wetlands, lakes and rivers and their margins, not only those in the coastal environment. This duty remains notwithstanding the existence of the NZCPS which requires avoidance of adverse effects in the coastal environment.</p> | <p>Amendment to specify that Policy 6.2.1 applies to both coastal and inland areas with high, very high or outstanding natural character.</p> <p>Consequential amendment to Policy 6.2.2 to remove subclause (b)</p> |
| Policy 6.2.4 (now 6.2.3) | <p>The Policy does not provide any direction as to what should be considered when assessing a resource consent application.</p> | <p>Amend Policy 6.2.4 to include a list of factors that should be taken into account when assessing a resource consent application:</p> |

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| | | <ul style="list-style-type: none"> (i) The location, scale and design of the proposed activity. (ii) The extent of anthropogenic changes. (iii) The presence or absence of structures, buildings or infrastructure. (iv) The temporary or permanent nature of adverse effects. (v) The physical and visual integrity of the area, and the natural processes of the location. (vi) The intactness of any areas of significant vegetation and vegetative patterns. (vii) The physical, visual and experiential values that contribute significantly to the wilderness and scenic value of the area. (viii) The integrity of landforms, geological features and associated natural processes. (ix) The natural characters and qualities that exist or operate across land and water and between freshwater bodies and coastal water bodies. <p>Or in the alternative, require a method setting these matters out as information requirements.</p> |
| Additional Policy 6.2.X | <p>Chapter 6 does not include a policy controlling the effects of specific activities in areas of high, very high and outstanding natural character (equivalent to Policy 7.2.7 for landscapes).</p> <p>Natural character areas are equally sensitive to development pressures. Clear and directive policies are required to ensure that key pressures are appropriately controlled.</p> | Inclusion of an additional Policy 6.X.X that seeks to protect the values of high, very high and outstanding natural character areas by controlling the activities listed in Policy 7.2.7. |
| Chapter 7 – Landscape | | |
| Policy 7.1.1 | Policy 7.1.1 should include reference to both the values and characteristics of landscapes. Values | Amendment to refer to the ‘characteristics and values’ of landscapes. |

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| | <p>are typically interpreted to focus on anthropocentric elements whereas characteristics incorporates the intrinsic or natural values of the landscape.</p> <p>Additional factors are required in Policy 7.1.1 to address topographical and hydrological elements as well as the expression of natural and formative processes. These amendments give effect to Policy 15 NZCPS.</p> <p>Reference to ‘geological’ in subclause (a) should also be replaced with ‘geomorphological’ as this allows a more comprehensive assessment of the landform.</p> <p>It should also be made clear that the reference to ‘perceptual values’ in Policy 7.1.1(b) is not limited to visual values.</p> | <p>Amendment of Policy 7.1.1(a) as below: (a) biophysical values, including geological <u>geomorphological, topographical, hydrological</u> and ecological elements</p> <p>Include additional subclause: “expression of natural and formative processes”.</p> <p>Amendment to clarify that ‘perceptual values’ in (a) incorporates multi-sensory values.</p> |
| Policy 7.1.3 | <p>Policy 7.1.3 should refer to both Policy 7.1.1 (factors for identification) and also Policy 7.1.2 (methods) on the basis that both policies are relevant to the process of identification and assessment of landscape values.</p> <p>Amenity landscapes should be mapped whether or not they are sensitive to change. Identification is a prior and separate consideration to the management of the landscape If a landscape qualifies under section 7(c) it should be mapped as such in the PMEP</p> | <p>Amendment to refer to the methods in Policy 7.1.2</p> <p>Identification of all amenity landscapes, not only those that are sensitive to change.</p> <p>This requires consequential amendments throughout Chapter 7.</p> |
| Policy 7.2.1 and 7.2.12 (now 7.2.1) | The RMA requires that amenity landscapes are maintained and enhanced. Currently the Plan includes no controls addressing the effects of | Deletion of Policy 7.2.12 and amend to Policy 7.2.1 to include amenity landscapes. |

