



# Proposed Marlborough Environment Plan

## Topic 3: Natural and Physical Resources

**Hearing dates:** 27 – 29 November 2017

**S42A Report Writer:** Liz White

**Conflicts of Interest:** None

**Interim decision:** None

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

List of Abbreviations .....	3
Overview of Provisions .....	4
Change of title and Introduction.....	6
Issue 4A .....	9
Objective 4.1 .....	15
Policy 4.1.1 .....	18
Policy 4.1.2 .....	25
Policy 4.1.3 .....	30
Method 4.M.4 Guidelines .....	35
4.AER.1 .....	35
Section 42A Report .....	35
Consideration.....	36
Decision.....	36
Management of regionally significant infrastructure.....	36
Issue 4B .....	38
Objective 4.2 .....	45
Policy 4.2.1 .....	48
Policy 4.2.2 .....	57
[New] Policy 4.2.3 .....	60
Provision for Utilities.....	61
[New] Objective 4.2A .....	61
[New] Policy 4.2.4 .....	62
[New] Policy 4.2.5 .....	63
Methods of implementation 4.M.6 to 4.M.10.....	65
4.M.6 Identification .....	65
4.M.7 Zoning .....	65
4.M.8 Designations .....	65
4.M.9 District and regional rules.....	65
4.M.10 Affected party status .....	65
Objective 4.3 .....	68
Policy 4.3.1 .....	73
Policy 4.3.2 .....	76
Policy 4.3.4 .....	79

## List of Abbreviations

CMA	Coastal Marine Area
DOC	Department of Conservation
FEP	Farm Environmental Planning
MDC	Marlborough District Council
MPI	Ministry for Primary Industries
NESTA	National Environmental Standards for Electricity Transmission Activities 2009
NESTF	National Environmental Standards for Telecommunication Facilities 2016
NGOs	Non-Governmental Organisation
NPS	National Policy Statement
NPSET	National Policy Statement on Electricity Transmission
PMEP	Proposed Marlborough Environment Plan
RMA	Resource Management Act 1991
RPS	Regional Policy Statement
S42A Report	Section 42A Report

## Submitter abbreviations

AQNZ	Aquaculture New Zealand
Awatere WUG	Awatere Water Users Group Incorporated
Chorus	Chorus New Zealand Limited
EDS	Environmental Defence Society Incorporated
FENZ	Fire and Emergency New Zealand
Forest & Bird	Royal Forest and Bird Protection Society NZ
FNHTB	Friends of Nelson Haven and Tasman Bay Incorporated
Hort NZ	Horticulture New Zealand
MFA	Marine Farming Association Incorporated
MFIA	Marlborough Forest Industry Association Incorporated
Nelson Forests	Nelson Forests Limited
NMDHB	Nelson Marlborough District Health Board
NZDF	New Zealand Defence Force
NZTA	New Zealand Transport Agency
PMNZ	Port Marlborough New Zealand Limited
Port Clifford	Port Clifford Limited
QCSRA	Queen Charlotte Sound Residents Association
Spark	Spark New Zealand Trading Limited
Te Ātiawa	Te Ātiawa o Te Waka-a-Māui

### Structure of Decisions

1. It is important that the topic decision is read as a whole together with the tracked change version of the Plan. The decision on each topic contains the reasons for the Panel's decisions. These comprise either adoption of the reasoning and recommendations of the original Section 42A Report or the replies to evidence, or a specific reasoning by the Panel<sup>1</sup>.
2. The tracked change version of the relevant PMEP provisions forms an integral part of the decision. The source of the change in terms of the topic that the subject matter was dealt with is clearly identified in the track changes version of the plan. This records all amendments (additions and deletions) to the notified PMEP provisions made by the Panel.
3. Where the PMEP provisions **remain as notified**, it is because:
  - (a) The Panel has decided to retain the provision as notified for reasons set out in this decision; or
  - (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to retain the provision as notified as recommended in the Reply to Evidence; or
  - (c) The Panel adopted the reasoning and recommendation of the Section 42A Report to retain the provision as notified in the original Section 42A report.
4. Where there is a **change to a provision** within the plan it is because:
  - (a) The Panel has amended a provision for reasons set out in this decision in response to a submission point which the Section 42A report writer(s) does not recommend in their reports; or
  - (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the Reply to Evidence; or
  - (c) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the original Section 42A report; or

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

- (d) A consequential change has been necessary following on from a decision in either a), b) or c).
5. Where there is a **different recommendation** between the Section 42A Report and the Reply to Evidence (i.e., the recommendation by the Section 42A report writer(s) has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.
  6. There are limited circumstances where the Panel has taken the opportunity to give effect to national policy statements or implement national environmental standards. Where this occurs the relevant decision clearly sets out the nature of the change and the reason for the change.
  7. Finally, there are limited circumstances where the Panel has decided that **alternative relief** is more appropriate than that requested by the submitters, but still within the scope of the relief sought. This is recorded in the Panel's decision.

## Overview of Provisions

8. The Section 42A Report gives a brief summary of the contents of the chapter, identifying the issues at which they are directed:<sup>2</sup>

*This package of provisions relates to the use of natural resources within Marlborough, and in particular, focuses on the reliance on the use of these resources for the District's social and economic wellbeing. This is expressed through the overarching Objective 4.1, which seeks that the District's primary production and tourism sectors continue to be successful and thrive, whilst ensuring that the natural resources on which they rely are sustained. Policies 4.1.1, 4.1.2 and 4.1.3 support the achievement of this outcome through directing that interventions in land use are limited to those necessary to protect the environment and wider public interest in it; generally enabling use of natural resources where it is sustainable; and seeking to maintain and enhance the quality of natural resources. These policies are to be implemented through five methods, being zoning provisions, district rules, regional rules, guidelines and information.*

*As high level RPS provisions, these provisions guide and direct more specific policies within the MEP, for example those relating to specific resource use.*

## Change of title and Introduction<sup>3</sup>

9. The current chapter title, 'Use of Natural and Physical Resources', is said to constrain content of the chapter to just these resources. Forest & Bird seek to amend language in the provisions to more clearly reflect the purpose of the RMA as set out in s 5, or delete the whole chapter, ensuring that its provisions are captured appropriately in other chapters.
10. The submitter considers that the 'use' and 'development' of natural and physical resources appears to be the primary goal of the planning process, with its emphasis on primary industry, tourism and public infrastructure projects. 'Use' is considered to be only one way of managing resources – the others are 'development' and 'protection'. The Introduction to Chapter 4, Volume 1 in fact includes 'the use and development of natural and physical resources' (paragraph 2).
11. The submitter also is not clear about whether the chapter is to provide integration or how this will include protective measures. It says Issue 5C Method of Implementation (identifying they

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<sup>2</sup> Section 42A Report, page 13.

<sup>3</sup> Section 42A Report, paragraphs 57-59.

will be implemented through other specific policies) makes the inclusion of the policies in this chapter irrelevant or of little weight.<sup>4</sup>

12. NZTA resists this notion, pointing out the chapter discusses the ‘importance of sustainable management and use and development of natural and physical resources [through Objective 4.1, Policies 4.1.2 and 4.1.3]’. Trustpower also opposes Forest & Bird’s overall approach, considering that each of the matters identified in the chapter is a legitimate resource management issue.<sup>5</sup>
13. Other submitters seek the chapter is amended to include provisions relating to road reserves, landscape quality, urban design and public safety provisions.<sup>6</sup> NZ Forest Products agrees Chapter 4 appropriately recognises the prosperity of Marlborough relies on utilising natural resources and the importance of the primary sector. This company, however, seeks specific recognition through clear objectives and policies that recognise the importance of commercial forestry as a primary industry and enable its operations to continue to expand and develop. It says the PMEP should also recognise the importance of infrastructure to support primary industry such as at the interface of the Coastal Marine Area.<sup>7</sup>
14. A submitter seeks that the second paragraph of the explanation to the Introduction discussing s 5 RMA needs to be expanded to provide a more complete legislative framework for the topic, and seeks that the PMEP be expanded to address the concept of natural capital and ecosystem services.<sup>8</sup>
15. Another submitter considers that the first paragraph from the Section 32 Report of the relevant benefits of Policy 4.1.1 be included in the main body of Chapter 4. This paragraph acknowledges the importance of private property rights and the benefit of having it expressed in the policy.<sup>9</sup> Te Ātiawa, on this issue, also seek an addition of the words ‘iwi’, ‘kaitiaki’ and ‘kaitiakitanga’ to the first paragraph of the Introduction.<sup>10</sup>

#### **Section 42A Report**

16. The Section 42A Report<sup>11</sup> acknowledges the chapter covers a limited range of matters within the broader topic of the use of natural and physical resources.<sup>12</sup> The chapter contains three

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<sup>4</sup> Forest & Bird (715.1.2).

<sup>5</sup> Trustpower (1203). Section 42A Report, Issue 5 General Submissions, page 57.

<sup>6</sup> H Ballinger (351.37), M Batchelor (263.6).

<sup>7</sup> NZ Forest Products (995.1).

<sup>8</sup> Section 42A Report, Introduction, page 59. FNHTB (716.27).

<sup>9</sup> Section 42A Report, Introduction, page 59. K Adams (21.1).

<sup>10</sup> Te Ātiawa, Submission, Ian Shapcott, page 12.

<sup>11</sup> Section 42A Report, pages 57-58.

<sup>12</sup> Section 42A Report, page 57.

distinct sections with each of these seeking to provide overarching guidance on topics that are otherwise spread throughout the PMEP. The report emphasises the sustainability of resources with the intent throughout to better ensure integrated management in these areas which is not successfully achieved by their deletion.<sup>13</sup>

17. In responding to questions from the Panel as to whether the underlying concern of Forest & Bird that the current chapter title constrains content to the use of natural and physical resources and that sustainability may be addressed by reconsidering the title to the chapter. The report writer suggested amending the title to 'Management of Natural and Physical Resources' on the basis that these provisions are not more effectively dealt with in other chapters as these provisions address integrated matters that traverse more than one chapter of the PMEP.<sup>14</sup> The intent of these provisions is to better ensure integrated management, which is not better achieved by their deletion.
18. The report writer, on hearing evidence from FNHTB,<sup>15</sup> also acknowledges the paraphrasing of the wording of subsections (a), (b) and (c) of s 5(2) RMA in the Introduction, does not make it clear that there are two components to s 5(2) RMA, and that the second component (the 'sustaining', 'safeguarding' and 'avoiding, remedying or mitigating') is not sufficiently captured in the text. While this does not ultimately affect the provisions within the chapter or their effect, the second component should be referred to, and amended accordingly.
19. The report writer also considers the words supplied by Te Ātiawa are appropriate additions, given the references to 'kaitiakitanga' in Chapters 2 and 3 of Volume 1.<sup>16</sup>

### **Consideration**

20. In terms of the retention of the whole chapter, we are satisfied that this provision as an overarching guidance to subsequent relevant chapters better achieves the way forward to more integrated management of natural resources than otherwise. We do not support its deletion.
21. The Panel concluded from the submissions that placing the words 'Sustainable Management' in front of this phrase 'of Natural and Physical Resources' would better achieve the desired outcome sought by Forest & Bird.
22. We note the issue of paraphrasing legal provisions arose in the Introduction to Volume 1 PMEP where ss 6 and 7 RMA subsections were identified in this way. This is one of those

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<sup>13</sup> Section 42A Report, Reply to Evidence, page 23.

<sup>14</sup> Ibid.

<sup>15</sup> FNHTB (716.27).

<sup>16</sup> Section 42A Report, Reply to Evidence, pages 25-26.



examples where the differing nuances of the provisions require capturing for their full import to be adequately recognised. We therefore accept that the second paragraph of the Introduction to the chapter should be amended accordingly while noting that the second component of s 5 RMA, in the view of the report writer, is better achieved by way of still paraphrasing rather than quoting full sections. In view of the fact that the Introduction to Volume 1 of the PMEP includes the RMA's full s 5 text, we agree.

23. We also accept the reference to cultural issues should be included in the final paragraph of the Introduction.

#### **Decision**

24. Chapter 4 is retained.

25. The title to Chapter 4, Volume 1 is amended to read:

*Sustainable Management Use of Natural and Physical Resources.*

26. The Introduction is amended as to read:

*Marlborough's tangata whenua iwi and early settlers flourished in the Marlborough environment through use of the district's natural resources. Indigenous forests, wetlands, rivers and the sea were all ladders for tangata whenua. Marlborough's tangata whenua iwi are kaitiaki (guardians) and maintain a cultural responsibility for the sustainability of Marlborough's natural world - kaitiakitanga. From the 1850s, Pakeha settlers...*

*Section 5 of the Resource Management Act 1991 (RMA) recognises that sustainable management includes the use and development of natural and physical resources to provide for the social and economic wellbeing, health and safety of the community.*

*Under Section 5(2)(a)-(c) this use and development must be managed to: sustain the potential for on-going resource use; safeguard the life-supporting capacity of air, water, soil and ecosystems; and address adverse effects on the environment. This chapter contains provisions that acknowledge the importance of using and developing our land, water, coastal and air resources and strategic infrastructure in this respect.. ...*

#### **Issue 4A**

##### **Marlborough's social and economic wellbeing relies on the use of its natural resources.**

27. The explanation to the issue set out details about the primary sector made up of agriculture, viticulture, horticulture, forestry, fishing and marine farming, and their reliance on the quality of Marlborough's natural resources. It is noted that although the resources of the region are currently of sufficient quality to meet the region's needs, they have an inherent vulnerability

to change.<sup>17</sup> Thus, loss of access to, or reduction in the quality of resources, would have a significant impact on all sectors.

28. Reference is also made to the specific natural resources that make up Marlborough's biodiversity. Further reference is made to the intrinsic and amenity values of this environment. While the value of the conservation estate is quantified, ecosystem services are not quantified in a monetary sense. Nevertheless, these services contribute to social wellbeing of the community beyond the primary sector, while sustaining (inter alia) fish and game that contribute to the region's natural capital. Tourism is a sector too that benefits as well as the primary sector, as do recreational opportunities and conservation.
29. Seven submitters support the issue statement as notified. Others seek changes:
- supporting the issue but noting the importance of diversity and capacity for adaptation; asserting that 'business as usual' may not continue; and that tourism based on high carbon-based energy demands may not continue in future;<sup>18</sup>
  - amending Issue 4A (and Policies 4.1.2-4.1.3), which currently refer only to 'natural resources', to both 'natural and physical resources', on the basis that the RMA does not separately refer to both, and it is more appropriate for the RPS as a high-level document to refer to them collectively and its enabling philosophy;<sup>19</sup> including the words 'use' and 'development' too would better align with s 5 and 9 RMA and the enabling intent of the RMA envisages change which needs to be recognised over the life of the MEP;<sup>20</sup>
  - amending Issue 4A and the explanation to include reference to ecosystem services provided by natural ecosystems and to refer to *natural resources or the environment* on the basis that there is inadequate reference to the contribution non-economic intrinsic values of the environment contributes to social wellbeing;<sup>21</sup>
  - recognising that while there is quantification of the conservation estate, there is none for the primary sector: there is, for example, no recognition that Marlborough's primary industries are nationally important (viticulture and marine farming); and no reference is made as to from where the statistics in the explanation are sourced;<sup>22</sup>

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<sup>17</sup> Section 42A Report, Reply to Evidence, page 14.

<sup>18</sup> PF Olsen Ltd (149.1).

<sup>19</sup> Forest & Bird (715.2).

<sup>20</sup> Dairy NZ (676.1), MFA (426.9), AQNZ (401.9).

<sup>21</sup> FNHTB (716.28).

<sup>22</sup> Federated Farmers (425.8).

- observing Issue 4A understates the contribution Marlborough’s primary sector makes to the regional economy and subsequently its social and economic benefits are understated; requesting MDC undertake a full report on how the statistics given in the explanation to the issue are arrived at (the added value from primary production and reference to the economic monitoring reports that are used);<sup>23</sup>
- requesting an additional paragraph in the issue, specific to aggregate resources, as a significant resource that should be included;<sup>24</sup>
- questioning how the economic contribution that the Queen Charlotte Track makes to the regional economy was arrived at;<sup>25</sup>
- requesting the ecosystem of commercial forestry (habitat recreational access, reducing flooding, carbon sequestration, other non-wood values) also be recognised;<sup>26</sup>
- submitting that the issue be amended to discuss other resource uses that play an important role in Marlborough’s wellbeing and requesting that as well as social and economic wellbeing, adding in ‘cultural’ is important.<sup>27</sup> Te Ātiawa in further submissions suggests the PMP overstates the benefits of economic activities without similar reference to cultural considerations; Hort NZ supports this submission and also seeks that information is included about its own industry.

#### **Section 42A Report**

30. The importance of diversity, capacity and flexibility for adaption around water and high carbon-based energy demands is noted and may be a potential response to the issue but its inclusion does not explain in this case what the issue is. No changes to this point are recommended.
31. As to further economic details and reports sought, the issue statement relates to the high-level objective and policies of the RPS associated with the topic. The inclusion of these details does not assist in explaining the issue which is not about how much the economic contribution makes to the region. The crux of the issue is ‘about the reliance of the primary sector on the natural resource base (of the region), and the correlation between resource use and prosperity of the district’.<sup>28</sup>

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<sup>23</sup> Awatere WUG (548.1).

<sup>24</sup> Fulton Hogan (717.10).

<sup>25</sup> J and T Hellstrom (688.1).

<sup>26</sup> MFIA (962.7). Nelson Forests (990.163).

<sup>27</sup> Te Ātiawa, Hort NZ (referenced Section 42A Report, page 15).

<sup>28</sup> Section 42A Report, page 15.

32. Adding numerous references to the contribution of specific primary industries to the economy sought by some submitters, is not necessary to explain the link between those industries and natural resources.
33. As to various figures provided in the explanation to the issue, the report writer was unable to establish where they came from, noting that they would become out of date over the life of the plan, and the 35 per cent or 7000 employees figures used, does not correspond with one of the monitoring indicators included in the Anticipated Result section at the end of Chapter 4. The report writer recommended the figures should be deleted.
34. Similarly, the question of the financial contribution made by the Queen Charlotte Track to the economy of Marlborough is also questioned by the report writer as to its validity and should also be removed, and the reference recommended made to 'a significant amount' or similar.
35. The amendment to the explanation to refer to use 'and development' is also recommended as not only the 'use' but in some cases 'development' of natural resources is important for the social and economic wellbeing of the district. It better aligns too with s 5 RMA for the inclusion of the word 'development' envisages change.<sup>29</sup>
36. It is not clear in the Section 42A Report, however, as to what would be gained by adding the loss of access to natural resources or the 'environment' rather than only 'natural resources' within the third paragraph to the explanation because there is inadequate recognition of the non-economic values of the environment in the PMEP that contribute to social wellbeing. It is not clear to the report writer whether this amendment would have a significant impact on the primary sector.
37. The reference to ecosystem services is addressed in relation to the submissions from MFIA and Nelson Forests. They seek that ecosystem benefits of commercial forestry should also be recognised within the last paragraph of the explanation to the issue (habitat, recreational access, reducing flooding, carbon sequestration, other non-wood values) and notice is taken in the report that these provide many of the benefits to the conservation estate.
38. The point is made by the report writer that the provision of ecosystems and the contribution these services make to social wellbeing is not limited to the conservation estate but neither is it limited to commercial forestry. She considers it should be separated from its current

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<sup>29</sup> Section 42A Report, pages 14-16; Reply to Evidence, page 2. Dairy NZ (676.1), Federated Farmers (425.14), Kim Reilly Evidence, paragraphs 10-13. Awatere WUG (548.1), MFA and AQNZ, Counsel Submissions.

paragraph so that it is a standalone point and amended to refer to the contribution of ecosystem services to wellbeing more generally. This aligns with the comments of FNHTB.<sup>30</sup>

39. Consideration of a more general nature is given to the amendment sought by Fulton Hogan.<sup>31</sup> Mr Tim Ensor considers that the chapter should be amended to recognise that reference to other activities that rely on the rural resource (such as aggregate) [could] be achieved through the explanation to Issue 4A and a new, broader objective together with amendments. The resource and activity Fulton Hogan particularly refers to is aggregate extraction as of necessity it literally forms the foundation for roads in Marlborough and for a variety of buildings.

