

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

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

ENV-2020-CHC-

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

AND

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

BETWEEN **DELEGAT LIMITED** a duly incorporated company having its registered office at Level 1, 10 Viaduct Harbour Avenue, Auckland, New Zealand

Appellant

AND

MARLBOROUGH DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL
Dated this 8th day of May 2020**

**GASCOIGNE WICKS
LAWYERS
BLLENHEIM**

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

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

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

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

To: The Registrar
Environment Court
Christchurch

Name of Appellant and Decision Maker

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

Trade Competition

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

Date of Decision appealed against

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

Date on which Notice of Decision was received by Appellant

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

The Decision

- 6 The parts of the decision that Delegat is appealing is:
 - (a) The provisions in 3.3.14 (formerly 3.3.13) in Chapter 3, Volume 2.
 - (b) The policies in Chapter 5, Volume 1. Specifically MDC’s refusal to insert a new policy per its original submission.

¹ Talley’s is lodging a concurrent appeal jointly with Clearwater Mussels Limited. That appeal relates to provisions of the MEP concerning the marine environment whereas this appeal relates exclusively to land based activities.

Reasons for the Appeal

7 The reasons for the appeal are as follows:

Cultivation Slope Restrictions

- (a) The rules restriction cultivation on slopes near rivers do not distinguish between land sloping towards the river verses land sloping away from the river.
- (b) Cultivation on land sloping away from a river will have a lower impact on a river from sedimentation than cultivation on land sloping towards a river.
- (c) When land is sloping away from a river, a 1m setback is sufficient.

Storage of Groundwater

- (d) The MEP does not address abstraction of groundwater for the purposes of placing into storage.
- (e) The MEP sets minimum levels for Freshwater Management Units. The will impact upon abstraction from related aquifers.
- (f) The MEP should provide clear direction on when 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

8 The Appellant seeks the following relief:

- (a) With respect to the cultivation slope restrictions:
 - (i) Amendments as set out in Part 1 of Schedule A.
- (b) With respect to the storage of groundwater
 - (i) Insert new policy 5.8.4 as set out in Part 2 of Schedule B into Chapter 5 of Volume 1 (with subsequent provisions renumbered accordingly).
- (c) Other equivalent relief

Attached Documents

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

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

Joshua Marshall

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

Address for service of the Appellant

Gascoigne Wicks, 79 High Street, Blenheim 7201.

Telephone: 03 578 4229

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

Contact person: Josh Marshall and Quentin Davies, Solicitors

Note to appellant

You may appeal only if—

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

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

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

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

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

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

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

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

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

Advice to recipients of copy of notice of appeal

How to become party to proceedings

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

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

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

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

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

How to obtain copies of documents relating to appeal

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

Advice

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

SCHEDULE A

Part 1

3.3.14. Cultivation.

Note:

Where cultivation is managed under the National Environmental Standards for Plantation Forestry 2017, Standards 3.3.14.1, 3.3.14.2, 3.3.14.3, 3.3.14.5 and 3.3.14.6 do not apply

3.3.14.1. 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.

3.3.14.~~12~~. On all slopes greater than 20° cultivation must be parallel to the contour of the land; except that up to 15% of the cultivated area may be cultivated at an angle to the contour.

3.3.14.~~32~~. On ~~all slopes greater than~~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~~a river ~~(except an ephemeral river, or intermittently flowing river when not flowing)~~, lake or coastal marine area.

3.3.14.~~43~~. 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 ~~all slopes~~ less than or equal to 10° cultivation must not be within 3m of ~~the~~a river ~~(except an ephemeral river, or intermittently flowing river when not flowing)~~, lake or coastal marine area.

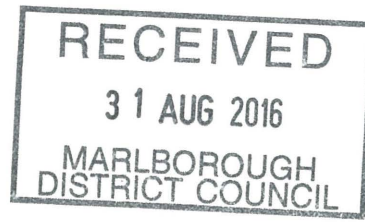
3.3.14.~~54~~. Cultivation must not be in, or within 8m of, a Significant Wetland, except:
(a) where the wetland is fenced in accordance with the wetland boundaries mapped in the Plan, in which case cultivation may occur up to the fenced boundary; or
(b) where the land slopes away from the Significant Westland, in which case cultivation must not be within 1m of the Significant wetland.

3.3.14.~~56~~. On completion of the cultivation, a suitable vegetative cover that will mitigate soil loss, must be restored on the site so that, within 24 months the amount of bare ground is to be no more than 20% greater than prior to the cultivation taking place.

3.3.14.~~67~~. Cultivation must not cause any conspicuous change in the colour or natural clarity of a flowing river after reasonable mixing, or a Significant Wetland, lake or the coastal marine area.