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| | <p>activities on amenity landscapes that are not considered sensitive to change.</p> <p>It is not sufficient that the Council use non-regulatory methods, and encouragement, to achieve the maintenance and enhancement of amenity landscapes. The effects of activities on high amenity landscapes need to be subject to specific and directive controls.</p> <p>Chapter 7 also does not include direction on what should factors should be taken into account in the resource consent application.</p> | <p>Include an additional Policy controlling the activities that have the potential to degrade the amenity value of other amenity landscapes (not provided for in Policy 7.2.2 and 7.2.3).</p> <p>Amendment to include a list of factors to be taken into account when determining a resource consent application.</p> |
| Policy 7.2.5 | Avoidance of adverse effects on outstanding natural features and landscapes should not be limited to those in the coastal environment. The NZCPS does not remove the direction provided under s 6(b) RMA. | Amendment to require avoidance of adverse effects on outstanding natural features and landscapes whether or not they are in the coastal environment. |
| Additional Policy 7.2.X | Policy 15(b) of the NZCPS requires that significant adverse effects of activities must be avoided on other natural features and landscapes in the coastal environment. This direction is not given effect in the PMEP. | Inclusion of additional Policy 7.2.X requiring the avoidance of significant adverse effects on natural features and landscapes in the coastal environment. |
| Chapter 8 – Indigenous Biodiversity | | |
| Issue 8A | The Introduction and explanatory text to Issue 8A both identify loss of diversity as a key issue faced in Marlborough, the issue itself should too. | Include “loss of diversity” in issue. |
| Objective 8.1 explanation | Reference to Policies 13 and 14 NZCPS is missing from decisions version MEP | Amend explanation to align with Topic 6 decision at [20]. |
| Approach to identification and protection of significant biodiversity Policy 8.1.3, Policy 8.2.2, Policy 8.2.8 (now 9), 8.M.3. | <p>PMEP approach to significant biodiversity identification is to:</p> <ul style="list-style-type: none"> - identify significant marine ecological areas and significant wetlands - a voluntary (“partnership”) approach to | 1. Amend Policy 8.2.2 and Method 8.M.3 to delete preference for a voluntary partnership approach and to provide for a programme of mandatory identification of significant natural areas and for both voluntary and regulatory measures as the |

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| | <p>identification of other SNAs (Policy 8.2.2, 8.M.3)</p> <ul style="list-style-type: none"> - continue to gather information (Policy 8.1.3) - take a voluntary approach - a 10 year transition period to expand the SNA programme to areas yet to be surveyed, but also to assess the effectiveness of the voluntary partnership approach (Policy 8.2.2). -review whether the voluntary approach is sufficient based on monitoring of condition and extent (Policy 8.2.8 [now 9]). - limited regulatory tools (Policy 8.3.7) <p>This approach is entirely inadequate to address the ongoing loss and degradation of Marlborough’s significant biodiversity. Protection of significant biodiversity areas is a matter of national importance and environmental bottom line. PMEP must set clear bottom lines to ensure that activities will not compromise this – this is regulatory action, above which voluntary partnerships are critical.</p> | <p>means for achieving protection of significant indigenous biodiversity.</p> <ol style="list-style-type: none"> 2. Amend Policies 8.1.3 and 8.2.2 to delete reference to a 10 year transition period and provide for MDC to start now on transitioning to an approach where SNAs are identified and mapped on a tenure neutral basis. 3. New policy requiring MDC to establish a database of significant biodiversity areas. 4. New policy requiring areas identified as significant through resource consent applications to be included in the PMEP every 2 years through a Schedule 1 process. |
| Policy 8.3.3 | The provision enabling the National Grid should recognise that in some circumstances effects will need to be avoided to maintain indigenous biodiversity. | Amend to recognise that avoidance of adverse effects may be required. |
| Policy 8.3.5 | A requirement to “take into account” that NZ King Shag could feed within 25km of certain breeding sites is insufficient to implement Policy 11(a), and the policy omits several NZ King Shag breeding sites. | <ol style="list-style-type: none"> 1. Amend to add “and avoid adverse effects on their habitat” 2. Add the following NZ King Shag breeding sites into policy: <ul style="list-style-type: none"> • Site 4.26 Blumine Island • Site 4.2.1 Hunia, Port Gore 3. Amend reference to “within 25km” to “within 25km and where the seabed is ≤50m depth”. |
| Policy 8.3.8 (now 8.3.6) | Amended offsetting policy conflicts with Policy 8.3.2(a), (which requires avoidance of adverse | Reinstate exclusion for sites with significant indigenous biodiversity value |