#### **Consideration**

40. Although we have already identified the title to the chapter should be changed in the Introduction, consideration of the wording of Issue 4A emphasises the fact that the issue is unnecessarily limited to the *use* of natural resources.
41. We support the insertion of the word 'development' for the reasons given to the heading of the issue as set out above.
42. We also considered whether the wording 'protection' should also be added to the title of Issue 4A as that too is identified in the wording of s 5(2) RMA as part of the definition of 'sustainable management'. This approach relates more specifically to the amended title to the chapter.
43. But s 12 RMA Restrictions on use of coastal marine area, and s 15 Discharge of contaminants into water already provide protection where necessary, whereas Issue 4A focuses on 'use' (and as amended 'development')<sup>32</sup>.
44. The word 'relies' is not the most appropriate approach in the first paragraph of Issue 4A when the legislation is addressing sustainable management and integrated management of Marlborough's resources. We consider that the phrase 'interlinked with' is more apposite.
45. We agree also that the word 'cultural' be inserted to the explanation. As seen in Chapter 3 Marlborough's tangata whenua iwi, cultural considerations are already part of the issues which MDC is required to recognise and provide for as a matter of national importance. As advised in that chapter, cultural considerations will be part of the future with links to economic growth, heritage, tourism and conservation, and should also be linked at the outset to cultural 'wellbeing'. The explanation needs in the Panel's view further expansion to

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<sup>30</sup> Section 42A Report, pages 14-16; Reply to Evidence, page 2.

<sup>31</sup> Fulton Hogan (717.1), Timothy Ensor, Evidence, paragraphs 3-11, 14-19.

<sup>32</sup> Dairy NZ (676.1).

recognise the cultural beliefs, practices and tikanga associated with being kaitiaki for natural resources.

46. Quantification of contributions to Marlborough's economy in the issue, however, will be out of date and time-bound (and therefore inaccurate). Greater recognition instead needs to be given to ecosystem services, including carbon sequestration.
47. Federated Farmers, in evidence, provided the Panel an alternative wording to the third sentence of the explanation. The Panel adopts this wording because it recognises that the primary sector still makes a significant contribution to the Marlborough economy.
48. Taking these issues into account, the Panel has accepted the following amended wording for the explanation to Issue 4A:

*The prosperity of Marlborough has always relied upon utilising and developing the natural resources in the surrounding environment. Historically, the primary sector has driven the local economy. Today, that same sector is still a significant contributor ~~over 35 percent of~~ to the local economy and is a substantial provider of both permanent and temporary employment within the District.*

*... The value of the conservation estate, which makes up 45 percent of Marlborough's land area, should not be underestimated. For example, the use of the Queen Charlotte Track, part of which occurs in the conservation estate, adds a significant amount ~~approximately \$10 million~~ to the Marlborough economy annually.*

*There are other ecosystem services ~~provided by the conservation estate~~ that result from different land uses, that although not quantified in a monetary sense, contribute to social wellbeing, such as reducing flood risk, sustaining whitebait catches and other fish and game and carbon sequestration.<sup>33</sup>*

49. We also consider that paragraph five should be broader than just the 'conservation estate' and should include 'carbon sequestration'.<sup>34</sup>
50. In view of the evidence the Panel heard from Marlborough's tangata whenua iwi, we also considered that an addition to the explanation to recognise what these iwi contribute to Marlborough is also appropriate. (Chapter 3 Marlborough's Tangata Whenua Iwi contains more explicit references to some of these issues.)

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<sup>33</sup> FNHTB (716.28), MFIA (962.7), Nelson Forests Ltd (990.163).

<sup>34</sup> Section 42A Report, pages 14-16. Reply to Evidence page 2, references FNHTB (716.28), MFIA (962.7), Nelson Forests Ltd (990.163).

## Decision

51. The Panel accepts the recommendations for amendments to the explanation as identified above, and accepts the further amendments to Issue 4A to make issues as to iwi even clearer as follows:

*Issue 4A – Marlborough’s social, ~~and~~ economic and cultural wellbeing relies on the use development and protection of its natural resources.*

*The prosperity of Marlborough has always relied upon utilising and developing the natural resources in the surrounding environment. Historically, the primary sector has driven the local economy. Today, that same sector is still a significant contributor ~~contributes over 35 percent of~~ to the local economy and is a substantial provider of both permanent and temporary employment within the District ~~employs the equivalent of over 7,000 people on a permanent basis.~~*

...

*The value of the conservation estate, which makes up 45 percent of Marlborough’s land area, should not be underestimated. For example, the use of the Queen Charlotte Track, part of which occurs in the conservation estate, adds a significant amount ~~approximately \$10 million~~ to the Marlborough economy annually. There are other ecosystem services ~~provided by the conservation estate that result from different land uses that,~~ although not quantified in a monetary sense, contribute to social wellbeing, by reducing flood risk, and sustaining whitebait and other fish and game and carbon sequestration.*

*Natural resources are also highly valued by Marlborough’s tangata whenua iwi. The resources have mauri, or life force, and are taonga. Cultural beliefs and practices have developed in association with the use, development or protection of the resources by the iwi over time, including cultural harvest. Those beliefs and practices play an integral role in tikanga and iwi are kaitiaki of the resources within their rohe. The issue records the close association of Marlborough’s tangata whenua iwi with natural resources. Further information on the nature of the relationship is contained in Chapter 3.*

## Objective 4.1

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

52. Twenty-seven submitters support the objective and either seek that it is retained or do not seek any changes. Those who suggest amendments seek: a need to recognise that with use comes responsibilities and a need to recognise that Marlborough’s natural resources

contribute a significant proportion of New Zealand's economy – there should be recognition of externalities that are created (not mitigated) and also to address reverse sensitivity effects (and subsequent costs);<sup>35</sup> a reference included to related servicing and processing industries;<sup>36</sup> the final sentence of the explanation to the objective should be amended to read 'The Council can play a role in this by striving to maintain and enhance the quality of our environment *particularly in the Marlborough Sounds*';<sup>37</sup> the objective be amended to 'reflect the Council's intention to promote certainty and equity between land users, allowing rational decisions to achieve optimum environmental outcomes' – what is required is that the Council will not single out any one industry for inequitable treatment.<sup>38</sup>

53. At the outset of assessing this objective, Mr Ensor, on behalf of Fulton Hogan, points out that there is a disconnect between Issue 4B, Objective 4.2 and the relevant policies. The issue is broad, the objective is specific to primary production and tourism, and the policies are broad. This disconnect requires adjustment and, in Fulton Hogan's opinion, requires a suggested new objective.<sup>39</sup>

#### **Section 42A Report**

54. The report says the objective should state the outcome that is desired rather than explaining how an outcome is to be measured. The report writer initially considered, after assessing these submissions, that there should be no change to Objective 4.1 and its explanation should be retained as notified. Her reasons for doing so include the fact several of the submissions provided no alternative wording to achieve an outcome and that no submitter has identified changes to the objective that are more appropriate for achieving the purpose of the RMA.
55. She identified that the objective should not be considered in isolation. Some guidance is already provided within the chapter as to measuring the achievement of the objective: namely anticipated environmental results and monitoring effectiveness – 4.AER.1.<sup>40</sup>
56. Further, with respect to external and reverse sensitivity effects, there are more specific issues that address these matters elsewhere in the PMEP and they do not necessitate a change to an overarching objective. Also, to specifically identify the Marlborough Sounds with the objective is unnecessary as the objective and its related provisions are specifically targeted to

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<sup>35</sup> PF Olsen Ltd (149.2).

<sup>36</sup> AQNZ (401.12-.18), MFA (426.12-.18).

<sup>37</sup> QCSRA (504.5).

<sup>38</sup> D Hemphill (648.2).

<sup>39</sup> Fulton Hogan, Timothy Ensor Evidence, paragraphs 20-26.

<sup>40</sup> Section 42A Report, pages 16-17.



considering the management of the Sounds in the specific section set aside later in the chapter.

57. The report writer accepts, however, after hearing the evidence of Fulton Hogan,<sup>41</sup> that if the focus remains on primary production and tourism sectors, some amendments to provisions are required, or alternatively (as preferred by the company), the provisions should be amended to provide direction on natural resource use more broadly because the issues, policies and methods range more widely than the objective.
58. The report writer acknowledges that this relates in part to ensuring that the PMEP recognises the importance of these sectors to the district's wellbeing, rather than focusing only on their effects. She also considered how the provisions are given effect to in other chapters of the PMEP, noting that more specific direction on natural resource use is contained in those chapters relating to specific resource use.
59. Taking into account these various factors, the report writer considers the amendment sought by Mr Ensor is appropriate. This would see a broader objective included relating to natural resource use more generally (but still linked to wellbeing), which is implemented through the existing policies. This broader objective would sit alongside the existing, more focused objective, or merging it with broader objective content which retains a level of acknowledgement of the importance of the contribution of the various sectors. It would be appropriate to revisit both objectives following further consideration of the provisions that give effect to them, to ensure appropriate alignment.<sup>42</sup>
60. The Section 42A report writer provisionally recommended the following suggestion from Fulton Hogan to address Issue 4A:<sup>43</sup>

*Objective 4X – Sustainable use and development of Marlborough's natural resources supports the social, cultural and economic wellbeing of the region.*

### **Consideration**

61. The Panel questioned whether a new objective that was more closely aligned with Issue 4A is warranted, or whether it should be managed within the existing Objective 4.1.
62. Retaining it as notified becomes difficult if the intent is to stress the need for integrated management of Marlborough's natural resources and the ongoing sustainable management of the issues laid down in s 5(2) RMA.

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<sup>41</sup> Fulton Hogan (717.10, 717.12).

<sup>42</sup> Fulton Hogan, Timothy Ensor Evidence, paragraphs 20-26.

<sup>43</sup> Section 42A Report, Reply to Evidence, pages 1-2.

63. The linking mechanism here between Issue 4A and the subsequent policies is Objective 4.1. It quickly becomes clear on the face of the related issues that a broader objective is preferable because the earlier Issue 4A was unnecessarily limited to the 'use' of natural resources.
64. On reflection, therefore, we consider a broader objective is preferable and Fulton Hogan's proposed wording is helpful to amalgamate with the existing objective.
65. The Panel believe consequential change is also required to introduce text that recognises that access to resources other than land and water are also important for social and economic wellbeing.

#### **Decision**

66. Objective 4.1 is amended as follows:

*[RPS]*

*Objective 4.1 – Sustainable use or development of Marlborough's natural resources supports Marlborough's social, economic and cultural wellbeing ~~Marlborough's primary production sector and tourism sector continue to be successful and thrive whilst ensuring the sustainability of natural resources. ...~~*

67. The explanatory statement after the third paragraph is amended as follows:

*... These responsibilities are reflected in policies elsewhere in the MEP.*

*Access to other natural resources is important for Marlborough's social and economic wellbeing. For example, aggregate from land-based sources and from rivers has made a significant contribution to the provision of infrastructure, particularly roads, and is valued as a construction resource. However, it is essential that access to such resources is managed on a sustainable basis. ...*

#### **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.**

68. Twenty-four submitters support the policy and seek that it is retained. Three submissions seek that the policy be deleted because it is not clear what it achieves; it is unclear what resource management issue the policy intends to address; it should be deleted given the rules in the PMEP and the issue of non-intervention is generally the position of most councils; the

inference that land ownership is implicit in s 9 RMA (within the explanation) is incorrect – further, given the rules in the plan, this is generally the position of most councils.<sup>44</sup>

69. Other submitters consider that:

- It is critical that intervention is only contemplated where there are clear service and economic ecological indications to support it – intervention is only justified when there are well established science, economic and ecological grounds.<sup>45</sup>
- While the policy is supported in part, rules are not drafted to guide the way resource use is undertaken and in relation to Policy 4.1.1, it should be amended to read *‘Recognise the rights of resource users by not intervening in the use of land to protect the environment and wider public interests in the environment unless specifically required under the Plan’*.<sup>46</sup>
- The policy should be amended to read:<sup>47</sup> *‘Recognise the rights of resource users while only intervening in the use of the coastal marine area where it is identified to ensure sustainable management of the environment. ‘Use of private land will reflect sustainable management including protection of the environment and wider public interests in it.’ Other reasons include cross-boundary effects, managing natural hazards, other hazards, reverse sensitivity.*
- Drafting of the policy implies that the rights of the landowners to use resources is more important than the environment; iwi rights should be referred to, as interests to ‘pull through’ the matters set out in Chapter 3. The policy should be amended to read *‘Recognise the rights of resource users while protecting the environment, and iwi rights and interests’* on the basis that it seeks to improve and provide greater recognition and protection for iwi values, beliefs and resources.<sup>48</sup>
- The phrase ‘wider public interests’ should be replaced with ‘greater public good’ as the latter is more restrictive and will compel a greater contemplation of the *displacement* of the rights and freedoms of individuals.<sup>49</sup>

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<sup>44</sup> Fish and Game (509.16), Ravensdown (1090.4), Fertiliser NZ (1192.2).

<sup>45</sup> PF Olsen Ltd (149.3).

<sup>46</sup> Federated Farmers (425.9).

<sup>47</sup> FNHTB (716.29).

<sup>48</sup> Te Rūnanga o Ngāi Tahu (1189.28).

<sup>49</sup> K Adams (36.3).

- Intervention should only be contemplated where there is a clear resource management issue that requires intervention, not just the wider public interest in the use of land being protected.<sup>50</sup>
- A provision be added to the policy that recognises Farm Environmental Planning (FEP) as a valid tool to deliver positive environmental outcomes while monitoring land use flexibility, better balancing the environment and minimisation of regulation – this is a better alternative to prescriptive activity-based rules.<sup>51</sup>
- An area where intervention is necessary is exotic commercial forestry where various adverse effects can arise such as effects on the coastal marine environment through sedimentation, safety amenity and cross-boundary effects, especially in Port Underwood.<sup>52</sup>
- The policy has the wrong emphasis, as it recognises the rights of resource users rather than controlling the use of land for environmental outcomes (responsibility of a regional council under s 30(1)(c) RMA) and the control of effects from land use and development (responsibility of a territorial authority under s 31(1)(b) RMA).
- Two submitters seek that the last two paragraphs of the explanation to the policy are amended to include reference to the need to control land use where activities have effects beyond their boundary on other people and the environment.<sup>53</sup>

#### **Section 42A Report**

70. The Section 42A Report identifies it is clear what is intended by the policy's direction and this is expanded in the explanation – further detail having been expanded in the originating Section 32 Report. The policy reflects the public consultation that took place in creating the PMEP and the importance of recognising private property rights, providing a key direction for how the PMEP achieves Objective 4.1. The submitter's reference to s 9 RMA (Restrictions on use of land) should not be accepted as land ownership is not implicit within the section and its relevance is captured in any event within the second paragraph of the explanation.<sup>54</sup>
71. As to the issue around changing the policy and seeking changes to the rules, this would create a circular policy which would then provide no assistance to guide the provisions in the other parts of the PMEP as to when intervention is warranted.

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<sup>50</sup> Hort NZ (769.6).

<sup>51</sup> Beef + Lamb (459.12).

<sup>52</sup> Clintondale Trust and Whyte Trustee Company (484.3).

<sup>53</sup> KR and SM Roush (845.1), Port Underwood Association (1042.1).

<sup>54</sup> Section 42A Report, pages 18-20.

72. The report writer says the policy as worded provides better direction and is better aligned with the aims of Objective 4.1 because the definition of 'environment' is so broad, encompassing all interests including ecosystems, people and communities, all natural and physical resources etc. As an example, as currently worded, the policy provides justification to intervene to protect people and communities from the effects of natural hazards where this relates to the effects of private land use. The policy as worded provides better direction and is better aligned with the aims of Objective 4.1 than the alternative suggestion.
73. Further, the report says protection offered landowners does not have more weight than the protection offered to the environment (including ecosystems, people and communities, all natural and physical resources, amenity values, and social and economic conditions); for it expressly provides direction by providing that intervention is appropriate if necessary to protect the environment. The submission adds little value as a high level policy.
74. With reference to iwi rights and interests, the report observes that objectives in the PMEP need to be considered together and it is not necessary or appropriate for different objectives to cover the same issues.
75. In relation to replacing the 'wider public interest' with the 'greater public good', the 'wider public interest' the report states this is not an appropriate driving force for intervention. The breadth of the definition of 'environment[al]' under the RMA covers the wider public intervention in any case, and the phrase 'wider public interest' may be deleted.
76. Reluctance to protecting the environment entirely and replacing it with ... 'a resource management issue' ... is identified in the report as not appropriate in that it risks other policies in the PMEP driving the level of intervention, not the other way round. Use of the phrase 'protect the environment' too sets a relatively low bar on intervention because 'protection' could be to mean 'no change'. A recommendation is to amend the policy to limit intervention on the use of land to 'where it is justified to protect the environment'.<sup>55</sup>
77. While a submitter considers FEP would deliver a better alternative to prescriptive activity-based rules, the report writer considers this change is too detailed and specific for the nature of the policy which is intended to provide overarching direction across the Plan. There are other ranges of tools that are best left to rule packages.
78. With regard to forestry, the report draws attention to the fact that there are now national rules relating to the activity set out in the National Environmental Standard for Plantation

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<sup>55</sup> Section 42A Report, pages 18-21; Reply to Evidence, pages 3-5.

Forestry and this includes limited opportunity for the provisions within the PMEP to differ from those set out in the standard.

79. The initial recommendation of the report writer was to amend Policy 4.1.1 as follows:<sup>56</sup>

*Policy 4.1.1 – Recognise the rights of resource users by only intervening in the use of land where it is justified to protect the environment ~~and wider public interests in the environment.~~*

80. In a subsequent hearing where evidence was presented, several requested the policy be further amended to read: 'Recognise the rights of resource users ~~by~~ while only intervening in the use of ~~land~~ the coastal marine area where it is justified to protect ensure sustainable management of the environment ~~and wider public interests in the environment.~~'<sup>57</sup>

#### **Section 42A Reply to Evidence**

81. The report writer identifies<sup>58</sup> it is not clear why the policy should apply to the CMA rather than to land. The explanation is clear that this was not the intention of the policy. Section 9 RMA provides for the use of land without consent, unless a plan rule requires one. Conversely, various activities within the CMA require consent, unless a plan rule allows for them as a permitted activity. No change is recommended.
82. The report writer had some concerns with using 'ensure sustainable management' instead of 'protect the environment' because reference to sustainable management essentially refers back to everything encompassed in s 5(2) RMA. That outcome does not provide particular direction about how the s 5(2) RMA objectives are to be achieved in the Marlborough context. No change is recommended.
83. The report writer further observes that the purpose of the policy is to assist in achieving the objectives of the PMEP (particularly Objective 4.1) rather than directly seeking to give effect to the intent of the RMA. Regardless of whether the policy 'sets out the intent of the RMA', the question should be, would the deletion of the policy better assist in achieving the overriding objective, which it is suggested it would not. No change is recommended.
84. In addition, the report writer notes that the emphasis on resource users (rather than control of use of land) relates again to the achievement of the objective, that is, recognition of the rights of resource users is part of ensuring the continued success of the primary production

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<sup>56</sup> Section 42A Report, page 20.