Part 2

Policy 5.8.4 Aquifer water may be abstracted to storage at all times 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. If aquifer water is abstracted to storage during the irrigation season the total abstraction for storage and direct irrigation must not exceed the reasonable use demand allocation.



Delegat Limited

Submission – Proposed Marlborough Environment Plan

August 2016

1. SUBMITTER DETAILS

Delegat Limited
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 **NO**

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.*

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%.

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.

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.*

5.3 Volume 1, Chapter 14 – Use of the Rural Environment

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.*

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.*

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.

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.*

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 5m³ per day per Computer Register.*

Standard 2.3.5 *Take and use of water for incidental use associated with farming up to 5m³ 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 3.1.13 *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.*

Rule 3.1.25 *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 3.6.2 *Winery, distillery or brewery and all associated definitions.*

5.6 Volume 3, Appendices

Appendix 6 *Environmental Flows and Levels.*

5.7 Volume 4, Maps

Significant Wetlands W226.

6. THE SUBMISSION IS:

Delegat Limited (Delegats) supports the above provisions subject to the following amendments.

6A. DELEGAT LIMITED SUPPORTS THE ABOVE PROVISIONS SUBJECT TO THE FOLLOWING:

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

The policy is supported however Delegats 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.

Delegats 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.

6.2 **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 Delegates 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 modelled reasonable demand does not reflect the actual demand.

Delegates 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.

6.3 **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 Class A & B 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 of 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.

6.4 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.

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) 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

(v) 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.

6.5 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. Delegates 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 for each 5ha block that the device is being operated over.

- 6.6 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.
- 6.7 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.
- 6.8 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.

Delegats 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.

6.9 Standard 3.3.23.1 The application of fertiliser must not be to a Soil Sensitive Area identified as free-draining soils.

Delegats submit that there no justification in the Plan for a blanket lack of permitted activity status for the application of fertiliser to free draining soils. Delegats understands the issue is one of over-application of fertiliser that is not taken up by plants and subsequently leaches into an aquifer.

There is a range of options to avoid this, including use of foliar fertiliser sprays, timing of fertiliser application and matching fertiliser application to plant uptake and requirements.

Relief Sought:

That the standard 3.3.23.1 be deleted.

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

Delegats 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.

6.11 Volume 3, Appendix 6 Environmental Flows and Levels

Delegats support in full:

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

Delegats 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.

6.12 Significant Wetlands

The Significant Wetland W226 is listed.

That wetland does not exist and is developed vineyard.

Relief Sought

That the Significant Wetland W226 be deleted from the Plan.

6B DELEGATS REQUEST THE FOLOWING ADDITIONAL MATTERS BE INCLUDED:

Storage of Groundwater

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. Delegates 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:

Delegates 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 at all times 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. If aquifer water is abstracted to storage during the irrigation season the total abstraction for storage and direct irrigation must not exceed the reasonable use demand allocation.

Soil Sensitive Areas

The MEP makes reference to Soil Sensitive Areas in a number of locations. Delegates 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

Delegates 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.

6C DELEGATS OPPOSE THE FOLLOWING PROVISIONS IN FULL:

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.

Delegats 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.

7. THE DECISION DELEGATS SEEK FROM COUNCIL IS:

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

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

That the various matters / provisions outlined in Section 6C (above) be deleted.

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.

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

only transport agency with the authority to act in spill events and (in the coastal marine area), Maritime Safety, along with the Council, Police and Fire Service.⁷

Decision

18. The explanation to Policy 15.5.5 is amended as follows:

Several agencies are potentially involved in any spill event, including the Council, ~~Fire Service~~ Fire and Emergency New Zealand, Police, the New Zealand Transport Agency, Marlborough Roads and (in the coastal marine area) Maritime Safety. An ad hoc response from each agency creates the potential for ineffective containment and for soil contamination to occur over a wider area than if the spill was effectively contained.

It is important therefore that the actions of each agency in responding to a spill are co-ordinated. This is especially the case considering the risks posed by the volume of goods transported to and through Marlborough on the State Highway ± network.

19. Method 15.M.50 is amended as follows:

A spill response contingency plan will be developed collaboratively by the Council, ~~Fire Service~~ Fire and Emergency New Zealand, Police, ~~and~~ the New Zealand Transport Agency and Marlborough Roads. The Plan will identify the methods to be used to contain and clean up any spill of hazardous substances, the role of each agency in implementing these methods and communication between the agencies. In this way, the Plan will ensure that response actions are effective and the potential for soil contamination caused by spills is minimised.

Standard 3.3.13

Cultivation definition

Cultivation means breaking up or turning soil such that the surface contour of the land is not altered.⁸

20. Federated Farmers seeks (inter alia) the recognition that cultivation involving ‘minimum tillage’ does not create the same potential for environmental effects. Mr Sycamore requests that the slope and setback provisions relate only to cultivation (‘mechanical cultivation’) and a new definition for ‘minimum tillage’ is requested to be incorporated into the PMEP. The following definition is proposed:⁹

Minimum Tillage: is a tillage method that does not turn the soil over. It is contrary to intensive tillage, which changes the soil structure.