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| | effects on significant areas) and will not protect significant vegetation and habitat. Offsetting principles are incomplete | Amend policy to be consistent with best practice offsetting guidance (e.g. Maseyk et al, Biodiversity Offsetting under the Resource Management Act, September 2018). |
| Policy 8.3.3 (now 8.3.7) | Provides for control of vegetation clearance but not other activities that adversely affect significant biodiversity. | Amend to include “land disturbance, drainage and subdivision”. |
| Policy 8.3.7 (now 8.3.8) | Policy 8.3.7 is not consistent with Policy 8.3.5 and does not give effect to Policy 11 NZCPS because it does not provide for control of activities that disturb the seabed within NZ King Shag feeding habitat. | Amend Policy 8.3.8 by adding: <u>Activities that disturb the seabed within New Zealand King Shag feeding habitat identified in Policy 8.3.5 must be controlled to ensure adverse effects on Threatened species are avoided.</u> |
| New policy and rule | Biophysical bottom lines for Marlborough’s seabed habitats should be included to implement Policies 11, 13 and 14 NZCPS and safeguard the life-supporting capacity of ecosystems. MDC holds a range of information including 3D mapping and habitat type characterisation for most of the region that would enable habitat-specific bottom lines to be developed | Include habitat-specific bottom lines for Marlborough’s seabed habitat. Amend rules to ensure activities occur in a manner consistent with achieving bottom lines. |
| New policy and rule | The NESPF prevents a range of activities within SNAs (whether mapped or not). Because MDC has not identified SNAs in the PMEP, foresters should be directed to undertake an assessment of significance prior to afforestation that may affect a SNA | New policy: Require an assessment of ecological significance in terms of the criteria in Appendix 3 prior to afforestation occurring. New permitted activity rule that makes afforestation a permitted activity (where permitted under the NESPF) subject to an assessment demonstrating that the area is not of ecological significance being provided to MDC one month prior to the afforestation commencing. |
| Method 8.M.2 | Does not provide for subdivision control. Subdivision fragments significant habitat. | Amend to: Resource consent will be required for <u>subdivision</u> , land disturbance... Consequently amend subdivision rules |

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| Method 8.M.3 | Consequential amendments | Amend for consistency with relief sought on Policies 8.1.3 and 8.2.2 |
| 8.AER.2 | Outcome is focussed on whether protection (which can be legal or active) increases not whether the environment is improved/degraded | Amend to reinstate “an improvement in the values of those sites” (along with “increased protection of the indigenous biodiversity values”). |
| Chapter 13: Use of the Coastal Environment and the Allocation of Coastal Space | | |
| Policy 13.1.1 | <p>Policy 13.1.1 fails to recognise that adverse effects on sites identified as significant coastal sites under Policy 8.3.1 must be avoided.</p> <p>To the extent that the areas in Policy 8.3.1 are covered by Policy 13.1.1(d), it is only directed that significant adverse effects be avoided. This causes inconsistency in the PMEP.</p> | <p>Inclusion of additional subclause 13.1.1(d): <u>“adverse effects on areas identified as significant coastal biodiversity sites under Policy 8.3.1”</u></p> <p>Consequential re-numbering of following subclauses.</p> |
| Policy 13.5.3 | Policy 13.5.3 conflicts with Policies 13.5.1 and 13.5.2. Residential development should be directed to the Coastal Living Zone rather than the Coastal Environment Zone. It should not be actively provided for in the Coastal Environment Zone. | Deletion of Policy 13.5.3 in its entirety. |
| Policy 13.5.6 | Policy 13.5.6 should include standards addressing colour and locating development away from sensitive areas as these elements have the potential to have adverse effects on the amenity values of the environment. | Amendment to include additional subclauses: <u>(j) Colour.</u> <u>(k) Locating away from sensitive areas.</u> |
| Policy 13.9.9 | <p>Policy 13.9.9(a) requires that consideration be given to <u>reducing</u> the ecological effects of seabed disturbance caused by a new mooring in terms of Policy 8.3.1.</p> <p>Policy 8.3.1 sets out how to manage the effects of development in the coastal environment and requires avoidance of adverse effects in a number</p> | Amendment to 13.9.9(a) to give effect to the management direction in Policy 8.3.1. |