<sup>57</sup> Section 42A Report, Reply to Evidence, page 3.

<sup>58</sup> Section 42A Report, Reply to Evidence, pages 3-4.

and tourism sectors, with the intervention identified being related (in part) to ensuring sustainability of natural resources.

85. With regard to FEPs, her view remains as set out in the Section 42A Report.<sup>59</sup> Specifically, this chapter provides overarching direction, whereas the use of particular tools to achieve and implement these aims is a more specific matter that should be considered in relation to the provisions that are included within the MEP to give effect to Chapter 4. No change is recommended.
86. The concerns expressed about the use of the phrase 'protect the environment' arise in this context. Thus the report writer takes the position that because the policy direction sets the bar for intervention at the level where there is justification for the intervention for the protection of the environment, the policy direction is saying that only justified intervention will be undertaken to protect the environment.
87. The later part of policy 4.1.1 was the subject of submission challenging the intervention being justified in the 'wider public interests in the environment'. The Report writer summarised her concerns as follows:

*I tend to agree with both submitters that "wider public interest" is perhaps not an appropriate driving force for intervention. Given the breadth of the definition of "environment" under the RMA (which includes people and communities, and amenity values in any case), my view is that this already covers any wider public interest in the environment that is relevant*

88. In terms of questions regarding the application of the policy (for example, when is it 'justified' to protect the environment?) the report writer notes that the policy is an RPS provision, which is then to be given effect to through the district and regional land use plan provisions. Essentially, when intervention is justified will be set out within these provisions – it is not something to be controlled by the consent process.

#### **Consideration**

89. The Panel considered whether Policy 4.1.1 should be retained with some submitters asserting it states the obvious. We consider the policy provides an oversight at the RPS level of the direction in which the subsequent provisions will go, and should be retained.
90. In terms of intervention, this should only occur where there is a clear resource management issue to be addressed that requires intervention, not the 'wider public interest', which sets a

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<sup>59</sup> Section 42A Report, pages 19-20.

much lower standard for intervention in the use of land. In terms of whether the policy should refer to the coastal marine area, this request ignores the reality that this policy addresses land issues because of the fact that activities on land are allowed as of right by s 9 RMA if there is no rule to the contrary. Whereas in the CMA, ss 12 and 15 RMA have the effect that rules are needed to allow activities. The distinction between Section 9 and sections 12 - 15 is important and the Panel has decided to include an added explanation as to that distinction.

#### **Decision**

91. Policy 4.1.1 is amended as follows:

*Policy 4.1.1 - Recognise the rights of resource users by only intervening in the use of land where it is justified to protect the environment ~~and wider public interests in the environment.~~*

92. The explanation is amended as follows:

*With land ownership comes an expectation of the ability to reasonably develop and use the land. In a property owning democracy such as New Zealand, it is fundamental that the reasonable rights and expectations of private property owners are respected. This is reflected in Section 9 of the RMA, which enables people to use or develop land. This position contrasts with Sections 12 to 15 of the RMA applying to other natural resources, which set out that the use of those resources can only occur if expressly allowed by a rule in a plan or by resource consent.*

*Notwithstanding these property rights, the Council can constrain such land use through rules in a regional or district plan. Under this policy, ~~t~~The Council can intervene in the exercise of private property rights where there is justification to do so to protect the environment ~~and wider public interests in the environment.~~ Even in these situations, the Council will seek to minimise the extent of regulation placed upon resource users. Generally speaking, resource users have a vested interest in sustaining the natural resources from which they extract an income. The Council can influence and guide the way in which resource use is undertaken by establishing clear and concise standards.*

*It is important to acknowledge that existing uses of land can continue under Section 10 of the RMA irrespective of the introduction of district rules to constrain the use. For this to apply, the use must be lawfully established and its effects must be the same or similar to those that existed prior to the introduction of the rule.*

*The policy reflects that, where activities carried out on private land could adversely affect the wider environment, ~~At times it may be necessary for wider public interest considerations to~~*



~~prevail over individual expectations and land use may need to be controlled in order to protect the environment.~~ In these circumstances, compensation to the land user is not payable under Section 85 of the RMA. The same section also provides the land user with the ability to challenge any provision of a plan on the grounds that the provision would render their land incapable of reasonable use. Section 86 of the RMA empowers the Council to acquire land with the agreement of the landowner and pay compensation for it.

#### **Policy 4.1.2**

##### **Enable sustainable use of natural resources in the Marlborough environment**

93. Twenty-one submitters support the policy and do not seek any changes. Others seek that: the policy is amended to refer to the use *and* ‘development of’ natural resources as its inclusion would provide a clear reference to potential future use of the environment and is consistent with the direction in s 5(2) RMA;<sup>60</sup> the policy does not support or encourage sustainable management and requires change;<sup>61</sup> support the policy but its scope is too wide – it should be extended to add ‘by including permitted activity rules where adverse effects are no more than minor, taking into account cumulative effects’ (this is seen as consistent with the explanation to the policy and Method 4.M.3); also the reference to coastal space in the explanation should be amended to the ‘coastal marine area’ to more accurately reflect s 12 RMA;<sup>62</sup> the policy be amended to enable ‘use’ rather than ‘sustainable use’ with the addition of ‘while managing any adverse environmental effects’. This is on the basis that, while the submitter supports the enabling intent of the policy, the purpose of the RMA is to promote the sustainable management of natural resources through managing effects;<sup>63</sup> the first paragraph to the explanation be amended to state at the commencement of the provisions sentence ‘Where the adverse effects are considered minor and there is no potential for environment effects, resource consents will not be required’;<sup>64</sup> amend the first paragraph: ‘to ensure natural resource sustainability long-term consents (over 20 years) should not be granted in public space’.<sup>65</sup>

##### **Section 42A Report**

94. The report writer agrees that the policy should refer to use and ‘development’ of natural resources contributing to the success of primary production and tourism sectors. It is also

<sup>60</sup> AQNZ (401.16), MFA (426.16).

<sup>61</sup> Further submissions from Clova Bay Residents, KCSRA.

<sup>62</sup> FNHTB (716.30).

<sup>63</sup> Ravensdown (1090.5).

<sup>64</sup> Dairy NZ (676.5).

<sup>65</sup> Port Underwood Association (1042.2).

consistent with the discussion in the second paragraph of the explanation and the fact that s 5 RMA refers to managing development as part of sustainable management.

95. The report writer acknowledges that on its own the policy provides limited guidance but from the explanation it is the intention to enable provision for natural resource use where such use is considered sustainable. The outcome is;

- permitted activity status for resource use that has no more than minor effects;
- consideration on a case by case basis beyond this;
- further definition in the PMEP through policies specific to resources;
- the use of an allocation framework.

96. As a result of the submissions, the report recommends that the policy is extended to provide greater detail on this policy. It also recommends that the reference to coastal space be amended to 'coastal marine area' to more accurately reflect the RMA.<sup>66</sup>

97. In response to the submission seeking long term consents to be limited to 20 years, this is recommended to be rejected for a number of reasons. Twenty years is the statutory minimum under the RMA, and prescribing the minimum as a maximum creates inefficiencies. Longer terms than 20 years provide greater certainty for businesses. The report writer also points out it is inappropriate for this statement in an explanation. If Council wants to provide such a direction in the plan, this is usually set at the policy level when there is sufficient reason and support for such a restriction. It would more usually relate to environmental effects.

98. Other submissions are recommended to be rejected either because they do not seek a change in policy or they duplicate what is already set out in the explanation.

99. The recommendation in the Section 42A Report on Policy 4.1.2 is as follows:<sup>67</sup>

'[RPS]

*Policy 4.1.2 – Enable sustainable use and development of natural resources in the Marlborough environment, including through the use of allocation frameworks and permitted activity rules and standards where no more than minor effects are anticipated.*

*Many uses of the coastal space marine area, river beds, air and water resources are ~~prohibited~~ restricted unless allowed by a rule in a regional plan or by resource consent*

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<sup>66</sup> Section 42A Report, page 22; s 12 RMA.

<sup>67</sup> Section 42A Report, pages 22-23.

*(see ss 12 to 15 of the RMA). As a principle, the Council will continue to enable access to natural resources where the subsequent use of those resources has no more than minor adverse effects on the immediate or surrounding environment. This will be achieved through the use of permitted activity rules, including conditions where appropriate, avoiding the need for resource consent. Where the adverse effects are considered more than minor or where there is potential for cumulative effects, then resource consents will be required. Policies throughout the MEP help define sustainable resource use and development.*

*The use of allocation frameworks for the coastal space marine area and freshwater will also assist to enable the sustainable use and development of these natural resources. These frameworks will provide certainty about the quantities and/or locations of resources available and the circumstances in which they may be used and developed.'*

100. In evidence, several submitters sought further changes to these recommended amendments: opposing the recommended addition of 'through the use of allocation frameworks' as it neither reflects the intent of the policy nor appropriately fits within its framework; policy [should be] reduced to 'enabling use and development', with no further additions;<sup>68</sup> requesting the inclusion of reference to 'physical' as well as natural resources in the policy; recognising the link between natural and physical resources and the definition of sustainable use; concern regarding additions as being unnecessary and only part of the discussion around the measures by which sustainable use and development of resources will be enabled;<sup>69</sup> today's 'minor effect' may be assessed differently tomorrow; the isolation of the word 'effect' has created problems in the holistic management of the environment; add 'taking into account cumulative effects' to the end of the recommended policy as an improvement but remove reference to the use of allocation frameworks;<sup>70</sup> concern that amendments do not include all matters identified in earlier submissions, and to do so would create a lengthy policy; preference is to add managing any adverse effects (as sought by Ravensdown) as 'this is surely the outcome sought by allocation frameworks, permitting activities with no more than minor effects, policies and the resource consent process';<sup>71</sup> policy does not include 'protection'; a change to refer to 'the use and development of natural resources' rather than 'sustainable use and development'. With reference to 'sustainable use and development' the RMA refers to 'sustainable management'; and as this relates to the use and development of

<sup>68</sup> Federated Farmers, Kim Reilly Evidence, pages 17-26.

<sup>69</sup> Trustpower, Nicola Foran Evidence, paragraph 5.16.

<sup>70</sup> FNHTB, Evidence, page 1.

<sup>71</sup> Fertiliser Association of NZ, C Kelly Evidence, paragraph 14.

natural and physical resources, the words 'sustainable development' should be amended to 'Enable sustainable use and development of natural resources in the Marlborough environment by managing adverse environmental effects arising from the activity'<sup>72</sup> because the policy seeks to enable sustainable use and development, and reference to managing adverse effects better reflects the intent of the RMA.<sup>73</sup>

#### **Section 42A Reply to Evidence**

101. The range of this evidence on the recommended changes to Policy 4.1.2 indicated to the report writer a level of dissatisfaction with the changes recommended to add greater specification as to how enabling the policy's direction would be achieved.
102. The report writer's agreement that the policy should be further amended included providing direction as to how the PMEP implements enablement as it makes direction clearer. Further, although direction may make the policy lengthy, with other chapters of the PMEP longer policies with subclauses are recommended to be used. And while allocation frameworks may cause concern, this reference was said to be appropriate to retain, because the term is used within the PMEP to enable resource use in the manner anticipated by the policy.<sup>74</sup>
103. Ravensdown's evidence seeks a change to refer to the 'use and development' of natural resources rather than 'sustainable use and development' on the basis that the RMA refers to 'sustainable management' and this relates to use and development of natural and physical resources, not to 'sustainable development'.<sup>75</sup> The report writer's concern is that to meet this suggestion would set a direction to 'enable' resource use and development without limitation. The report writer's understanding of the policy intent is that it seeks to enable resource use where that use is sustainable. She prefers retention of that wording, noting that the additional reference by Hort NZ to managing adverse effects goes some way to addressing her concern.
104. The reply to evidence also identifies that the emphasis on resource users (rather than control of use of land) relates again to the direction in Objective 4.1, that is, recognition of the rights of resource users as part of ensuring the continued success of the primary production and tourism sectors with the intervention identified, being related (in part) to ensuring sustainability of natural resources.<sup>76</sup>

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<sup>72</sup> Ravensdown, Memorandum, paragraphs 34-37.

<sup>73</sup> Hort NZ, Lynette Wharfe Evidence, paragraph 4.36.

<sup>74</sup> Section 42A Report, Reply to Evidence, page 5.

<sup>75</sup> Ravensdown, Statement, such as the responsibility of a regional council under s 30(1)(c) RMA and the control of effects from land use and development (responsibility of a territorial authority under s 31(1)(b) RMA).

<sup>76</sup> Reply to Evidence, pages 4-5.

105. The report writer reiterates what has been included earlier – that the chapter provides overarching direction. The use of particular tools to achieve and implement these aims is a more specific matter and should be considered in relation to other provisions that are included within the PMEP to give effect to Chapter 4.
106. The final recommendation is to amend Policy 4.1.2 as follows:

*Policy 4.1.2 - Enable sustainable use and development of natural resources in the Marlborough environment, while managing any adverse environmental effects, through the use of:*

*a) Allocation frameworks*

*b) Permitted activity standards where no more than minor effects are anticipated and taking into account cumulative effects*

*c) Resource consent processes*

*d) Policies specific to various resources*

*Many uses of ~~the coastal space~~ marine area, river beds, air and water resources are ~~prohibited~~ restricted unless allowed by a rule in a regional plan or by resource consent (see Sections 12 to 15 of the RMA). As a principle, the Council will continue to enable access to natural resources where the subsequent use of those resources has no more than minor adverse effects on the immediate or surrounding environment. This will be achieved through the use of permitted activity rules, including conditions where appropriate, avoiding the need for resource consent. Where the adverse effects are considered potentially more than minor or where there is potential for cumulative effects, then resource consents will be required. Policies throughout the MEP help define sustainable resource use.*

*The use of allocation frameworks for the coastal space ~~space~~ marine area and freshwater will also assist to enable the sustainable use and development of these natural resources. These frameworks will provide certainty about the quantities and/or locations of resources available and the circumstances in which they may be used and developed.*

### **Consideration**

107. In the Panel's opinion the intent of the policy requires clarification. Policy 4.1.2 should enable use and 'development' to more correctly align with Issue 4A as suggested by AQNZ and MFA.<sup>77</sup> As to the submissions seeking that policy include 'protection'. The concept of 'Protect' is not

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<sup>77</sup> Section 42A Report, pages 21-23 (AQNZ, MFA).

relevant in the context of this policy. Sections 12 (Restriction on use of coastal marine area) and 15 (Discharges of contaminants into environment) already provide protection unless a rule otherwise provides for use and development – this is what the policy addresses.

108. We also reflect that the reference to ‘cumulative effects’ in Policy 4.1.2(b) is not necessary as it is included in the definition of ‘effect’ in s 3 RMA and also the reference to Policy 4.1.2(c) should be deleted too. Resource consents are not a plan mechanism, and resource consent processes are not usually enabling. They are processes utilised to obtain consent to use or develop resources.
109. We queried also whether the policy should refer in the explanation to the coastal marine area and considered that for this particular series of policies the submission is rejected. It ignores the reality that this policy addresses land issues because of the fact that activities on land are allowed by s 9 RMA as of right if there is no rule to the contrary. In the Coastal Marine Area, ss 12 and 15 RMA provide that rules are needed to allow activities. The last sentence of the first paragraph of the explanation needs further expansion as to the differences between s 9 and ss 12 and 15 RMA. Rules are required to enable activity in the coastal marine area.
110. Otherwise we accept the recommendations of the report writer.

#### **Decision**

111. Policy 4.1.2 is amended as follows:

[RPS]

*Policy 4.1.2 – Enable sustainable use and development of natural resources in the Marlborough environment, while managing any adverse environmental effects, through the use of:*

*(a) Allocation frameworks*

*(b) Permitted activity rules and standards where no more than minor effects are anticipated*

*(c) Policies specific to various resources.*

112. Add “...and development” to the end of the first paragraph of the explanation.

#### **Policy 4.1.3**

##### **Maintain and enhance the quality of natural resources.**

113. Eight submitters support the policy and do not seek changes. Other submitters seek: that the policy be deleted on the basis that it duplicates s 7(f) RMA and in any event is inherent in

Policy 4.1.2;<sup>78</sup> that the policy be amended to read maintain ‘or’ enhance, rather than maintain ‘and’ enhance as ‘maintain and enhance’ is confusing, and the ‘or’ better aligns with the terminology used in the National Policy Statement for Freshwater Management Objective 2 which requires maintenance *or* improvement in relation to freshwater quality; it is not possible to both ‘maintain’ and ‘enhance’; enhancement should be limited to ‘where degraded’;<sup>79</sup> requiring the maintenance of the quality of the environment to protect the quality of natural and physical resources in order to protect the continuing viability of production activities in the coastal marine area;<sup>80</sup> further detail within the policy to improve its clarity and implementation by adding ‘Maintain and enhance the quality of natural resources, recognising and reflecting – (a) that a precautionary approach may be required to maintain the quality of natural resources; (b) the intergenerational needs for the quality of natural resources’; supporting the intent of the policy but seeking the enhancement of the quality of resources where there is community desire for this, and subject to the costs and benefits of enhancement having been weighed up seeking the following amendment to the policy: ‘Maintain and, where there is community desire and costs and benefits are balanced, enhance the quality of natural resources.’<sup>81</sup> Te Ātiawa seeks to amend the policy by adding ‘with the support of kaitiaki’ and the addition of a further sentence to the policy explanation regarding consultation with iwi.<sup>82</sup>

### Section 42A Report

114. In terms of deleting the policy, the Section 42A Report identifies that the policy is an important component to the achievement of Objective 4.1. Policy 4.1.1 is focused on limiting intervention in land use to enable the success of the primary production and tourism sectors. Policy 4.1.2 seeks to enable the *use* of natural resources while ensuring that the use is sustainable. Policy 4.1.3 is more focused on the *sustainability of natural resources* – it requires the maintenance *and* enhancement of the quality of natural resources to assist the resource base to be sustained, contributing to the success of the sectors that rely on this outcome.
115. Conversely, there may be times where in order to achieve Objective 4.1, enhancement of the quality of a natural resource is justified even when it is not degraded, for example, various actions can be taken to enhance the quality of soil to increase its productive use. The report is unsure, however, what is meant by benefits and costs being ‘balanced’, as sought by

<sup>78</sup> AQNZ (401.19) and MFA (426.19).

<sup>79</sup> Dairy NZ (676.17), Ravensdown (1096.6), Fertiliser Association (1192.4).

<sup>80</sup> Totaranui Ltd (233.8).

<sup>81</sup> Federated Farmers (425.12).

<sup>82</sup> Te Ātiawa, Section 42A Report, Reply to Evidence, page 27.

Federated Farmers, as the direction in s 32 RMA is simply to *consider* the costs and benefits of any approach.