⁷ Section 42A Report, pages 21-22.

⁸ PMEP, Volume 2, Chapter 5, page 25-6.

⁹ Federated Farmers, Darryl Sycamore Evidence, Section 42A Report, Reply to Evidence, paragraph 110.

21. Hort NZ requests that the definition of cultivation is amended to include ‘ancillary erosion and sediment control measures’.¹⁰

Section 42A Report

22. In the Addendum, the report writer recommended the following amendments to the definition:

*Cultivation means breaking up, turning and mounding of soil ~~such that the surface contour of the land is not altered~~ in preparation for sowing, planting or harvesting a crop or pasture. But excludes the recontouring of land.*¹¹

23. The Section 42A Report considers that 3.3.13.5 is important in order to retain productive top soil from erosion and loss of sediment to water bodies.¹²
24. The report writer did not therefore support Hort NZ’s submission. Erosion and sediment controls are mitigation measures employed to comply with the relevant activity standards, therefore their inclusion in a definition is not necessary. If Standard 3.3.13.5 cannot be met then resource consent would be required and industry standards would be considered as part of that process, as set out in Policy 15.4.4, and therefore the relief being sought is already provided in that policy.¹³
25. In the report writer’s opinion the cultivation methods proposed to be excluded by Federated Farmers have the potential to result in adverse effects on soil quality. Some methods such as direct drilling have a lower impact than other methods of cultivation. There may be periods prior to or following cultivation taking place where topsoil could be lost and sediment eroded to surface water and excluding the management of this does not accord with the policy direction of the PMEP. The report writer does not recommend the relief sought by the submitter is adopted, and recommends the definition of cultivation remains as notified.¹⁴

Consideration

26. The submitter sought recognition that cultivation involving ‘minimum tillage’ does not create the same potential for environmental effects.
27. The Panel considered that it would be appropriate to include minimum tillage in the recommended exemption so that it reads ‘But excludes minimum tillage and the recontouring of the land’.

¹⁰ Hort NZ, Lynette Wharfe Evidence, paragraph 6.2.

¹¹ Section 42A Report, Addendum, recommendation paragraph 36.

¹² Section 42A Report, paragraph 143.

¹³ Section 42A Report, paragraph 145.

¹⁴ Section 42A Report, paragraph 128.

28. A definition should be added for 'minimum tillage' to Chapter 25 as follows:

means a tillage method that does not turn the soil over and includes direct drilling.

Decision

29. The definition of 'Cultivation' is amended as follows:

Cultivation means breaking up, ~~or turning~~ and mounding of soil such that the surface contour of the land is not altered in preparation for sowing, planting or harvesting a crop or pasture.
But excludes minimum tillage and the recontouring of land.

30. A new definition 'Minimum tillage' is added to Chapter 25 Definitions as follows:

Minimum tillage means a tillage method that does not turn the soil over and includes direct drilling.

Definition of 'Vegetation clearance'

Vegetation clearance means the cutting, destruction or the removal of all forms of vegetation including indigenous or exotic plant vegetation by cutting, burning, cultivation, crushing, spraying or chemical treatment.

31. Hort NZ and Federated Farmers oppose the definition of 'vegetation clearance' as the definition includes 'cultivation' which is defined and provided for in the PMEP separately.¹⁵ Beef & Lamb opposes the inclusion of 'spraying or chemical treatment' in the definition due to the potential for lower risk activities being unintentionally restricted.¹⁶ NZTA opposes the definition and consider there is potential for the definition to capture the mowing of grass and domestic gardening activities.¹⁷ MDC supports the definition but seek it is amended to clarify that vegetation clearance excludes commercial forestry harvesting, carbon sequestration (non-permanent) forestry harvesting and woodlot forestry harvesting.¹⁸ J Hickman and G Mehlhopt support the definition in part, but seeks it is amended to provide for routine farm operations to occur without resource consent.¹⁹
32. NZTA did not provide specific detail in its submission for an amended definition.

Section 42A Report

33. The report writer agrees with NZTA that the notified definition has the potential for some activities to be unintentionally captured by the definition of 'vegetation clearance' as it applies to standards related to both non-indigenous and indigenous vegetation clearance.

¹⁵ Hort NZ (769.99, .132), Federated Farmers (425.654, .727).

¹⁶ Beef & Lamb (459.65).

¹⁷ NZTA (1002.265).

¹⁸ MDC (91.206).

¹⁹ J Hickman (455.69), G Mehlhopt (456.69).

Schedule D: Address for Service of Persons to be Served

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