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| | of areas. The direction in Policy 13.9.9(a) does not accurately reflect that direction. | |
| Policy 13.10.3 | <p>The intent of Policy 13.10.3 is to achieve efficient use of the coastal marine area. Using the minimum area necessary for structures is not the only consideration for achieving efficiency. The Policy should be amended to include other relevant considerations.</p> <p>Policy 13.10.3 as worded also does not include a course of action, rather it states something that <i>can</i> be done.</p> | <p>Amend Policy 13.10.3 as set out below: Efficient use of the coastal marine area can <u>is to</u> be achieved by:</p> <p>a. using the <u>limiting structures to the</u> minimum area necessary for structures.</p> <p>b. <u>Limiting structures that have a technical or operation need to be located in the coastal marine area and for which no alternative location is available.</u></p> <p>c. <u>Encouraging structures to be multipurpose where practicable.</u></p> |
| Policy 13.10.5 | Policy 13.10.5 does not include a requirement to consider the effects of structures on high value environments or environments other than the terrestrial environment. | <p>Amend Policy 13.10.5(g) to include additional subclause addressing natural character and landscape values.</p> <p>Policy 13.10.5(g)(iii) should be amended to include terrestrial, freshwater and marine environments.</p> |
| Policy 13.11.4 | As above, Policy 13.11.4 also does not include a requirement to consider the effects on high value environments or environments other than the terrestrial environment when considering an application to reclaim or drain the coastal marine area. | <p>Amend Policy 13.11.4(c) to include subclauses addressing:</p> <ul style="list-style-type: none"> - Natural character and landscape values. - The marine and freshwater environment |
| Policy 13.11.7 | To avoid uncertainty, this policy should be reworded to identify the specific situations where public access areas do not need to be set aside. | <p>Amend Policy 13.11.7 to read:</p> <p>Where practicable For the purpose of public access, an esplanade reserve or strip shall be required to be set aside on reclaimed areas of the coastal marine area <u>unless restriction is necessary to:</u></p> <p>(a) <u>protect public health and safety;</u></p> <p>(b) <u>provide for defence, port or airport purposes;</u></p> |

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| | | <p><u>(c) protect areas with natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal, historic heritage and special character;</u></p> <p><u>(d) protect threatened indigenous species;</u></p> <p><u>(e) protect dunes, estuaries and other sensitive natural areas or habitats;</u></p> <p><u>(f) have a level of security necessary to carry out an activity or function that has been established or provided for;</u></p> <p><u>(g) provide for exclusive use of an area to carry out an activity granted an occupation consent under section 12 of the Resource Management Act 1991;</u></p> <p><u>(h) enable a temporary activity or special event;</u></p> |
| Additional Policy 13.11.X | <p>Additional Policy requiring that a precautionary approach be adopted for proposed activities in the coastal environment that have uncertain, unknown, or little understood, but potentially significantly adverse effects.</p> <p>Inclusion of this Policy gives effect to Policy 3 of the NZCPS.</p> | <p>Additional Policy required. Proposed wording, from Policy 3 NZCPS, set out below:</p> <ol style="list-style-type: none"> 1. <u>Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.</u> 2. <u>In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that:</u> <ol style="list-style-type: none"> (a) <u>avoidable social and economic loss and harm to communities does not occur;</u> (b) <u>natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and</u> <p><u>the natural character, public access, amenity and</u></p> |