116. The report writer, nevertheless, accepts several submissions to amend the policy to ‘maintain *or* enhance’. Her concern is where resources have been degraded there may be times when maintenance will still be the most appropriate course of action because the benefits of enhancement are outweighed by costs.
117. In terms of Te Ātiawa’s submission, the report identifies the submitter has not provided details around what support from kaitiaki will be provided, and therefore how the addition would be implemented. As the submission relates to consultation, and as set out in the additions sought in the explanation, it is not appropriate to include directions. The submission also does not align with Policy 3.1.2 and the legal implications of consultation. No change is recommended.

#### **Consideration**

118. The Section 42A Report identifies that s 7(f) RMA relates to the quality of the ‘environment’ (in its widest sense) whereas Policy 4.1.3 relates to the quality of the ‘natural resources’ relating primarily to those supporting the social, cultural and economic wellbeing of Marlborough (amended Objective 4.1). The report writer considers that the policy helps to ensure that appropriate regard has been given to the direction in s 7(f) and that this more specific policy is an important component of the achievement of Objective 4.1.
119. The report writer also states in relation to costs and benefits: ‘Given that this policy sits at a high level, it is my view that it is appropriate to retain the broad direction in relation to maintaining *or* enhancing without prescribing when this is to occur.’ Policy 4.1.3 provides further detail that it is the maintenance *or* the enhancement of the qualities of the natural resource base that will contribute to the sustainability of the primary production and tourism sectors.<sup>83</sup> We do not accept that recommendation that ‘maintenance’ and ‘enhancement’ should be expressed as alternatives.
120. Nowhere in Policy 4.1.3 is the alternative wording recommended by the report writer found. The last lines of the first paragraph of the explanation to the policy identify ‘the Council can play a role in [ensuring the sustainability of natural resources] by striving to maintain *and* enhance the quality of the environment’, thereby directly reflecting the s 7(f) wording as to maintenance and enhancement of the environment, of which natural resources are a part.

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<sup>83</sup> Section 42A Report, pages 23-24.



121. Merely maintaining natural resources as recommended in the Section 42A Report by substituting ‘and’ with ‘or’ does not encourage improvement/enhancement of an identified natural resource. The report writer in fact gives as one example that various actions can be undertaken by the farming community to enhance the quality of soil to increase its productive use. Another example is farmland prone to erosion being better protected with the planting of indigenous trees, or farming landowners sympathetic to wetlands on their properties enhancing natural resources with added fencing and setbacks; or planting waterways and margins to protect and enhance the quality of water resources.
122. The word ‘thrive’ in Objective 4.1 introduces the notion of a need to provide for added value to economic and natural resource values, while restoration, and rehabilitation can enhance the quality of Marlborough’s natural resources.
123. The word ‘or’ is provided for in s 5(2) RMA where sustainable management of natural resources is provided for through ‘avoiding, remedying *or* mitigating any adverse effects of activities on the environment’. The use of the word ‘or’ in that provision addresses remedying *or* mitigating any adverse effects on the environment. That is not the focus of Policy 4.1.3. With the implications in s 5(2) RMA of mitigation of adverse effects, it is more to do with maintenance than it is enhancement. Enhancement is a matter to which authorities must give particular regard in s 7(1)(c).
124. In terms of the substitution of ‘and’ with ‘or’ endorsed in the wording of the Section 42A Report and by some of the submitters, we note that s 5 RMA defines the purpose of the legislation as the *promotion* of the management of natural and physical resources at the same time as sustaining these resources to meet the reasonably foreseeable needs of future generations safeguarding the life-supporting capacity of air, water, soil and ecosystems.<sup>84</sup>
125. The RMA legislation in fact provides a number of management tools addressing Marlborough’s natural resources in terms of resource consents including by enabling the enhancing of their qualities through conditions on consents. (We note the MFA’s submission that offsetting, compensation and substitution are merely offsets against adverse effects.<sup>85</sup>)
126. In the course of evidence for Te Atiawa a request was made for this policy to include a requirement for kaitiaki input. The Panel considers it is inappropriate to include such wording at a policy level given the uncertainty regarding resourcing, availability, capacity for iwi to meet the requirements of this policy direction. There is also the potential for difficulties in

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<sup>84</sup> Section 5(2)(a) and (b) RMA.

<sup>85</sup> MFA, Counsel Submissions, pages 46-48.

obtaining agreement on Kaitiaki status. Given s 8 RMA there remains an expectation that Council will engage with any affected iwi.

127. Further, by providing for MDC, as part of its management functions, a wider lens to work with Marlborough's tangata whenua iwi, MPI, DOC, fisheries, NGOs, the farming community, and community groups, the PMEP provides for enhancement of increasing the quality of natural resources through other means as set out in the methods attached to this chapter, rather than simply monitoring the status quo.
128. The Panel concludes that there is no need for Policy 4.1.3 to be amended. The MDC has appropriately in s 7 RMA terms given it 'particular regard' to the notified policy. It is worthwhile to note that if Council considers Marlborough's natural resources are significant enough to provide specific encouragement through an overarching policy such as Policy 4.1.3, then it is within its discretion to do so. Equally, if Council does not consider these resources present a profile beyond maintenance (and can demonstrate this), then it has the discretion not to require both maintenance and enhancement.
129. It is not appropriate to change a legislative criterion in s 7(f) RMA for a subset of the environment in a high-level document (RPS) or 'bend' a legal provision to suit a particular activity or activities when it suits merely based on a particular view of elusive costs and benefits arising in respect of the quality of natural resources.
130. The Panel's views expressed above as to importance of potential enhancement need to be recognised by an addition to the explanatory statement.

#### **Decision**

131. There is no change to Policy 4.1.3 but an additional paragraph at the end of the existing explanation is included as follows:

*The policy seeks to maintain and enhance the quality of soil, air, water and coastal resources given their contribution to Marlborough's social, economic and cultural wellbeing as a base from which enhancement can commence. However, past resource use has degraded some of those natural resources and in these circumstances the policy seeks to enhance resource quality in order to achieve Objective 4.1. The way in which regard will be had to maintenance and enhancement or resource quality is set out in greater detail in subsequent chapters.*

#### **Method 4.M.4 Guidelines**

132. Awatere WUG and Irrigation NZ seek that the final sentence stating that the Council will 'rely on' user groups to implement the guidelines should be amended to the Council supporting these groups and/or further supporting industry organisations.<sup>86</sup>
133. Federated Farmers suggested support for a new method as follows: 'Council will resource priority catchment enhancement projects that develop partnerships between industry, resource users in the catchment.' The report writer recommends no change in this method as it does not come within the parameters of Chapter 4.

#### **Section 42A Report**

134. The Section 42A Report agrees that methods of implementation should be focused on the actions the Council will take to implement the PMEP with the Council supporting rather than relying on industry and user groups to implement guidelines. The report recommends an amendment to the second to last and last lines of Method 4.M.4 Guidelines as follows: '... the Council will support industry and resource user groups to implement the guidelines'.<sup>87</sup>

#### **Consideration**

135. The Panel agrees that the method as notified does not reflect the actions the Council will take. We agree with the recommendation to replace 'rely on' with 'support industry and'.

#### **Decision**

136. Method 4.M.4 is amended as follows:

*The Council will make extensive use of guidelines to assist resource users to carry out their activities according to best practice for environmental outcomes. Guidelines will be developed in consultation with resource users and groups that represent their interests. The Council will ~~rely on~~ support industry and resource user groups to implement the guidelines.*

#### **4.AER.1**

137. Multiple submitters highlighted concerns with respect to the reliance on public perception surveys in the fourth indicator and sought its deletion. The main concern was the subjective nature of such surveys and the ability to therefore rely on the results.

#### **Section 42A Report**

138. The report writer considered the method to be appropriate and highlighted that the results would be considered alongside other information to determine whether the objectives of Chapter 4 are being met.

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<sup>86</sup> Section 42A Report, pages 25-26.

<sup>87</sup> Section 42A Report, Reply to Evidence, page 7.

### Consideration

139. The Panel agreed with the submitters public perception surveys are not a reliable method for determining whether objectives are being met. The Panel also grappled with this issue in the context of 7.AER.1 as well and came to the same conclusion.
140. Although the Panel agrees with the submitters, it does not consider that the indicator should be deleted. It is important that another appropriate indicator is used to measure whether the Marlborough Sounds Environment is in good health. In this regard, the AERs and associated indicators already included in Chapters 6, 7, 8 and 10 will provide useful information with respect to the state of the natural character, landscape, indigenous biodiversity and heritage values present in the Marlborough Sounds. In removing the fourth indicator, the Panel has therefore decided to replace it with a cross reference to the indicators in those chapters.
141. However, it will also be essential to involve Marlborough's tangata whenua iwi in the consideration of the results of monitoring under the relevant AERs. Iwi are kaitiaki and can contribute to the analysis of the monitoring results.

### Decision

142. Replace the fourth indicator for 4.AER.1 with the following:

*The ecological, physical, cultural qualities, and amenity values that contribute to the character of the Marlborough Sounds are maintained (and enhanced), as informed by AERs in Chapters 6, 7, 8 and 10 and by consultation with Marlborough's tangata whenua iwi*

### Management of regionally significant infrastructure

#### **Background to Issue 4B, Objective 4.2, Policies 4.2.1, 4.2.2 and 4.2.3 and Methods 4.M6, 4.M.10**

143. The Panel's decisions on Topic 20: Utilities and Designations have influenced the nature of the provisions under Issue 4B. In particular, that decision adds provisions providing for network utilities to Chapter 4. Therefore this decision should be read in conjunction with the decision on Topic 20.
144. Because of the interrelated nature of a number of the submission points on the various provisions within this topic, this section of the report assesses the submissions which seek changes and additional provisions which relate to the same underlying principle: the importance of regionally significant infrastructure to Marlborough including Network Utilities.
145. There is a degree of overlap between Issue 4B, Objective 4.2 and Policy 4.2.1. They concern some matters of national and regional importance and address omissions, definitions and the status of the relevant planning provisions.

146. The report writer at the outset of the Section 42A Report set out a series of statutory documents which are within the scope of this section of the chapter to address. The National Policy Statement on Electricity Transmission (NPSET), which manages the transmission of electricity within the region or district and the effects of the network on the environment, is one of these. This document is particularly relevant in that it influences the assessment of the relief requested by submissions set out in the Section 42A Report. It is particularly relevant to Issue 4B, Objective 4.2 and related provisions of this section of Chapter 4 because the National Grid is identified as ‘regionally significant infrastructure’ as well as being nationally significant. The particular policies within the NPSET used in into submissions and evidence by Transpower<sup>88</sup> are reflected in the suggestions made in particular to the PMEP policies and how they are developed.<sup>89</sup>
147. Sections 62(3), 67(3)(a) and 75(3) of the RMA require that a regional policy statement, regional plan and district plan must give effect to a national policy statement, such as the NPSET. The requirement to ‘give effect to’ is a strong statutory directive compared to other directives in the RMA and was interpreted in the *EDS v New Zealand King Salmon* Supreme Court case as meaning ‘to implement’.
148. There is also an issue as to the relevance of the National Environmental Standards for Electricity Transmission Activities 2009 (NESTA). NESTA applies to high voltage electricity transmission lines and covers activities related to the operation, maintenance and upgrading of existing lines but does not apply to the construction of new lines or substations. As pointed out by the report writer, ‘this is of some relevance to the management of this regionally significant infrastructure because Chapter 4 contains overarching policy guidelines relating to this infrastructure which includes not only the National Grid, but the telecommunications infrastructure.’<sup>90</sup> While the rules in NESTF (National Environmental Standards for Telecommunication Facilities 2016) prevail over district rules, the PMEP’s policies and objectives are relevant in the consideration of any resource consent required under the NESTF or any designation process.’
149. While the telecommunications network is considered nationally significant by Chorus and Spark there are no finer grained provisions to some items of infrastructure of which the telecommunications network is one despite the fact that under Topic 20 Utilities there are a

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<sup>88</sup> Section 42A Report, pages 9-10.

<sup>89</sup> Ibid, paragraph 2.

<sup>90</sup> NESFT, Section 42A Report, pages 10-11.

significant number of rules that apply to the range of network facilities identified. There is in essence a policy gap around this particular treatment of infrastructure.

150. The report writer in Topic 3 identified that she would address the 'gap' in RPS policy development around network utilities (identified by Fulton Hogan and Transpower) when addressing Topic 20 Utilities and Designations.

151. There was until then no specific policy framework for network utilities despite rules in Volume Two Chapter 2 to do so. The final recommendation made by the report writer in reply to submissions was:

Retain provisions as regional policy statement provisions only, noting that there is currently a policy 'gap' in relation to network utilities that therefore needs to be addressed, and reconsider the whole approach as part of Topic 20 - Utilities.<sup>91</sup>

152. The omission was addressed at the outset by the report writer in Topic 20 by providing a recommended objective and a recommended new policy. These are identified below. The new policy follows the numbered sequences following new Policy 4.2.3 of Topic 3.<sup>92</sup>

#### **Issue 4B**

**The social and economic wellbeing, health and safety of the Marlborough community are at risk if community infrastructure is not able to operate efficiently, effectively and safely.**

153. The explanation to Issue 4B explains that infrastructure is a regionally significant resource upon which the community relies to function, needing to be operated efficiently, effectively and safely on an ongoing basis. It also explains that other activities can affect infrastructure and that reverse sensitivity effects can arise on surrounding land uses.<sup>93</sup>

154. Five submitters support the issue statement and seek its retention with no change. Others seek: minor changes to the explanation to remove reference to 'strategic' infrastructure in the explanation and seek changes to identify telecommunications as nationally important;<sup>94</sup> another considers that Issue 4B is 'unduly constrained' through its reference to 'community' infrastructure and seeks deletion of the word; the explanation to Issue 4B understates the national significance of the National Grid and the inclusion of several sentences is sought outlining the existence of and direction in the National Policy Statement on Electricity Transmission – this submitter also seeks reference to the importance of the Grid and its

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<sup>91</sup> Section 42A Report, paragraph 45.

<sup>92</sup> Section 42A Report (Utilities and Designations), Matter 1 – Objectives and policy framework pertaining to network utilities, paragraphs 42-55.

<sup>93</sup> Section 42A Report, pages 27-37, 44-45

<sup>94</sup> Chorus (464.4), Spark (1158.77).

regionally and nationally significance;<sup>95</sup> the explanation to Issue 4B also requires amendment to include reference to ‘operation’ alongside ‘maintenance, upgrading and replacement’;<sup>96</sup> explicit reference should also be made in the Issue 4B explanation to the role emergency services make to health, safety and wellbeing of people and community in Marlborough.<sup>97</sup>

155. A large number of common format submitters (collectively referred to by the report writer as Group 2) and B. Clarke seek that Issue 4B (and Objective 4.2) are amended to recognise that regionally significant sectors omitted so far from the process are at risk if unable to operate efficiently, effectively and safely; that the PMEP should acknowledge that aquaculture, farming, forestry and viticulture employ people and spread wealth; these sectors should be enabled to grow while recognising and protecting the special qualities of the district and are omitted from this process.<sup>98</sup>
156. Chorus and Spark raise concerns that throughout the PMEP there is reference to ‘Regionally Significant Infrastructure’. They consider that all infrastructure is of regional significance, as it allows people, businesses and communities of the region to undertake their day to day lives in a safe and efficient manner, which contributes to wellbeing and health and safety, in line with Part 2 of the RMA. They consider that there is no planning need to determine what is ‘regionally significant infrastructure’, (or strategic) as identified in the explanation to the issue, and that instead the PMEP should simply refer to “infrastructure”. Consistent with this, they therefore seek changes to the explanation not only to Issue 4B, but also to Objective 4.2, Policies 4.2.1 and 4.2.2 and Methods 4.M.7, 4.M.8 and 4.M.9.<sup>99</sup>
157. Transpower, Port Clifford, NZTA and FENZ do not agree that all infrastructure is equal and assert the distinction between regionally significant infrastructure and others should be retained.<sup>100</sup> It is seen by them as particularly important to provide for the operation and development of essential services that may not otherwise meet the (other) restrictive policies of the PMEP.
158. FENZ in evidence considers that provisions in this part of Topic 3 should include emergency services, thus recognising the necessary role emergency services play in providing for the health, safety and wellbeing of the Marlborough community. FENZ makes the point that Issue 4B is the only provision in Volume One PMEP that directly and specifically addresses the social

<sup>95</sup> Transpower (1198.3).

<sup>96</sup> Marlborough Roads (967.4), NMDHB (280.6).

<sup>97</sup> NMDHB (280.7), FENZ (993.1).

<sup>98</sup> Section 42A Report, page 31. Table 2 List of Common Format Submitters, Group 2.

<sup>99</sup> Section 42A Report, page 28.

<sup>100</sup> Section 42A Report, *ibid.*

and economic wellbeing and health and safety of people and communities as elements of sustainable management.

159. FENZ seeks to amend not only Issue 4B and Objective 4.2 to extend these to emergency services, but to amend Method 4.M.9 in order to provide specific reference to the provision of emergency services and their associated activities. An additional new policy 4.2.x, relating specifically to FENZ, is also provided.<sup>101</sup>

#### **Section 42A Report**

160. In the Section 42A Report examining the evidence from Chorus, Spark, and PMNZ, the report writer cites s 59 RMA which states the purpose of an RPS is ‘to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of Marlborough.’<sup>102</sup>
161. There are several key words in the provisions of s 59 as to ‘overview’ and ‘integrated management’ of natural and physical resources. There is a requirement for the MDC to provide for them both. Consequently there is a need for provisions in this section of Chapter 4 to provide an overarching objective for regionally significant infrastructure in order to provide for the integrated management of its resources implemented through the various more specific chapters of the PMP (‘Water’ is not considered in this chapter).
162. If the planning provisions applied to all infrastructure however, Policy 4.1.2 would need to recognise and provide for such infrastructure regardless of scale. In the report writer’s opinion the nature of the issues surrounding infrastructure is what is necessary to achieve integrated management of the natural and physical resources in the context of Marlborough (as opposed to Auckland where the word ‘infrastructure’ addresses generally quite different issues and needs).
163. In the report writer’s opinion, it is implicit that any objectives within an RPS which respond to the issue must also be of regional significance and this should begin with that acknowledgment in Issue 4B. She acknowledges therefore Transpower’s submission to amend Issue 4B to refer to ‘regionally significant infrastructure’ instead of ‘community’ as the provisions addressed in the issue explanation are all limited to regionally significant infrastructure already. This aligns with the report writer’s conclusion in relation to the Chorus

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<sup>101</sup> FENZ, Ainslie McLeod Evidence, paragraph 5.3 and Attachment A.

<sup>102</sup> Section 42A Report, Reply to Evidence, pages 8–9.



and Spark submissions that not all infrastructure should be considered as being of equal significance. The heading to the Issue is recommended to be amended accordingly.

164. It is also accepted by the report writer that some reference to the type of infrastructure to which provisions apply is helpful (that is, that which primarily serves the community, rather than primarily serving a private interest). The report writer has not recommended acceptance of Transpower's submission to delete reference to 'community infrastructure'. Instead the report recommends reference to infrastructure is retained, although in a slightly different form ('infrastructure serving the community'). The report writer considers 'community infrastructure' is not the most accurate reflection of what this term relates to, nor is the term used within the provision itself.<sup>103</sup>
165. Related to this discussion are the changes requested by Chorus and Spark to identify telecommunications as nationally important. PMNZ agrees, citing the port infrastructure at Picton as having this status, as does Transpower relating to its own facilities. The report writer makes the point nevertheless that the issue explanation already states that some infrastructure within the district is also of national importance. Therefore the additional and repeated references to nationally important infrastructure is unnecessary in the opinion of the report writer. Infrastructure that is of national importance will also be of regional significance. There is thus no practical effect from infrastructure being listed within an explanation to an issue as being of national significance.
166. In terms of a reference to the National Grid in the issue statement, the report writer considers the amendments suggested by Transpower simply provide statements about the NPSET and do not assist in explaining the particular issue.
167. If on the other hand, the examples given in Issue 4B are amended to state 'Some infrastructure also has national importance' then the report writer agrees with Transpower, that it is important that reference to the National Grid is made explicit within the PMEP provisions because of the NPSET and its directions recognising its national significance. The report writer acknowledges in this context, that it may also be appropriate to include separate, specific policy guidance in this chapter.<sup>104</sup>
168. Some submitters seek the issue be amended to refer to use and 'development' in order to be aligned with ss 5 and 9 RMA and the enabling intent of the RMA,<sup>105</sup> as sought by the aquaculture industry. They assert inclusion of the word 'development' envisages change and

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<sup>103</sup> Section 42A Report, page 34, bullet point 3.

<sup>104</sup> Section 42A Report, page 29.

<sup>105</sup> Transpower (1198.2 and .3), PMNZ (433.5).

that it is important to recognise that change will need to occur over the life of the PMEP.<sup>106</sup> As is clear from the explanation to the issue, the report writer identifies that it is not only the use, but also in some cases development of natural resources that is important for the social and economic wellbeing of the district. The report writer says the issue clearly recognises that new infrastructure may be required to provide for growth within the district.

169. In terms of including the word 'operation' to Issue 4B (and Objective 4.2), the report writer considers the sentence in the explanation to the issue referring to 'maintenance, upgrade and replace infrastructure' without significant constraint, is an expansion of the word 'operation' as the previous sentence explicitly talks about the importance of being able to 'operate' on an ongoing basis effectively and safely. No change is recommended by the report writer.
170. The submission seeking an amendment to the explanation to support the population and the 'economy' was not considered by the report writer to align with s 5 RMA which is focused on enabling people and communities to provide for their economic 'wellbeing', rather than 'providing for the economy'. The current wording in the explanation to Objective 4.2, which refers to protection and support of the population is considered to already encompass economic wellbeing. With respect to 'upgrading', the report writer does not consider this is necessary on the basis that the explanations to both Issue 4B and Objective 4.2 are clear that (maintenance, upgrading and replacement) are already part of the ongoing operation of infrastructure. Again, no change is recommended by the report writer.
171. In terms of Group 2 submitters, it is the report writer's opinion that the PMEP already recognises the link between Marlborough's social and economic wellbeing and these primary production activities through Issue 4A, Objective 4.1 and related policies. Further, Issue 4B and related provisions are focused on infrastructure and extending these to cover particular primary production activities is neither necessary nor appropriate. Once more no change is recommended by the report writer.
172. As to the submissions from NMDHB and FENZ seeking to be identified as regionally significant infrastructure, (and also in relation to Objective 4.2, Policy 4.2.1 and Method 4.M.10), the report writer considers generally that in relation to the emergency services mentioned that this is likely to be true for a number of facilities and services of importance to the social wellbeing, health and safety of the district but whether or not there is a regionally significant

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<sup>106</sup> MFA (426.10).

issue that relates to them, this should be addressed further if additional information was forthcoming from the evidence.<sup>107</sup>

173. The report writer recognises that while the nature of FENZ's services does not fall within the RMA's definition of 'infrastructure', the nature of these services and facilities is not too dissimilar from that of other infrastructure and that it may be appropriate to extend the list in Policy 4.2.1 to include emergency services. She considers that this is dependent on whether the same issues arise in these services requiring special recognition and management.<sup>108</sup>

174. A few minor amendments to the explanation to the issue are recommended by the report writer: 'Additionally' in place of 'Occasionally' in the third to last line to the Issue 4B explanation, with the addition 'and it is also important that this can be developed efficiently, effectively and safely'.<sup>109</sup>

### **Consideration**

175. In terms of Issue 4B, the Panel's decision is to include the words 'regionally significant' and 'serving the community' in the statement to the issue, deleting 'community infrastructure'.<sup>110</sup>

176. In terms of the first sentence to the explanation to Issue 4B, the Panel agrees to insert the word 'to' between 'communities' and 'function'.<sup>111</sup>

177. The Panel also agrees with the deletion of the word 'strategic' from the fifth sentence of the first paragraph of the explanation to Issue 4B. Chorus and Spark oppose the use of this word to describe certain types of infrastructure, given the lack of its definition.<sup>112</sup>

178. In order that the issue should reflect that the significance of the development of new infrastructure is also important, the final sentence of the first paragraph of the explanation should be amended in relation to the National Grid to ensure NPSET is fully given effect to.<sup>113</sup>

179. Also, in order to reflect FENZ's addition to infrastructure issues, Issue 4B requires further amendment to recognise the very high value and importance of emergency services to the community's health, safety and wellbeing. This can be achieved by a further amendment with the insertion of the words 'emergency services' to the statement and a further explanation as to the reason for its inclusion added to the end of the first amended paragraph as follows:

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<sup>107</sup> Section 42A Report, page 30.

<sup>108</sup> Section 42A Report, page 31.

<sup>109</sup> Section 42A Report, Reply to Evidence, page 11.

<sup>110</sup> Section 42A Report, pages 28-29, 35. Reply to Evidence, page 12.

<sup>111</sup> Section 42A Report, page 35.

<sup>112</sup> Section 42A Report, pages 35-36.

<sup>113</sup> Section 42A Report, pages 29, 36. Reply to Evidence, pages 13-14.

*Emergency services are essential to the on-going health, safety and wellbeing of the Marlborough community. It is therefore important that emergency services also are able to operate, upgrade and develop efficiently and effectively in a manner that responds to community needs without unnecessary constraints.*<sup>114</sup>

180. The word ‘development’ is missing in the revision of Issue 4B by the report writer in the second to last line of the first paragraph. The phrase is ‘maintain, upgrade and replace’ which, in the Panel’s opinion, indicates replacing existing regionally significant infrastructure. This appears to become even clearer when the report writer acknowledges the other provisions of this section of the chapter are limited to present regionally significant infrastructure and not future developments.
181. Ms McLeod for Transpower considers ‘maintenance, upgrade and replace’ in the explanatory text does not unambiguously mean that further developments are provided for as part of an ‘ongoing operation’. It is common for RMA policy and planning documents to distinguish ‘operation’ from ‘maintenance upgrading’ but what is equally important here is to recognise that provision needs to be made for future upgrade and development. This distinction is also made in relation to the National Grid in NPSET.<sup>115</sup>
182. In relation to all other matters raised in the submission on Issue 4B the Panel agrees with the report writer’s recommendations for the reasons set out above.

### **Decision**

183. Issue 4B is amended as follows:

*Issue 4B – The social and economic wellbeing, health and safety of the Marlborough community are at risk if ~~community~~ regionally significant infrastructure or emergency services is are not able to operate, upgrade and develop efficiently, effectively and safely.*

*We rely on a range of physical resources to allow our communities to function on a day-by-day basis. These resources include the water, stormwater and waste disposal services provided to townships and small settlements; the transport links within Marlborough and connecting Marlborough to the remainder of the country; the provision of electricity and telecommunications; and, on the Lower Wairau Plain, the drainage of land. Collectively, this infrastructure is regionally significant due to the contribution it makes to our social and economic wellbeing, health and safety. Other infrastructure in (e.g. RNZAF Base Woodbourne) or running through Marlborough (e.g. the National Grid and state highways) also has national*

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<sup>114</sup> FENZ, Ainslie McLeod, Evidence, Attachment A.

<sup>115</sup> Transpower, Ainsley McLeod, Evidence, paragraph 62.

*importance. It is important that this ~~strategic~~ infrastructure is able to operate efficiently, effectively and safely on an ongoing basis for community wellbeing. The ability to maintain, upgrade and replace existing infrastructure without significant constraint is important in this respect. ~~Occasionally~~ Additionally, new infrastructure may be required to provide for growth within the district and it is also important that this can be developed efficiently, effectively and safely.*

Emergency services are essential to the on-going health, safety and wellbeing of the Marlborough community. It is therefore important that emergency services are able to operate efficiently and effectively in a manner that responds to community needs without unnecessary constraints. ...

## **Objective 4.2**

### **Efficient, effective and safe operation of regionally significant infrastructure**

184. In terms of the objective, some submitters restate support or otherwise for ‘infrastructure’ or ‘regionally significant infrastructure’; others in varying language seek: to extend the provisions of the development of new, and the upgrade of, existing regionally significant infrastructure stressing its importance for future population growth; a change to Objective 4.2 because it fails to give effect to the NPSET, particularly Policies 2 and 5,<sup>116</sup> because it does not contemplate the upgrade and development of the National Grid;<sup>117</sup> Objective 4.2 and related policies should include the regional plan, the regional coastal plan and district plan as well as the RPS; the objective should be expanded to refer to the expansion of existing infrastructure and/or the objective should provide for change over time and/or where it is appropriate Objective 4.2 should be amended to recognise the ‘resilience’ of significant infrastructure as a key issue; the explanation to the objective should be extended to refer to infrastructure having been developed to protect and support the population ‘and economy’;<sup>118</sup> limitations should be placed on activities near regionally significant infrastructure including the question of costs and consideration of the effects of restrictions on the use of people’s private property; that objectives and policies be included that recognise the effects that infrastructure has as a result to related restrictions on the use of people’s private property; that objectives (and policies) should also apply to the location and operation of National Transmission Lines, Grids and Corridors avoiding those where use and development of property for the purpose it

<sup>116</sup> Chorus, Spark, PMNZ, Transpower. [See Transpower, A. McLeod, Evidence paragraph 29. NPSET 14 Policies.]

<sup>117</sup> Transpower (1198.4, .7, .8).

<sup>118</sup> NMDHB (280.7), NZDF (992.3), MFA (426.20).

is already zoned for;<sup>119</sup> the objective is amended ‘to recognise that major changes to existing infrastructure may impose significant costs or opportunity costs to third parties who are affected by such changes should consider matters of compensation’.<sup>120</sup>

#### **Section 42A Report**

185. The report identifies that under s 62(1)(1) RMA the resource management issues identified in an RPS must be those of significance to the region, notwithstanding the report writer’s recommendation that the policies should also be district, regional and coastal as well as RPS; in the report writer’s opinion the objective(s) within an RPS must be those of significance to the region. Objective 4.2 as notified, is considered therefore as appropriately focused on the overall operation of regionally significant infrastructure. While some submitters seek ‘development and upgrading of infrastructure as an ‘end goal’’ this is said to be inappropriate, with the existing objective implemented through policies 4.1.1 and 4.2.2, the former seeking that the benefits of these items of regionally significant infrastructure is recognised, and the latter how the adverse effects of other activities are managed.
186. The report writer considers initially that extension of the objective is unnecessary on the basis that the explanation to the Objective (and Issue 4B) are clear that maintenance, upgrading and replacement is part of the ongoing operation of infrastructure. Another sentence explicitly talks about the importance of being able to operate efficiently, effectively and safely.
187. In terms of those who are concerned about significant costs and opportunity costs in relation to the objective and how it is implemented through the PMEP’s policies and rules together with the impacts of regionally significant infrastructure on private land use options, the report writer agrees that costs and benefits will be an issue with the objective and ultimately how it is varied over time. However, the report acknowledges that the submitter recognises these costs are affected by the significant community benefit that arises through the existence of significant infrastructure. The report says that further consideration will be required as to whether the specific rules required to implement the infrastructure are appropriate in cost/benefit terms.
188. Taking this point further, the report writer points out that the ability to upgrade and replace existing infrastructure is not unconstrained in relation to the objective, as consideration of any particular resource consent application or notice of requirement with respect to designations would need to consider the other objectives within the PMEP including the managing of

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<sup>119</sup> K and J Wills (66.33).

<sup>120</sup> PF Olsen Ltd (149.4).

adverse effects. Further consideration would also be required as to whether the associated rules are the most effective to achieve the PMEP's objectives and give effect to the RPS level provisions.<sup>121</sup>

189. As to whether 'resilience' is part of the ongoing operation of regionally significant infrastructure, the report points out this term is part of effectiveness and therefore does not need to be added to the objective.
190. For those who seek that the explanation to the objective is amended to encompass the economy, this addition does not align with the terminology in s 5 RMA, which is focused on enabling people and communities to provide for their economic wellbeing, rather than providing for the 'economy'. The report writer recommends retaining the current wording which refers to protection and support of the population. The report says that already encompasses support for the population's economic wellbeing and is more appropriate than the addition sought.
191. Several submitters sought to expand the existing provisions of infrastructure to the development of new, and upgrade of existing, regionally significant infrastructure. NMDHB seeks an additional objective to be included which recognises the importance of regionally significant infrastructure on the basis it needs to be recognised and provided for. As a consequence of this, NMDHB also considers that additional policies are required to implement these objectives and in particular to account for population growth. MFA and NZDF support this on the basis that an additional objective should provide for change over time and an expansion of infrastructure when it is appropriate.
192. Transpower's amendment to the phrase seeks to add to the ability to 'maintain, upgrade and replace' existing infrastructure by including the phrase 'may include the development of new infrastructure'.<sup>122</sup>
193. While the report writer considers there should be no change to Objective 4.2 itself, she recognises that future development is something that should be addressed to give effect to the RPS provisions for which she recommends the explanation to the objective contain the words similar to those in amended Issue 4B: 'Occasionally, new infrastructure may be required for growth with the district, to ensure its ongoing operation'.<sup>123</sup>

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<sup>121</sup> Section 42A Report, page 34.

<sup>122</sup> Transpower, Ainsley McLeod, Appendix B page 1.

<sup>123</sup> Section 42A Report, page 30.

### Consideration

194. In terms of the Panel's assessment of the Objective 4.2, we are clear it should remain as the overarching provision with the status of an RPS in this set of provisions on regionally significant infrastructure. There are various other chapters throughout the PMEP that provide more specific objectives relating to specific topics.<sup>124</sup>
195. There is also however change needed to include the term 'emergency services' in the objective and the first paragraph of the explanation.
196. The importance of regionally significant infrastructure is further acknowledged in the explanation to the Objective to foreshadow the inclusion of other infrastructure facilities through the words '*and may include the development of new infrastructure*'.

### Decision

197. The objective is amended for the reasons set out in the Section 42A Report and the evidence of Ainslie McLeod for FENZ.<sup>125</sup>

[R]

*Objective 4.2 – Efficient, effective and safe operation, upgrade and development of regionally significant infrastructure, network utilities and emergency services.*

198. The explanation to Objective 4.2 is amended as follows:

*The community relies on the ~~considerable~~ infrastructure, network facilities and emergency services that ~~has~~ have been developed to protect and support the population. It is essential for the social and economic wellbeing, health and safety of the Marlborough community that this ~~critical~~ infrastructure, network utilities and emergency services continues to operate efficiently, effectively and safely on an ongoing basis. This includes the ability to maintain, upgrade and replace existing infrastructure and network utilities. It may include the development of new infrastructure and network utilities.*

### Policy 4.2.1

**Recognise the social, economic, environmental, health and safety benefits from the following infrastructure, either existing or completed at the time of the Marlborough Environment Plan became operative, as regionally significant: ...**

199. The list of regionally significant infrastructure in the PMEP at Policy 4.2.1 is:

- (a) reticulated sewerage systems (including the pipe network, treatment plants and associated infrastructure) operated by the Marlborough District Council;

<sup>124</sup> See Section 42A Report, Topic 20, paragraph 40.

<sup>125</sup> FENZ, Ainslie McLeod, Evidence, Attachment A.



- (b) reticulated community stormwater networks;
  - (c) reticulated community water supply networks and water treatment plants operated by the Marlborough District Council;
  - (d) regional landfill, transfer stations and the resource recovery centre;
  - (e) National Grid (the assets used or owned by Transpower NZ Limited);
  - (f) local electricity supply network owned and operated by Marlborough Lines;
  - (g) facilities for the generation of electricity, where the electricity generated is supplied to the National Grid or the local electricity supply network (including infrastructure for the transmission of the electricity into the National Grid or local electricity supply network);
  - (h) strategic telecommunications facilities, as defined in Section 5 of the Telecommunications Act 2001, and strategic radiocommunication facilities, as defined in Section 2(1) of the Radiocommunications Act 1989;
  - (i) Blenheim, Omaka and Koromiko Airports;
  - (j) main trunk railway line;
  - (k) district roading network;
  - (l) Port of Picton and Havelock Harbour;
  - (m) Picton, Waikawa and Havelock marinas;
  - (n) RNZAF Base at Woodbourne; and
  - (o) Council-administered flood defences and the drainage network on the Lower Wairau Plain.
200. The Preamble to the NPSET includes useful background as to its significance for the following provisions. It states that the efficient transmission of electricity on the National Grid plays a vital role in the well-being of New Zealand, its people and the environment. The Preamble also notes that the National Grid has particular physical characteristics and operational/security requirements that have been challenging to manage under the RMA. It also acknowledges the potential significance of some effects of transmission lines (utilities) (including the inability for these to be avoided or mitigated), along with the significant constraints that third party activities and development can place on the network. It notes that adverse effects are

experienced at the local level, while benefits are regional or national, requiring a balanced consideration of effects.<sup>126</sup>

201. Transpower considers that by confining the policy to existing infrastructure as part of the policy, any new assets would not be considered regionally significant in the context of the PMEP; the benefits of these assets are therefore not recognised or provided for contrary to Policy 1 of NPSET. The policy therefore has little or no relevance to the requirements of designations or resource use and development applications for new regionally significant infrastructure. While the PMEP policy framework recognises the significance of the National Grid, it does not enable or provide for it in the way it aligns with the Objective 4.2 and Policies 2 and 5 of NPSET. PMNZ also considers that the policy should not refer to infrastructure that is either consented to or existing at the time the plan became operative.<sup>127</sup>
202. It is considered the policy is retrospective in nature and does not enable upgrades, improvements and additional developments. Transpower considers that the opening statement fails to recognise the dynamic nature of this infrastructure and may unnecessarily constrain its ongoing use and development.
203. By way of relief Transpower seeks either:
- a. *The inclusion of an additional (first) policy to enable the operation, maintenance, upgrading and development of essential network utilities including the National Grid throughout Marlborough.*
  - b. *An additional (second) policy which mirrors Policy 18.1.3 (relating to renewable energy generation) and is considered by the submitter to provide greater clarity and direction in terms of how the National Grid is recognised in the Marlborough context.*
204. Marlborough Roads and NZTA supported by Port Clifford, also seek that Policy 4.2.1 is also amended to refer to infrastructure ‘authorised as a permitted activity, resource consent or notice of requirement’.
205. A further suggested amendment from Transpower, provides for (e) to delete ‘NZ’ and substitute ‘New Zealand’.
206. In terms of amendment to the existing list, Chorus and Spark do not accept the wording in subsection (h) of the list because it is inaccurate in that there were cross-references to

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<sup>126</sup> Transpower, Ainsley McLeod Evidence, paragraphs 20-28.