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| | | <u>other values of the coastal environment meet the needs of future generations</u> |
| Policy 13.12.1 | Policy 13.12.1 fails to include factors relating sedimentation retention methods and disposal material which are important for sediment control. | Amendment to Policy 13.12.1 to include additional subclauses set out below: <u>(d) Appropriate sediment retention methods are used to control spread or loss that cannot be addressed through location.</u> <u>(e) The material disposed exhibits the same characteristics to the material at the disposal location.</u> <u>(f) The material is free from waste.</u> |
| Additional Policy 13.12. X | An additional policy should be included to identify where deposition should not be allowed. This would recognise that deposition has significant, and in many cases permanent, effects and should be avoided in some areas (for example, significant marine biodiversity areas). | Include an additional Policy 13.12.X setting out where deposition should not occur. |
| Chapter 15 – Resource Quality | | |
| Table 15.1 | Although MDC does not monitor Para Wetland there is evidence to suggest it is in a degraded state | Include Para Wetland |
| Issue 15C | Issue is not accurate | Amend to "The mauri of wai (water) has been degraded due to the lack of understanding of its spiritual value <u>and inadequate control of the impacts of activities and uses.</u> " |
| Objective 15.1a | Objective is not consistent with a value and limit setting approach. Objective does not recognise the compulsory national value of human health for recreation and does not contribute to the target of 90% swimmable rivers by 2040. | Amend to include: - additional subclause of achieving water quality limits and targets - Amendment to (b) to provide for primary contact recreation/ swimmability - Compulsory national values should not be qualified as “where identified as a value”. |
| New Objectives 15.1 | Objectives for sediment and sediment are needed | Include objectives for phosphorus and |

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| | to safeguard ecosystem health | suspended/deposited sediment in accordance with the Freshwater Science and Technical Advisory Group Report to the Minister for the Environment dated June 2019. |
| Policy 15.1.1 | PMEP should provide for primary contact recreation. | Amend (a) and (b) to provide for primary contact recreation (swimming). |
| Policy 15.1.2 | Uncertainty in how water resource units and FMUs apply and how quality standards apply to each | Amendment to specify: a. The difference and relationship between quality classifications and standards. b. The level and which standards will be applied: water resource unit, FMU etc. |
| Policy 15.1.3 | <p>There are already a number of degraded water bodies in Marlborough and also many at high risk of becoming degraded. MDC cannot postpone its function to safeguard ecosystem health when it is known that many waterbodies are degraded and what the activities contributing to that degradation area. The PMEPP should identify and include interim cumulative contaminant to achieve ecosystem health, to ensure that contaminants are appropriately managed until completion of FMU value and limit setting by 2024 (or whenever these provisions are eventually made operative). Non-point source discharges should be included in the regime managing to these limits. Discharges from non-point sources can be measured using models like Overseer and allocations should be based on Land Use Capability. Policies to this effect should be included in the PMEPP.</p> <p>The PMEPP provides for new dairy farming (Policy 15.1.34). It should include maximum leaching limits for dairy farming that are based on the inherent productive potential (LUC) of the subject land, to ensure that production and intensification</p> | Include interim limits (including loads for N and P). |