<sup>127</sup> Section 42A Report, page 29.

definitions that do not exist in the relevant statutes for telecommunications and radiocommunications. While these were potentially recognised and corrected by the report writer, the Radio Communications Act 1989 does not define a 'network'. A definition in the Radio Communications Act supports a more explanatory and extensive definition. The provision is recommended to be amended accordingly to read:

*(h) Telecommunications networks, as per the definition of a network, ~~for the purpose of telecommunications, as defined in section 5 of the Telecommunications Act 2001, or and equipment facilitating the purpose of radiocommunications, as per the definition of radiocommunications defined in section 2(1) of the Radiocommunications Act 1989.~~<sup>128</sup>*

207. Another query from Marlborough Roads and NZTA concerns whether 'district roading network' (which is undefined in the PMEP) in (k) includes State Highway Network. The submitters consider 'road network' is more appropriate as it is frequently used with the terminology elsewhere in the PMEP particularly in Volume 1, Chapter 17 (Transportation).

#### **Section 42A Report and Consideration**

208. The report writer accepts the amended provisions of this section of the chapter and recognises what they are aimed at achieving are largely focused on recognising the importance of existing infrastructure and the need to promote its ongoing operation and effects on it from other activities. She agrees that if additional infrastructure is built or consented to within the lifetime of the PMEP it is appropriate that it is recognised, protected and managed in the same way. Using the National Grid as an example, if this was to be extended the provisions which constrain particular land uses and subdivision should apply equally to new infrastructure. Policy 4.2.1 therefore should not be limited only to infrastructure existing or consented to at the time the PMEP becomes operative. Such a change would better achieve Objective 4.2 and ensure that infrastructure of regional significance is appropriately recognised ensuring its ongoing operation. The report writer also considers that the policy could be strengthened by extending it to 'recognise and provide for' the benefits identified.<sup>129</sup>
209. With respect specifically to the National Grid, the report writer accepts that it is necessary to give more explicit guidance on the development of the new National Grid infrastructure in order to give effect to NPSET.

<sup>128</sup> Chorus (1158.4) and Spark 464.6), Tim Anderson, Evidence, paragraphs 33-37.

<sup>129</sup> Section 42A Report, pages 29-30.

210. The first policy suggested by Transpower is not recommended as it is largely duplicated by Policy 4.2.1. The report writer recommends that with slight changes to better reflect the direction in NPSET, the second policy is to be adopted.
211. The suggested second policy identified should be limited to the National Grid because the same circumstances do not arise in relation to other infrastructure which is identified in Policy 4.2.1. The policies required by NPSET (Policy 2 and policies 3 – 8) are those generally replicated in the second policy proposed by Transpower. The report writer also considered that the policy can be strengthened by extending it to recognise *and provide for* the benefits identified.
212. The report writer therefore recommended amendment to Policy 4.2.1 as follows:
- Policy 4.2.1 – Recognise and provide for the social, economic, environmental, health and safety benefits from the following infrastructure, ~~either existing or consented at the time the Marlborough Environment Plan became operative~~, as regionally significant ...*
213. The amendment to Policy 4.2.1 recommended by the report writer includes the words ‘Recognise and provide for the social, economic, environmental, health and safety benefits from the following infrastructure...’.
214. Transpower considered the words ‘and provide for’ should be deleted as the provisions in this chapter should not explicitly direct development of new infrastructure. Any direction should be considered as part of the overarching provisions of the PMEP. How the benefits are recognised in subsequent provisions would then be balanced against other provisions in the PMEP providing more specific direction on development.
215. The report writer considers that a definition of road network, which was also sought, is unnecessary as it is self-evident in the context of Chapter 17 which contains provisions which give effect to this component of Policy 4.2.1.<sup>130</sup>
216. In terms of listing regionally significant infrastructure included in an Appendix, as sought in another submission, this amendment is not accepted by the report writer as the list is relatively brief and there is little benefit in moving it.<sup>131</sup> Nor does ‘regionally significant infrastructure’ require a definition as the items listed in practice define the term and these are within the definition of ‘infrastructure’ in s 2 RMA.

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<sup>130</sup> Marlborough Roads (967.4), NZTA (1002.9).

<sup>131</sup> Federated Farmers (425.15).

**What should additional regionally significant infrastructure include?**

217. In terms of the policy and the list, two submitters support the wording as notified. There are a number of submissions that seek changes to treat other activities in the same or similar manner as proposed for infrastructure or to extend what is defined as regionally significant infrastructure. They include: a new policy to recognise the essential nature that emergency services make to the health, safety and wellbeing of people and the communities of Marlborough, in the same way as infrastructure, but through a range of methods and requiring a consequential change to Method 4.M.9;<sup>132</sup> recognition that healthcare services and facilities are regionally significant infrastructure with these explicitly listed in Policy 4.2.1;<sup>133</sup> that Policy 4.2.1 is amended to specifically recognise infrastructure used for commercial purposes at Elaine Bay (Tennyson Inlet), Oyster Bay (Port Underwood), Okiwi Bay (Croisilles Harbour);<sup>134</sup> extend reference to the Port of Picton and Havelock Harbour to include Shakespeare Bay;<sup>135</sup> extend Policy 4.2.1 so that it applies to all reticulated water supply networks and water treatment plants, not just limited to those operated by the Council;<sup>136</sup> extend the RNZAF base at Woodbourne and refer to 'and other defence facilities';<sup>137</sup> a query whether the district roading network includes state highways - reference to the 'road network' is more appropriate as it is consistent with the terminology used elsewhere in the PMEP;<sup>138</sup> rather than referring to 'strategic facilities' and including reference to the various legislation that defines these, reference 'telecommunication and radiocommunication issues';<sup>139</sup> amend the policy to include the list of regionally significant infrastructure in an appendix;<sup>140</sup> define regionally significant infrastructure;<sup>141</sup> add to list of regionally significant infrastructure wine and aquaculture development;<sup>142</sup> critical items are not identified such as irrigation and on-farm drainage;<sup>143</sup> recognition and provision for the material and processes that contribute to construction, operation and maintenance of existing infrastructure, ensuring materials needed (aggregates) are available;<sup>144</sup> policies and objectives (in Policy 4.2.1 and elsewhere) should recognise that quarries are an essential part of flood protection (as are

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<sup>132</sup> FENZ (993.37).

<sup>133</sup> NMDHB (280.8).

<sup>134</sup> AQNZ (401.20) and MFA (426.20).

<sup>135</sup> Federated Farmers (425.15).

<sup>136</sup> Irrigation NZ (778.9).

<sup>137</sup> NZDF (992.4).

<sup>138</sup> Marlborough Roads (967.4). See Vol 1 Chapter 17 Transportation.

<sup>139</sup> Chorus (464.6), Spark (1158.3).

<sup>140</sup> Federated Farmers (425.15).

<sup>141</sup> Marlborough Roads (967.4) and NZTA (1002.9).

<sup>142</sup> Group 2 submitters.

<sup>143</sup> Federated Farmers (425.15).

<sup>144</sup> Fulton Hogan (717.13).

MDC administered flood defences);<sup>145</sup> transport infrastructure associated with primary industry should be included in regionally significant infrastructure.<sup>146</sup>

#### **Community and emergency services**

218. In the report writer's opinion there is a distinction between community facilities and services and the types of infrastructure defined in Policy 4.2.1; the latter largely reflect the type of infrastructure involved in the definition of infrastructure in the RMA.<sup>147</sup> As a result the ability to operate efficiently, effectively and safely is far less affected by the provisions in the PMEP and are influenced by matters outside the Council functions under the RMA.
219. FENZ seeks a policy framework to support the rules included in Volume Two PMEP as notified. Ms McLeod's evidence also sought a new Policy 4.2.X specific to these services which the report writer supports in a recommendation.<sup>148</sup>
220. NMDHB seeks to amend the issue to recognise *healthcare services and facilities* that would include the Wairau Hospital, emergency services, general practices and community support services. Policy 12.3.2 seeks to provide for appropriate community facilities to reside within residential environments where they meet a community need and are in keeping with the character and amenity of the zone.<sup>149</sup> The report writer therefore considers the PMEP already takes into account the provision of community facilities. In relation to the Wairau Hospital, the activities are managed as a scheduled site.<sup>150</sup> There is no change recommended to the notified provisions relating to the Wairau Hospital in the PMEP.

#### **Infrastructure used for commercial purposes**

221. Group 1 submitters seek generally in Chapter 4 to recognise that the infrastructure used for commercial purposes identified by AQNZ and MFA (Elaine Bay, Oyster Bay, Okiwi Bay, Havelock, Shakespeare Bay, Port of Havelock and Picton) be recognised as regionally significant infrastructure.
222. Shakespeare Bay, however, is already within the Port Zone. With respect to the Port of Picton, the report writer points out the bay itself is within the Port Zone. As such, change is not necessary. In terms of other *smaller* ports and airports Omaka and Koromiko, and whether there any inconsistency between ports and airports in terms of the significance of operations, the report writer accepts that a level of judgement is required in determining what meets the

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<sup>145</sup> Simcox Construction (1151.1).

<sup>146</sup> NZ Forest Products (995.8).

<sup>147</sup> Section 2 RMA.

<sup>148</sup> FENZ, Ainslie McLeod, Evidence, paragraph 5.11(e). Section 42A Report, Reply to Evidence, pages 10-11.

<sup>149</sup> Section 42A Report, page 31.

<sup>150</sup> Volume 4, Appendix 16-3-16-4.

threshold of significance. In terms of Elaine Bay and Oyster Bay, they are zoned as Port Landing Zone in recognition of their use and that zoning provides for that use as such.

223. In the report writer's opinion, Elaine and Oyster Bay meet the threshold for regionally significant infrastructure as set out in Issue 4B in which case she recommends it would be appropriate to include them. Okiwi Bay is not recommended due to its limited size and restricted storage space for marine farm purposes. And while Elaine Bay and Oyster Bay have cranes or lifting equipment on the wharves together with more fuel facilities, these are not present at Okiwi Bay.<sup>151</sup>

#### **Irrigation schemes**

224. Federated Farmers and Hort NZ consider irrigation schemes and on-site drainage are of such important value to the region as to be included in regionally significant infrastructure. In the report writer's opinion the primary benefits of the infrastructure identified by these submitters are private benefits for landowners and owners of commercial premises and localised. Any benefits to the wider community are included in the list.
225. In terms of community water reticulation, storage and reticulation and the amendment to remove 'networks operated only by Council', the report writer accepts Kim Reilly's evidence for Federated Farmers that there are benefits 'well beyond the farm gate' and therefore of public and private benefit.
226. But the report writer considers that while some irrigation schemes may meet the threshold of regional significance, the level at which this is met has not been identified within the submitter's evidence. A solution in relation to water reticulation schemes might be that an appropriate threshold would be if the reticulation scheme was aligned with the NESDW (National Environment Standard for Sources of Human Drinking Water) which sets out greater restrictions on other activities which may affect a supply that provides drinking water for 501 people or more.<sup>152</sup> The Register of Drinking Water Suppliers shows that Council operated schemes are all below this threshold except for the Woodbourne RNZAF Base. This base is already listed within Policy 4.2.1 as operated by the Council,<sup>153</sup> reflecting the size of the public benefit of such schemes.

#### **Decision**

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<sup>151</sup> See also assessment under Coastal Environments, Chapter 13. Addendum to Report, 12 March 2018.

<sup>152</sup> Section 42A Report, page 32.

<sup>153</sup> Section 42A Report, page 32, citing <http://www.esr.cri.nz/assets/WATER-CONTENT/Images-and-PDFs/RegisterOfSuppliers-2017a.pdf>

227. The amended wording for Policy 4.2.1, to three items in the list, and to the explanation, is as follows:

*[RPS, R, C, D]*

*Policy 4.2.1 – Recognise the social, economic, environmental, health and safety benefits from the following infrastructure, ~~either existing or consented at the time the Marlborough Environment Plan became operative~~, as regionally significant:*<sup>154</sup>

- (a) reticulated sewerage systems (including the pipe network, treatment plants and associated infrastructure) operated by the Marlborough District Council;*
- (b) reticulated community stormwater networks;*
- (c) reticulated community water supply networks and water treatment plants operated by the Marlborough District Council;*
- (d) regional landfill, transfer stations and the resource recovery centre;*
- (e) National Grid (the assets used or owned by Transpower ~~NZ~~ New Zealand Limited);*
- (f) local electricity supply network owned and operated by Marlborough Lines;*
- (g) facilities for the generation of electricity, where the electricity generated is supplied to the National Grid or the local electricity supply network (including infrastructure for the transmission of the electricity into the National Grid or local electricity supply network);*
- (h) Telecommunications networks, as per the definition of a network, in section 5 of the Telecommunications Act 2001, and equipment facilitating radiocommunications, as per the definition of radiocommunications defined in section 2(1) of the Radiocommunications Act 1989.*

*~~Strategic telecommunications facilities, as defined in Section 5 of the Telecommunications Act 2001, and strategic radiocommunication facilities, as defined in Section 2(1) of the Radiocommunications Act 1989;~~*<sup>155</sup>

- (i) Blenheim, Omaka and Koromiko Airports;*

<sup>154</sup> Section 42A Report, Reply to Evidence, pages 15-15.

<sup>155</sup> Chorus and Spark (1158.4)(464.6), Tim Anderson, Evidence, paragraphs 33-37.



- (j) *main trunk railway line;*
- (k) ~~*district roading road network;*~~
- (l) *Port of Picton and Havelock Harbour, Elaine Bay and Oyster Bay;*
- (m) *Picton, Waikawa and Havelock marinas;*
- (n) *RNZAF Base at Woodbourne; and*
- (o) *Council administered flood defences and the drainage network on the Lower Wairau Plain.*

*The policy identifies infrastructure considered regionally significant due to its contribution to the social and economic wellbeing or health and safety of a large proportion of Marlborough’s population, or because of its strategic importance nationally. These benefits will be taken into account when developing district and regional rules and when considering resource consent applications, notices of requirement and plan change requests. This policy recognises the significance of the infrastructure whether it is existing or consented at the time that the MEP becomes operative, or developed subsequently.<sup>156</sup>*

#### **Policy 4.2.2**

##### **Protect regionally significant infrastructure from the adverse effects of other activities.**

228. Several submitters support the policy, either explicitly seeking it to be retained or do not seek changes. Others seek: ‘other activities’ to be amended to refer to ‘subdivision use and development’ to achieve greater consistency with Policies 10 and 11 NPSET;<sup>157</sup> also a change is required in the explanation where it refers to the NPSET to refer to reverse sensitivity on the network being avoided ‘to ensure that the National Grid is not compromised’ rather than being avoided ‘as much as possible’; another does not consider that it is always appropriate to protect infrastructure from the adverse effects of other activities, such as existing farming activities;<sup>158</sup> the policy amended to read ‘Avoiding adverse effects where practical on regionally significant infrastructure’; the protection of infrastructure is more akin to the outcome that is sought, rather than a course of action;<sup>159</sup> the policy be extended to refer to ‘including reverse sensitivity and cumulative effects’;<sup>160</sup> changes to the policy explanation to

<sup>156</sup> Consequential amendment: PMNZ (433.7), Marlborough Roads (967.4), NZDF (992.4), NZTA (1002.9), Transpower (1198.5).

<sup>157</sup> Transpower (1198.6).

<sup>158</sup> Federated Farmers (425.16).

<sup>159</sup> Hort NZ (769.5).

<sup>160</sup> Trustpower (1201.9).

remove reference to ‘avoiding establishment of incompatible activities in close proximity to infrastructure in the first place’ replacing it with in ‘locations where reverse sensitivity effects may arise’.<sup>161</sup>

### Section 42A Report and Consideration

229. The initial recommendation of the report writer in response to some of these submissions was as follows:

*Protect regionally significant infrastructure from the adverse effects of ~~other~~ subdivision, use and development activities that may compromise its operation, and in addition, in relation to the National Grid, that may compromise its maintenance, upgrading and development.*

*In respect of the electricity transmission network, it is a requirement of the National Policy Statement on Electricity Transmission (NPSET) for decision makers, to the extent reasonably possible, to manage activities to avoid reverse sensitivity effects on the network and to ensure that the National Grid is not compromised as much as possible.*

230. In evidence, Federated Farmers strongly maintains it is not always necessary to ‘protect’ infrastructure from the adverse effects of other activities.<sup>162</sup> The report writer considers what is sought in this submission repeats Policy 4.1.1 and does not address the issue of managing reverse sensitivity. The policy’s intention, as understood by the report writer, does not require protection from all adverse effects but as identified by Hort NZ,<sup>163</sup> only those that may compromise the operation of regionally significant infrastructure thus avoiding many of the matters raised in original submissions of Trustpower, NZTA and Transpower, and repeated in evidence.<sup>164</sup> Therefore the report writer agrees that protection for *all* adverse effects goes beyond what is necessary to achieve Objective 4.2.
231. Hort NZ considers the suggested policy provides a more stringent policy framework than that directed in NPSET (Policy 10 of that document) thus the caveat of ‘to the extent reasonably possible’ should be included in the explanation, to reflect Policy 10 NPSET.<sup>165</sup>
232. Transpower in evidence recommends ‘including the maintenance, upgrade and development of the National Grid’ to ‘operation’ at the end of the provision.

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<sup>161</sup> NMDNB (280.9).

<sup>162</sup> Federated Farmers, K Reilly Evidence.

<sup>163</sup> Section 42A Report, pages 38-39; Reply to Evidence, page 17.

<sup>164</sup> Chorus (464.7), Spark (1158.5), Trustpower (1201.14).

<sup>165</sup> Hort NZ, L Wharfe, Evidence, page 18.

233. The report writer accepts Ms McLeod’s concerns for Transpower that the amendments to the policy as recommended limit ‘compromise’ to ‘operation’ and in terms of the National Grid the matters that may be compromised (and must be managed) are broader. The report writer also notes the comments from Ms McLeod that at least in respect of the National Grid, the initial changes ignore the ‘reverse sensitivity’ aspects of Policy 10 NPSET.
234. The report writer has concerns nevertheless that the phrase ‘as far as practicable’, which is sought by Transpower, is however slightly different to that used in NPSET which is ‘to the extent reasonably possible’ as suggested by Hort NZ.
235. Overall, the report writer accepts Hort NZ’s points about amendments to the explanation but suggests it would be more appropriate to insert the wording used in Policy 10 NPSET earlier in the sentence. She also noted the minor correction sought by Ms McLeod better reflects NPSET.
236. The report writer considers that while the wording ‘protect’ is more stringent than the wording used in NPSET, she prefers the notified wording.<sup>166</sup> Within the explanation, the report writer prefers Hort NZ’s request in respect of the words ‘as much as possible’ to reflect Policy 10 NPSET.
237. In terms of Transpower’s first submission it is the report writer’s understanding that the ‘other’ activities referred to in these managed within the PMEP to implement the policy are ‘subdivision, use and development activities’. As such the change sought provides greater clarity as to what is agreed to. In terms of changing the explanation where it refers to reverse sensitivity effects on the network ‘being not compromised’ this should be amended to ‘as much as possible’.

**Decision**

238. Policy 4.2.2 and the explanation is amended as follows:

*[RPS, R, C, D]*

*Policy 4.2.2 – Protect regionally significant infrastructure from the adverse effects of ~~other~~ subdivision, use and development activities that may compromise its operation, including the maintenance, upgrade and development of the National Grid.*

*The effective and efficient operation of regionally significant infrastructure can be ~~protected~~ ensured by avoiding the establishment of incompatible activities in locations (for example, those in close proximity to the infrastructure); in the first place where reverse sensitivity effects*

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<sup>166</sup> Section 42A Report, Reply to Evidence, pages 17 and 18.

*may arise. This policy recognises that there has already been significant investment in the infrastructure and that there are usually considerable difficulties relocating the infrastructure in the event of conflict with other land uses. In respect of the electricity transmission network, it is a requirement of the National Policy Statement on Electricity Transmission (NPSET) for decision makers, to the extent reasonably possible, to manage activities to avoid reverse sensitivity effects on the network ~~as much as possible~~ and to ensure that the National Grid is not compromised.*

**[New] Policy 4.2.3**

239. Transpower had proposed in its submission a new policy to address effects of upgrade and development. The report writer recommended Transpower's suggestion that the additional policy be as suggested.
240. Transpower, in evidence, sought minor changes to the new Policy 4.2.3 relating to the National Grid and NPSET. The report writer accepts these are appropriate and better encapsulate the NPSET direction as well as implementing and giving effect to Objective 4.2 and to achieve the purpose of the RMA.
241. Given that the Panel has accepted Transpower's proposition that the objective and policies need to enable further upgrade and development of the National Grid, the Panel also accepts that there needs to be new policy as suggested by Transpower to outline the effects to which regard must be had in respect of such upgrades and developments.

**Decision**

242. For the reasons given, the additional policy is amended as follows:

[RPS, R, C, D]

Policy 4.2.3 - When considering the environmental effects of National Grid activities, to have regard to:

- (a) the national, regional and local benefits of sustainable, secure and efficient electricity transmission;
- (b) the technical and operational requirements that constrain measures to avoid, remedy or mitigate adverse effects;
- (c) the extent to which any adverse effects have been avoided, remedied or mitigated by route, site and method selection for new infrastructure or major upgrades;
- (d) the extent to which existing adverse effects have been reduced as part of any substantial upgrade;

(e) the extent to which adverse effects on urban amenity have been minimised;

(f) whether adverse effects on outstanding natural landscapes, areas of high natural character, town centres, areas of high recreation value and existing sensitive activities, have been avoided.

Central government has recognised the importance of electricity transmission through the National Policy Statement on Electricity Transmission (NPSET) which came into effect in 2008. The NPSET establishes that the need to operate, maintain, develop and upgrade the National Grid is a matter of national significance. The objective of the NPSET is to recognise the national significance of the National Grid by facilitating its operation, maintenance upgrade and development while managing adverse effects of, and on, it. When considering an application for resource consent(s) or notice of requirement for National Grid activities the Council will have regard to the positive and adverse effects on the environment associated with the activity. This policy provides guidance on the matters that are relevant to this consideration, which reflects the particular direction in the NPSET.

## **Provision for Utilities**

### **[New] Objective 4.2A**

243. The report writer's recommendation in Topic 20 was to include new provisions for Chapter 4 providing a further Objective 4.2A for network utilities identified as applying to district and regional plans as follows:

*[D, R]*

*Objective 4.2A - Network utilities provide for the social and economic wellbeing and health and safety of the community, while their adverse effects are appropriately managed.*

### **Consideration**

244. As noted, the report writer agreed in the opening chapter of Topic 20 that if policies 4.2.1 and 4.2.2 are extended to be regional, coastal and district plan provisions, Objective 4.2 should also be similarly extended.<sup>167</sup>

245. The Panel concluded that it was better to add 'and network utilities' to the end of Objective 4.2 and to its explanation which would confirm its RPS status. The recommended objective, Objective 4.2A, identified above is therefore not required because of that change.

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<sup>167</sup> Topic 20, Utilities, paragraph 43-44.

**Decision**

246. The suggestion by the report writer of a new Objective 4.2A is rejected.

**[New] Policy 4.2.4**

247. The proposed new policy is:

*Policy 4.2.4 - Provide for the upgrade and development of network utilities, while ensuring that any adverse effects are avoided, remedied or mitigated to the extent practicable.*

For the reasons that are now described, the report writer suggested this solution which flows from the amendment to Objective 4.2.

248. The category under which each provision is identified in the preceding section of Chapter 4 proceeded with the recognition that the RPS applied to all provisions identified – Objective 4.2 and Policies 4.2.1 and 4.2.2. The Council resolved that these provisions are intended to provide the high-level overarching direction over other more finely grained provisions with the PMEP.

249. Transpower, however, consistent with the approach taken to give effect to the NPS for Renewable Electricity Generation 2011, considers the RPS category should apply to the regional plan, the regional coastal plan and district plan provisions. Transpower asserted that with ‘the absence of the policies also being regional, coastal and district-level provisions, there is a potential gap between the overarching guidance within the chapter and the specific rules intended to implement them. There are no finer grained policies relating to all items of the infrastructure identified (in Policy 4.2.1) particularly ‘network utilities’.<sup>168</sup>

250. The report writer makes a recommendation that with the exception of Objective 4.2 which remained as an RPS, policies 4.2.1 and 4.2.2 should be stated as being RPS, district, coastal and regional provisions.

251. As a result of evidence lodged, the report writer further considered that if policies 4.2.1 and 4.2.2 are extended to regional, coastal and district plan provisions, then Objective 4.2 should also be similarly extended ‘because the policies must be achieving a regional, coastal and district plan objective’ (not just giving effect to an RPS provision).

252. In assessing this issue, the report writer notes that other chapters provide more specific objectives and policies. Thus provisions elsewhere should address the development of significant infrastructure providing direction that appropriately recognises its benefits as

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<sup>168</sup> Section 42A Report, page 28.

relevant. An alternative approach identified is to include specific objectives and policies in the PMEP for network utilities to be placed before the rules in the Chapter 4 provisions.

253. The report writer's final conclusion was to recommend Objective 4.2 and Policy 4.1.1 being retained as RPS provisions only, because they relate to all regionally significant infrastructure, while there are more finely grained provisions at the other levels in other chapters to give direction to particular infrastructure (such as provided by the Picton Port Zone).<sup>169</sup> Policy 4.2.2 meanwhile should be a RPS, district and regional provision in order to achieve the overarching aim of Objective 4.2 as well as providing the policy guidance at the district and regional plan levels which is then implemented through the rule framework in the PMEP.
254. New and upgraded infrastructure, however, required more specific direction in relation to development and upgrade in the assessment of the provisions of Topic 20 Utilities.

#### **Decision**

255. An additional policy is included as follows as Policy 4.2.4<sup>170</sup> to provide for the upgrade and development of network utilities; this policy is coded 'C' in addition to 'R' and 'D':

[R, C, D]

Policy 4.2.4 - Provide for the upgrade and development of network utilities, while ensuring that any adverse effects are avoided, remedied or mitigated to the extent practicable.

It is important that network utilities are able to be developed and upgraded, in order to provide for the social and economic wellbeing and health and safety of the community. However, this must be balanced with the need to manage the adverse effects of such infrastructure. Consideration of the management of these effects needs to take into account the logistical, technical and operational constraints associated with network utilities. 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 policy framework relating to those will be relevant.

#### **[New] Policy 4.2.5**

256. The report writer, in acknowledging Ms McLeod's evidence for FENZ as comprehensive, had indicated that an amendment to extend the application on emergency services into the wording of Topic 3 Use of Natural and Physical Resources could be appropriate.

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<sup>169</sup> Topic 20 Utilities, Section 42A Report, paragraphs 43-46.

<sup>170</sup> The policy was numbered 4.2.3 in the original Section 42A Report on Utilities but as noted at pages 18-19 of the Final Report, the report writer had already recommended a new Policy 4.2.3 during Topic 3. FENZ, Ainslie McLeod, Evidence, Attachment A.

257. Mc McLeod in her Attachment A included a recommended policy as follows:

*Policy 4.2.x Recognise the essential nature of emergency services by:*

*(a) providing for the development and on-going use of emergency service facilities;*

*(b) requiring adequate property access for emergency vehicles and appropriate access to, and supplies of, firefighting water; and*

*(c) enabling emergency services activities, including emergency services training.*

*The policy recognises that emergency service facilities; emergency services training; and the need for adequate access and water supply for emergency response purposes is essential for the health, safety and wellbeing of people and communities. The policy provides for emergency services, and associated activities, throughout Marlborough.*

...

258. The Panel largely accepted the wording of the policy but with a few minor amendments as follows:

- replace 'providing for the' in recommended (a) with 'enabling appropriate';
- insert 'in the urban environment' to the end of the recommended (b);
- insert 'appropriate' between 'enabling' and 'emergency services' in the recommended (c).

259. The limitation on access for firefighting and access to, and provision for, firefighting water reflects other decisions made by the Panel in respect of requests by FENZ for additional standards in the zone rules in respect to both of these matters. Those decisions record that the Panel accepted the relief requested in urban environments but not in coastal or rural environments. The reasons for those decisions are set out in the relevant topic decision. The decision with respect to (b) reflects those other decisions.

#### **Decision**

260. Policy 4.2.5 is inserted as follows:

*Policy 4.2.5 Recognise the essential nature of emergency services by:*

*(a) the enabling appropriate development and on-going use of emergency service facilities;*

*(b) requiring adequate property access for emergency vehicles and appropriate access to, and supplies of, firefighting water in the urban environment; and*



(c) enabling appropriate emergency services activities, including emergency services training.

The policy recognises that emergency service facilities; emergency services training; and the need for adequate access and water supply for emergency response purposes is essential for the health, safety and wellbeing of people and communities. The policy provides for emergency services, and associated activities, throughout Marlborough.

## **Methods of implementation 4.M.6 to 4.M.10**

### **4.M.6 Identification**

The electricity transmission network will be identified on the planning maps. This will allow other methods to be applied to manage the adverse effects of third parties on the transmission network.

### **4.M.7 Zoning**

Recognition will be given to regionally significant infrastructure by providing, where appropriate, explicit zoning for the infrastructure. In conjunction with the application of district rules, zoning will assist to enable the infrastructure to operate efficiently and effectively.

### **4.M.8 Designations**

Encourage requiring authorities (as defined by Section 166 of the RMA) to utilise designations as an effective means of identifying and protecting regionally significant infrastructure. Designations can then be explicitly included in the MEP.

### **4.M.9 District and regional rules**

Rules will be used to enable activities associated with the maintenance, alteration, minor upgrading and replacement of regionally significant infrastructure. Standards will specify the extent of works involved with any of these activities.

Rules will be used to control the proximity of land uses in river beds that could have adverse effects on regionally significant infrastructure. This includes development within the National Grid corridor.

A buffer corridor for the National Grid transmission lines will be established through rules within which activities will be managed to reduce the risk of electrical hazard, the potential for reverse sensitivity effects and adverse effects on the structural integrity of the National Grid. The width of the corridor will vary depending on the activity, type of National Grid asset and the sensitivity of the network to the activity. This method gives effect to Policy 11 of the NPSET.

In addition to the rules in the MEP, the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 establishes various classes of activity for certain activities relating to existing transmission lines.

### **4.M.10 Affected party status**

Where the grant of a resource consent application may adversely affect regionally significant infrastructure, the owners and operators of the infrastructure will be served notice of the application as an affected party. Transpower NZ is required to be served notice if a resource consent application may affect the National Grid under Regulation 10 of the Resource Management (Forms, Fees and Procedures) Regulations 2003.

261. There were a significant number of amendments sought in a range of submissions to methods in this chapter which in broad terms the report writer agreed with.

### Section 42A report

262. The report writer's assessment of the Methods include: agreement with Transpower seeking an amendment for Method 4.M.6 'Identification';<sup>171</sup> agreement in principle with Method 4.M.7 'Zoning' recommending a change in wording which reflects this particular method relating to zoning;<sup>172</sup> change to Method 4.M.8 'Designations' to include the word 'developing';<sup>173</sup> changes agreed to Method 4.M.9 'District and Regional Rules' with recommended alternative wording, and substituting 'activities' instead of 'land uses in river beds';<sup>174</sup> and rules will be used to 'enable appropriate' emergency services activities and facilities, substituting 'provide for' a number of changes agreed to Method 4.M.10 'Affected Party Status' (with the caveat that trying to identify every provision where this may occur and cross referencing all such rules is inefficient and unwieldy).<sup>175</sup>

### Consideration

263. The Panel has considered each of these amendments and agrees with the recommendations that have been made by the report writer for the reasons set out in the report and/or below as follows:

264. 4.M.6 : The Panel agrees that Transpower's request for identification of the National Grid reflects the policy approach in the NPSET and in other parts of the decision has not accepted the requests of NZTA to have reverse sensitivity buffer areas identified.

265. 4.M.7: The Panel agrees that the wording recommended as set out in the decision below accurately reflects the way the PMEP provisions will work for zoning as required by the decisions the Panel has made.

266. 4.M.8: The amendment recommended in respect of the Method for designations appropriately enables development of the National Grid as required by the NPSET.

267. 4.M.9: The Panel is satisfied the report writers recommended wording meets the requirements of the NPSET and NESETA and related regulations for rules to make provision for the National grid and its protection from reverse sensitivity.

268. 4.M.10: Method 4.M.10 relates to situations where service is required to provide infrastructure operators to protect infrastructure which is regionally or nationally significant.

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<sup>171</sup> Transpower (1198.9).

<sup>172</sup> Chorus (464.8), Spark (1158.6).

<sup>173</sup> Transpower (1198.10).

<sup>174</sup> Transpower (1198.11).

<sup>175</sup> NZTA (1002.15), Transpower (1198.12). FENZ, Ainslie McLeod, Evidence, Attachment A.

The Panel agrees that the recommended amendments provide that opportunity for protection.

**Decision**

269. Amend Methods 4.M.6 to 4.M.10 as follows:

*4.M.6 Identification*

*The National Grid electricity transmission network will be identified on the planning maps. This will allow other methods to be applied to manage the adverse effects of third parties on the National Grid transmission network.*

*4.M.7 Zoning*

*Recognition will be given to regionally significant infrastructure by providing, where appropriate, explicit zoning for the infrastructure. This, in conjunction with the application of district rules specific to infrastructure, zoning and the use of designations, will assist to enable the infrastructure to operate efficiently and effectively.*

*4.M.8 Designations*

*Encourage requiring authorities (as defined by Section 166 of the RMA) to utilise designations as an effective means of identifying, developing and protecting regionally significant infrastructure. Designations can then be explicitly included in the MEP.*

*4.M.9 District and regional rules*

*Rules will be used to enable activities associated with the maintenance, alteration, ~~minor~~ upgrading, development and replacement of regionally significant infrastructure and network utilities. Rules will also be used to enable emergency services, activities and facilities. Standards will specify the extent of works involved with any of these activities.*

*Rules will be used to control the proximity of activities ~~land uses in river beds~~ that could have adverse effects on regionally significant infrastructure. This includes development in the vicinity of within the National Grid corridor.*

*A buffer corridor for the National Grid transmission lines will be established through rules within which activities will be managed to reduce the risk of electrical hazard, ~~the potential for avoid~~ reverse sensitivity effects and ensure that adverse effects on the structural integrity of the National Grid is not compromised. The width of the corridor will vary depending on the activity, type of National Grid asset and the sensitivity of the network to the activity. This method gives effect to Policy 10 and Policy 11 of the NPSET.*

~~In addition to the rules in the MEP, t~~The Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 establishes various classes of activity for certain activities relating to contain separate rules for the operation, maintenance, upgrading, relocation or removal of existing National Grid transmission lines. The Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 contain separate rules for telecommunication facilities and activities associated with the establishment of such facilities. Where activities are managed by these Regulations, no rules in the MEP apply to such activities.

#### 4.M.10 Affected party status

Where the grant of a resource consent application or approval of a Notice of Requirement may adversely affect regionally significant infrastructure, the owners and operators of the infrastructure will be served notice of the application as an affected party. Transpower New Zealand Limited NZ is required to be served notice if a resource consent application may affect the National Grid under Regulation 10 of the Resource Management (Forms, Fees and Procedures) Regulations 2003

### Objective 4.3

#### **The maintenance and enhancement of the visual, ecological and physical qualities that contribute to the character of the Marlborough Sounds.**

270. Seven submitters support the objective and either explicitly consider it should be retained or do not seek any changes. Others give conditional support on the basis of an additional new objective (4.3A),<sup>176</sup> others again seek: the objective be deleted on the basis that it may preclude changes to the visual, ecological and physical qualities of the Sounds which creates an inherent difficulty in the objective being able to be achieved; that it is ludicrous to state that the Marlborough Sounds are iconic – it is a working landscape with periodic change part of the norm;<sup>177</sup> that the objective is extended by providing that ‘the appropriate recognition of land use activities has created the landscape’ – these are legitimate activities that have formed its character;<sup>178</sup> that an additional objective is added after Objective 4.3 namely ‘Use and development occurs with the ability of the environment to sustain its life-supporting capacity’.<sup>179</sup>

271. Another submitter considers it is unclear why there are not similar sections for other parts of the district (there has been significant environmental degradation in this area as a result of

<sup>176</sup> MFA (426.26) and AQNZ (401.26).

<sup>177</sup> D A Hemphill (648.8).

<sup>178</sup> PF Olsen Ltd (149.6), Ernslaw One (505.5), Nelson Forests Ltd (990.?).

<sup>179</sup> EDS (698.9).

cumulative land use within Marlborough, Nelson City and Tasman District;<sup>180</sup> a further submitter seeks that the objectives (and policies) are amended to recognise the importance of forestry within the Marlborough Sounds – that it is part of the area’s visual character, with temporary adverse effects from activities such as tree felling;<sup>181</sup> another submitter considers that in discussing the need for precaution within the explanation to Objective 4.3, there is no mention made of needing to relate this to established baseline science and measures.<sup>182</sup>

272. Te Ātiawa seeks that the explanation to the objective is amended to formally recognise and include Te Ātiawa in the meaning of the objective;<sup>183</sup> yet another submitter also has concerns about the explanation because the current wording suggests that ‘the Council intends to subordinate resource use to subjective environmental values’ without sufficient regard to the area being a working landscape; another submitter considers it is important that historic heritage values are also maintained and enhanced as these are important contributions to the character of the Sounds. Yet another submitter considers there should be a distinction between the Inner and Outer Sounds to account for the development apparent in the Inner Sounds.

273. Te Ātiawa seeks to amend the Objective 4.3 explanation: ‘The Marlborough Sounds are deeply valued by Marlborough’s tangata whenua iwi who have strong cultural ties both historic and contemporary. As tangata whenua, they carry a cultural responsibility for sustainable outcomes.’

#### **Section 42A Report**

274. A number of submitters seek to delete the words that the Marlborough Sounds is considered to be ‘our jewel in the crown’ in terms of its natural assets in the opening words of the objective’s explanation:

*The Marlborough Sounds is a truly exceptional place – it is considered to be our “jewel in the crown” in terms of natural assets.*

275. These objections come largely from the forestry sector with MFA and AQNZ seeking a new objective to be added in order to ‘Recognise that the visual, ecological and physical qualities of the Marlborough Sounds have been altered by cultural and social use and those uses have become part of the character of the Marlborough Sounds and do not detract from it’. These submitters assert that New Zealanders have a positive view of the aquacultural industry and

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<sup>180</sup> FNHTB (716.34).

<sup>181</sup> NZ Forest Products (995.5).

<sup>182</sup> PF Olsen Ltd (149.6).

<sup>183</sup> Te Ātiawa (1186.38).

consider that other activities are more likely to have an impact on the characteristics of Marlborough.