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| | occur within the capacity of the environment to sustain itself. | |
| Policy 15.1.8 | Discharge to land should only be encouraged where the land characteristics support attenuation. Contaminants discharged onto land with high loss rates will still run directly into waterways. This is identified in the explanation but not the policy. | Add " <u>where its characteristics will attenuate contaminant discharge</u> " at the end of the Policy. |
| Policy 15.1.9 | The Policy should include a link to management of all discharges. This ensures an integrated approach is taken to achieving water quality outcomes and staying within limits. | Add subclause (c): <u>"The degradation of ecosystem health in combination with all other discharges"</u> |
| Policy 15.1.10 | Cumulative effects of discharges are not managed in accordance with limits. | Add subclause (b): "the contribution of those contaminants to the overall load/limit." |
| Policy 15.1.11 | A link between the assessment of the application and the matters that the applicant must consider (Policy 15.1.10) is needed. The decision-maker must also consider the potential for adverse effects on ecosystem health of the activity itself and in combination with other activities. This is necessary to ensure an integrated approach. | Add subclause (a): "the factors in Policy 15.1.10" Add new subclause: "The potential for adverse effects on ecosystem health including in combination with other permitted discharges." |
| Policy 15.1.12 | Policy should make clear that a discharge permit should only be granted if limits are complied with. The policy needs to clarify that the application itself must not only comply with quality standards but the application in combination with all other discharges. In over-allocated FMUs further permits should not be allowed until contaminant levels are brought below the limit. Only then will there be head room for new activities and uses. Any | Amend to insert "only" in the chapeau. Delete (b) and addition of below: "(b) in the case of <u>overallocation including by non-compliance with the water quality classification standards set for the waterbody or the objectives in 15.1:</u> (i) the <u>applicant is a</u> consent holder for an existing discharge <u>and</u> can demonstrate a reduction in the |

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| | discharge permit for existing in over-allocated catchments should be required to reduce discharge amounts over the term of the permit. | concentration of contaminants and a commitment to a staged approach for achieving the water quality classification standards <u>and objectives in 15.1</u> within a period of no longer than five years from the date the consent is granted; and (ii) the degree of non-compliance will not give rise to significant adverse effects. |
| Policy 15.1.23 | Discharge of effluent into coastal waters should also be avoided. This is required to give effect to Policy 21 NZCPS. | Include “and coastal” before waterbodies. |
| Policy 15.1.25 | Precautionary interim limits should be set until the FMU value and limit setting process is complete. Policy 15.1.25 should be amended to identify non-regulatory methods as a tool but not to set up a preference for their use as is currently inferred. | Amend Policy to read: “Recognise that non-regulatory methods <u>may...</u> ” |
| Policy 15.1.27 | This policy should not direct exclusively non-regulatory approaches. Planting of riparian margins should be required as a condition of consent in situations where it is a necessary and effective tool to address water quality pressures. | Amend Policy by adding the following: “ <u>and requiring planting or riparian margins as a condition of consent where it is an effective management tool in intercepting contaminant run off, excluding stock, or preventing sediment loss.</u> ” |
| Policy 15.1.29 | Sediment is a significant stressor on water quality and in-water ecosystems. Land disturbance activities should be controlled so that increased sediment does not occur. | Amend (a) to require avoidance of adverse effects of increased sediment runoff |
| Policy 15.1.34 | Policy provides for new dairy farming. Information requirements to demonstrate new dairy farming will not have more than minor adverse effects are inadequate | <ol style="list-style-type: none"> 1. Amend chapeau: “A land use must identify <u>(as part of and in combination with the requirements in Schedule 1 RMA)...</u>” 2. Amend (e) to ensure NMPs also address output figures 3. Add two subclauses: <u>f) assessment of the effects of any discharges, in combination with all other discharges to the FMU on the receiving environment and identifying how</u> |

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| | | <u>and why the adverse effects are no more than minor; and</u> <u>(g) measures in place to ensure that leaching limits/loads are met.</u> |
| Volume 2 - Rules | | |
| Livestock access to waterbodies 2.9.9 and 2.11.4 and 2.11.5 | Rules exclude intermittent/ephemeral waterbodies when dry and only consider water quality not direct disturbance of freshwater habitat | Amend to requires stock are excluded from the active bed and riparian area of main-stem rivers and of other intermittent and ephemeral rivers where they are important habitat or breeding areas or important to the hydrological function of the water body. |
| Chapter 2 – General Rules | | |
| All zones | | |
| New/amended vegetation clearance rules | PMEP does not control construction and siting of buildings and structures, vegetation clearance, cultivation, excavation or subdivision in outstanding natural landscapes and outstanding natural features. | Include new/amended rules to require resource consent for construction and siting of buildings and structures, vegetation clearance, cultivation, excavation or subdivision in outstanding natural landscapes/ outstanding natural features and areas with high/very high natural character. |
| Indigenous vegetation clearance permitted activity standards (3.3.12 and similar) | Council has decided not to map terrestrial SNAs. This means the PMEPP's vegetation clearance permitted standards must be set at a point where regulatory oversight will be triggered when effects may compromise protection of significant values. PMEPP permitted activity standards will allow adverse effects on significant biodiversity. | Delete standards 3.3.12.2(b) and (c) and Standards 3.3.12.5, 3.3.12.6 and 3.3.12.7 permitting clearance of indigenous vegetation/indigenous forest. Require resource consent for any indigenous vegetation clearance not authorised by standards 3.3.12.2(a), (d), (e), (f) or (g). Similarly amend standards in other zones. |
| Discretionary activity rule for activities not meeting permitted activity standards (3.6 and similar) | Where standards are not met, indigenous vegetation clearance is a discretionary activity. Non-complying activity status is appropriate to | Specify that indigenous vegetation not meeting the standards in 3.3.12 (or similar standards in other chapters) is a non-complying activity. |

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| | implement the Chapter 8 objectives and higher order policy direction | |
| New/amended diffuse discharge rules | PMEP does not contain any mechanism to ensure diffuse discharges of contaminants are managed to maintain Water Resource Unit Values & Water Quality Classification Standards or Objectives 15.1.a– 15.1.e | Insert new rules for diffuse discharges from primary production activities to implement water quality objectives and policies |
| Coastal Env't Zone Rule 4.4.3 (forestry setback) Replanting Afforestation | Forestry within 200m of the coastal marine area in the Marlborough Sounds will contribute to degradation of the marine environment by sediment run-off | 1. Amend Rule 4.4.3 to make plantation forestry replanting a non-complying activity within 200m of the coastal marine area. 2. Provide for plantation forestry afforestation within 200m of the coastal marine area as a non-complying activity. 3. Consequentially amend Standard 4.3.6.1(c) |
| Chapter 16 | | |
| Amend rule 16.6.6 King Shag feeding habitat | Control of dredging, bottom trawling, deposition and reclamation in New Zealand King Shag feeding habitat is necessary to implement Policy 11 NZCPS and protect this species. | Amend rule 16.6.6 to include dredging, bottom trawling, deposition and reclamation within New Zealand King Shag feeding habitat identified in Policy 8.3.5 |
| Chapter 24 | | |
| New subdivision rule | PMEP does not control fragmentation effects of subdivision on significant indigenous vegetation or habitat | 1. Require resource consent for subdivision as a restricted discretionary activity outside urban zones, with matters of discretion to include effects on significant indigenous vegetation or significant habitat of indigenous fauna. 2. Include a new assessment matter: effects on significant indigenous vegetation or significant habitat of indigenous fauna. |
| Chapter 25 | | |
| Vegetation clearance | Definition excludes plantation forestry harvest, which can damage adjacent indigenous vegetation | Amend definition to clarify that damage to adjacent vegetation by plantation forestry harvesting is a form of vegetation clearance |
| Volume 3 – Appendices | | |
| Appendix 4 | The RMA includes cumulative effects under the | Amendment to require application of the criteria |

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| | definition of 'effect'. As such, the cumulative effects of an application should be considered in determining whether an effect is significant or not. | in assessing both individual and cumulative effects of a proposal. |
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