276. The outcome sought through the objective, as identified in the Section 42A Report, is that the particular qualities identified in the issue, which relate to the Marlborough Sounds' character, are maintained and enhanced. In the report writer's opinion the changes sought by the submitters – essentially to recognise that the various activities they represent have influenced the area – do not in fact relate to the outcome sought. A new objective proposed by PMNZ, for example, does not specify an outcome. What the issue and the objective are seeking is to maintain and enhance the visual, ecological and physical characteristics that contribute to the area's special character.
277. With regard to the use of the word 'iconic', it is the report writer's understanding that this reflects the feedback from community consultants during the review process. 'Iconic' is used to reference the area as a whole, not individual areas within the Sounds. In that context the report writer is comfortable with the use of the word.
278. Further, the report writer considers that to distinguish between the Inner and Outer Sounds is inappropriate. The character of the area as a whole, as well as its geography means that integrated management is required to ensure that the outcome sought is achieved. The decision such as is sought by some submitters does not achieve that outcome. The report writer observes that the process of identifying the qualities and values that contribute to a particular area as a whole will necessarily take into account the extent to which these are present or not in the various parts of the Sounds. The provisions within the PMEP will then only need to be targeted to protecting the qualities and values from inappropriate activities in areas where they exist. Excluding part of the area is not an appropriate way to achieve the purpose of the RMA.<sup>184</sup>
279. In the discussion in the explanation to Objective 4.3 recognises the need for precaution, there is no mention made of needing to relate the precautionary measures to established baseline science. (There is a range of factors beyond science and baseline measures alone that will influence the exercise of precaution.) EDS considers that Chapter 4 could identify that use and development should only occur within the capacity of the environment/within environmental limits. Several industry submitters oppose this as limits (such as bottom lines) for each resource have not been described and they have particular concerns in relation to landscapes which are open to the vagaries of individual judges and courts. This could lead to subjectivity,

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<sup>184</sup> Section 42A Report, page 46.

confusion and uncertainty. They consider it is impossible for the level of complexity proposed to be detailed within a single policy – a situation with which the report writer agrees.

280. In terms of Te Ātiawa's submission, the report writer accepts that it identifies the significance and connection of the area for iwi which will be relevant matters in identifying and managing effects on the cultural as well as visual, ecological and physical qualities that contribute to the character of the Sounds.<sup>185</sup> An amendment in the light of this submission is justified.

### **Consideration**

281. The words 'unique' and 'iconic' are not within Issue 4C although the word 'unique' legitimately, in the Panel's opinion, qualifies the issue in terms of the geology, with the rugged landform sloping away from the shoreline to prominent spurs and ridges on the skyline. This in turn creates diversity with variation in geology, soils, topography, tidal range and currents in both the character and ecology of the Marlborough Sounds.
282. In addition, the objective refers to the environment as dynamic with an ability to absorb change. We endorse all of Issue 4C and Objective 4.3 with the exception of the phrase 'jewel in the crown'. This is too emotive in a planning document even if it is used in the explanation to Objective 4.3. In our view it is hierarchical in nature and does not reflect the purpose of integrated management as identified in Policy 4(a)-(c) NZCPS, providing for the integrated management of natural resources and activities that affect the coastal environment, nor from Policy 6(1)(a)-(c) Activities in the Coastal Environment – all of which point to sustainable management of the area's multiple resources rather than dominance of any one activity or quality.
283. In terms of the precise wording of the objective – the 'maintenance and enhancement' issue – we queried whether the words 'where appropriate' or 'where degraded' should qualify 'enhancement' as submitted by Federated Farmers. This recommendation was supported by the Section 42A Report writer following on from her agreement to a disjunctive interpretation of the phrase in Policy 4.1.3.
284. The Section 42A Report observes that Federated Farmers originally sought deletion of reference to 'enhanced' entirely from the objective, and the change sought is a compromise – enhancement should not be directed in all cases.<sup>186</sup> The report writer considers the phrase is problematic, because the term 'where appropriate' reflects the desire set out in Policy 4.3.4 and the intent (as understood) is to encourage enhancement where possibly appropriate but

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<sup>185</sup> Te Ātiawa, Ian Shapcott Evidence, page 18.

<sup>186</sup> Federated Farmers, Kim Reilly Evidence, paragraphs 43-44.

not require it in all circumstances.<sup>187</sup> Our reasons given previously on Policy 4.1.3 remain, and for the same or similar reasons.

285. In terms of the report writer's initial recommendation, we did not accept it as stated in that it retains the phrase 'jewel in the crown'. We queried whether some aspects such as landscape and seascape issues referred to in the explanation to Objective 4.3 should be removed from the objective and left to specific later chapters. Our conclusion is to retain most of them for they are important for a number of reasons. Landscapes contain wildlife, surface values, colours, beauty of the skyline – some of which are intangible. Others indicate Māori mythology and links through whakapapa, urupā, fishing places, and burial sites. These factors require recognition of the importance of maintenance and enhancement of cultural qualities in the objective. Others indicate the activities of early European explorers and family links – farming, beaches, nature conservation walks and heritage landscapes.
286. Marlborough's tangata whenua iwi cultural ties and their kaitiaki responsibilities need recognition in the objective and the explanatory statement as requested in evidence by Te Ātiawa.
287. As to the 'visual' qualities of the landscape, the RMA s 7(c) uses the term 'amenity values' which is defined in s 2 as follows:

**amenity values means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes**

Therefore the term amenity values is much broader than just aesthetic amenity especially in the context of the Marlborough Sounds and therefore the word 'visual' should be amended in the objective to 'amenity' values.

288. The Panel also took the view that the explanatory statement to the Objective required amendment to reflect that change in wording for the Objective. The Panel also considered the explanatory statement required amendment to capture the concept that the Objective seeks to maintain existing qualities and amenity values which form the character of the Marlborough Sounds environment as a base from which enhancement can commence, particularly where past resource use has degraded the environment.

#### **Decision**

289. For the reasons given, Objective 4.3 is amended as follows:

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<sup>187</sup> Section 42A Report, page 48.



[RPS]

*Objective 4.3 – The maintenance and enhancement of the ~~visual~~, ecological, ~~and~~ physical, cultural qualities and amenity values that contribute to the character of the Marlborough Sounds.*

290. The explanatory statement to Objective 4.3 is amended as follows:

*The Marlborough Sounds is a truly exceptional place—~~it is considered to be our “jewel in the crown” in terms of natural assets.~~ The landscapes and seascapes within the Marlborough Sounds and the ecology and natural processes that occur within them are unique and highly valued. Marlborough's tangata whenua iwi have particularly strong cultural ties to the Marlborough Sounds, both historic and contemporary. As tangata whenua, they carry a cultural responsibility for sustainable outcomes.*

*The objective seeks to maintain the ecological, physical, cultural qualities and amenity values that contribute to the iconic character of the Marlborough Sounds as a base from which enhancement can commence. ~~This objective seeks to maintain and enhance these qualities to~~ This will ensure that the community and visitors to the district can continue anticipate improvement of ~~to enjoy~~ this environment now and into the future. This does not mean that use and development of natural and physical resources cannot occur within the Marlborough Sounds, ~~but an element of~~ precaution needs to be exercised to ensure that resource use is complimentary to the ~~visual~~, ecological, physical, cultural qualities and amenity values that give the Marlborough Sounds ~~its~~ this iconic character.*

*In some locations, both on land and in the coastal marine area, past resource use has degraded the ecological, physical, cultural qualities or amenity values. The objective in these situations is to enhance the qualities and/or values to restore and rehabilitate the unique character of the Marlborough Sounds. This could be achieved through both regulatory and non-regulatory means. However, an important tool will be encouraging people and community to engage in their own enhancement efforts and activities.*

#### **Policy 4.3.1**

##### **Integrate management of the natural and physical resources within the Marlborough Sounds environment**

291. There is a direction through s 59 RMA that the purpose of an RPS is expressed as being to achieve integrated management of the natural and physical resources of the whole region.

292. NZCPS Policy 4 Integration provides for integrated management of natural and physical resources in the coastal environment and activities that may affect them. The benefits of

Policy 4.3.1 are that the Council, as a unitary authority for the past 22 years, is well placed to achieve the integrated management of its resources through its policy making and consenting functions.<sup>188</sup>

293. There is general support for the policies above by seven submitters who support both Policy 4.3.1 and Policy 4.3.2, six support Policy 4.3.3 and eight support Policies 4.3.4 and 4.3.5.

294. In relation to Policy 4.3.1, one submitter identifies that the policy deals only with one aspect of the integration of the management of resources, namely that of land and coastal resources within the Council's frameworks. He notes other agencies such as DOC, MfE and MPI also have related management responsibilities; these together with the community work collaboratively. The submitter seeks an enabling policy to further the opportunity to implement integrated management of the Marlborough Sounds marine environment.<sup>189</sup>

#### **Section 42A Report**

295. The report writer observes that caution needs to be exercised by the Council to not give 'direction' to these agencies but to work collaboratively with them in achieving Objective 4.3. Rather than providing an additional policy which is already covered by the proposed wording of Policy 4.3.1, the report writer recommends discussion around the explanation to Policy 4.3.1 and that a further method be added at the end of this section of Chapter 4. The drafting proposed is intended to focus on the Council pursuing discussions with other parties to ultimately assist in the achievement of Objective 4.3 rather than trying to direct other agencies, or step outside the Council's functions under the RMA.

296. The report writer recommends the following additions to the explanation of Policy 4.3.1 as follows:<sup>190</sup>

*In addition, there are other agencies, including the Ministry for Primary Industries, the Department of Conservation and the Ministry for the Environment, who have statutory responsibilities that influence the management of natural and physical resources within the Marlborough Sounds. The Council can take active steps to facilitate discussions with these agencies regarding their management roles and how they can work together to best integrate the management of natural and physical resources to maintain and enhance the qualities that contribute to the character of the Marlborough Sounds.*

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<sup>188</sup> MEP Section 32 Evaluation Report 9 June 2016.

<sup>189</sup> E Jorgensen (404.2).

<sup>190</sup> Section 42A Report, page 56.

### Consideration

297. The Panel recognises the need to promote integration of management of the Marlborough Sounds environment between the Council's functions and those of the Crown and across the various Crown agencies. The Panel's view is that rather than amending the policy itself that is best achieved by amending the explanatory statement as recommended by the report writer and inserting a new method 4.M.12 in the PMEP. That method will state:

#### 4.M.12 Collaboration and Liaison

There are a number of Crown and other agencies with statutory responsibilities that influence the management of the natural and physical resources within the Marlborough Sounds. The Council will take steps to encourage discussions with these agencies to facilitate a discourse on the respective management roles of each party and how they could be better integrated to achieve Objective 4.3.

### Decision

298. The Panel accepts the submissions to the extent that an additional paragraph is added to the explanatory statement to Policy 4.3.1 as follows:

*In addition, there are other agencies, including the Ministry for Primary Industries, the Department of Conservation and the Ministry for the Environment, who have statutory responsibilities that influence the management of natural and physical resources within the Marlborough Sounds. The Council can take active steps to facilitate discussions with these agencies regarding their management roles and how they can work together to best integrate the management of natural and physical resources to maintain and enhance the qualities that contribute to the character of the Marlborough Sounds.*

299. The Panel inserts a new method 4.M.12 as follows:

#### 4.M.12 Collaboration and Liaison

There are a number of Crown and other agencies with statutory responsibilities that influence the management of the natural and physical resources within the Marlborough Sounds. The Council will take steps to encourage discussions with these agencies to facilitate a discourse on the respective management roles of each party and how they could be better integrated to achieve Objective 4.3.

**Policy 4.3.2****Provide direction on the appropriateness of resource use activities in the Marlborough Sounds environment**

300. Seven submitters support Policy 4.3.2. Other submitters seek that the policy is amended to recognise the need for well-founded data or baseline trends, and sound peer-reviewed science, and use these to inform consideration of the potential significance of adverse effects and the impacts of activities on the values and qualities identified in the Marlborough Sounds;<sup>191</sup> another submitter has concerns about the use of the term ‘unique’ and ‘iconic’ and how they may be used in the resource management decision-making context. Values identified do not include those from the working landscape such as forestry and agriculture, and specify where these qualities and values can be found in the PMEP to recognise the importance of these for the Marlborough Sounds (for example, through an appendix), as well as a schedule of activities and characteristics of the Marlborough Sounds.<sup>192</sup>
301. Another submitter considers that Policy 4.3.2 should be deleted as it is already covered in other policies, and this and other policies contradict Issues 4A and 4B;<sup>193</sup> another seeks a minor amendment to Policy 4.3.2 to use the word ‘may’ instead of the word ‘will’ in relation to determining whether particular activities will/may have significant effects. This submitter also seeks policies stating that they must include *avoidance of the proliferation of subdivisions along the coastal margin*.<sup>194</sup>

**Section 42A Report**

302. In regards to the use of the terms ‘unique’ and ‘iconic’ in Policy 4.3.2, the identification requires taking into account any influence that historic and existing activities have on these qualities and values. In terms of the wording itself, the report writer considers that it needs to clearly relate to the outcome sought – that is, the visual, ecological and physical qualities that contribute to the Marlborough Sounds are maintained and enhanced. Policy 4.3.2 directs that it is these qualities and attributes that are to be identified and protected from inappropriate activities. It is not appropriate to extend this direction to the identification of some sort of cataloguing of activities in the Marlborough Sounds and the impact such activities have on the environment, because it is not required to achieve Objective 4.3.
303. A change recommended however is to retain the proposed wording of the policy but include specific reference within the policy explanation to acknowledge that the Sounds’ character

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<sup>191</sup> PF Olsen Ltd (149.7), D Hemphill (648.9).

<sup>192</sup> Federated Farmers (425.20).

<sup>193</sup> PMNZ (433.11), Louise Taylor Evidence, paragraph 115.

<sup>194</sup> QCSRA (504.8).

has been and is influenced by past and present activities within the area and the identification of the particular values that is required needs to be undertaken with this in mind.

304. The report writer does not consider cross-references to other provisions are appropriate. Method 4.M.11 makes it clear that provisions are given effect to throughout other policies. She is comfortable with use of the term 'iconic' and similarly 'unique' as these will assist in determining the types of values and qualities that the policy directs be identified.
305. In response to the submissions relating to data and peer-reviewed science, it is the report writer's opinion that both need to be carefully considered in the assessment of provisions relating to the PMEP, but they cannot be relied upon alone. Community and cultural values are often not based on science, data and trends alone but must be made based on the professional views of qualified and experienced experts. It is inappropriate to consider otherwise.
306. In terms of PMNZ's submission requiring deletion of the policy because it is already covered in other provisions, the report writer considers the policy is not duplicated in other policies and overlays but is implemented through them. This policy requires identification of the qualities and values which the objective seeks are maintained and enhanced and is a necessary step in achieving the objective.
307. QCSRA's minor amendment to the policy seeking the explanation to the policy use the word 'may' instead of 'will' is recommended as it better reflects that consideration of effects (in this context) is based on what is anticipated to arise rather than definite knowledge.
308. The report writer recommends the explanation to Policy 4.3.2 as follows:

*In order to determine whether particular activities in the Marlborough Sounds ~~will~~ may<sup>195</sup> have significant adverse effects, it is necessary to identify the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds. These qualities and values are identified in the objectives and policies of other chapters, where criteria to help define appropriate activities are provided. In some cases, these qualities and values are also mapped and/or scheduled in the MEP. The identification of the qualities and values of importance required under this policy will also need to take into*

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<sup>195</sup> QCSRA (504.8).

account the effects that past and present activities have had, and continue to have, on the character of the Marlborough Sounds.<sup>196</sup>

309. KCSRA in evidence appears to oppose this recommended change in the Section 42A Report as the submitter considers that ‘it may be taken to suggest that effects of existing activities are a baseline even where these effects of existing activity are unacceptably adverse and open to being avoided, mitigated or remedied through consent renewal or review processes’. On this basis the submitter seeks deletion of the change, or clarification that ‘the process of quality and value identification for protection should include improved qualities and values that are attainable through consent processes for an existing activity’.<sup>197</sup>
310. The Section 42A Report writer identifies that the change recommended has been a result of a number of submitters raising concerns that this section of Chapter 4 does not adequately take into account the modification that has already occurred within some parts of the Marlborough Sounds. While she understands the concerns of KCRSA (and agrees with the sentiment), her view is that the amendments do not result in the identified concern arising, and therefore no change is required.
311. Te Ātiawa seeks to amend Policy 4.3.2 to add ‘including iwi cultural values’.<sup>198</sup> The report writer considers it is not appropriate to add ‘including’ into the policy drafting. The policies already encompass all values that contribute to the unique and iconic character of the area, and it is not helpful to single one out for mention. No change is recommended to include specific extra reference to iwi cultural values.<sup>199</sup>

### **Consideration**

312. The Panel has already made amendments to the wording of Objective 4.3 and its explanatory statement to ensure the concept of establishing a base from which maintenance of the qualities and values which form the character of the Sounds can be protected – with the emphasis being that it is a base from which enhancement is encouraged, particularly where past resource use has degraded the environment. The Panel agrees with the Section 42A Report recommended changes to the explanatory statement to the policy which effectively capture and apply those concepts in the Objective.

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<sup>196</sup> Federated Farmers (425.20). Also relates to PF Olsen Ltd (149.6); AQNZ (401.14); Federated Farmers (425.19); MFA (426.14); Ernslaw One Ltd (505.5); D Hemphill (648.7, .8); Group 1 submitters (submission point 4); Group 2 submitters (submission points 7 and 8).

<sup>197</sup> KCSRA (869.4).

<sup>198</sup> Te Ātiawa, Ian Shapcott Evidence, page 8.

<sup>199</sup> Section 42A Report, pages 43-47. Reply to Evidence, pages 19-22.

## Decision

313. For all the above reasons, we consider that the amendments to the explanation to Policy 4.3.2 are accepted as recommended:

*In order to determine whether particular activities in the Marlborough Sounds ~~will~~ may have significant adverse effects, it is necessary to identify the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds. These ecological, physical, cultural qualities and amenity values are identified in the objectives and policies of other chapters, where criteria to help define appropriate activities are provided. In some cases, these qualities and values are also mapped and/or scheduled in the MEP. The identification of the qualities and values of importance required under this policy will also need to take into account effects that past and present activities have had, and continue to have, on the character of the Marlborough Sounds.*

### Policy 4.3.4

#### **Enhance the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds**

314. One submitter seeks that this policy is also deleted because it is considered vague and unlikely that any activities that result in adverse effects on the environment will gain consent. It is also apparent that the specific values associated with the Marlborough Sounds and elsewhere are identified in other chapters in the PMP.<sup>200</sup> Another submitter also seeks the policy be deleted on the basis of concerns about its implementation. It is difficult to enhance outstanding natural character and the submitter considers whether it will mean that every consent within the area will be required to show that enhancement is achieved.<sup>201</sup>
315. Te Ātiawa in evidence sought to amend Policy 4.3.4 to include 'iwi cultural values'.<sup>202</sup>

### Section 42A Report

316. The report considers that the wording of the policy goes beyond what is necessary to achieve the outcome sought and may conflict with Policy 4.3.2 which directs that the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds are identified and then protected from inappropriate activities: Policy 4.3.4 directs that these are enhanced.
317. As such, 'there is tension between when protection from inappropriate activities should occur and when enhancement should occur'.<sup>203</sup> The explanation to Policy 4.3.4 and the Section 32

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<sup>200</sup> PMNZ (433.13).

<sup>201</sup> Federated Farmers (425.21).

<sup>202</sup> Te Ātiawa, Ian Shapcott Evidence, page 8

assessment indicate that the intention is not to require enhancement in all cases nor, in the report writer's opinion, is that the outcome sought in Objective 4.3.

318. The recommendation is for changes to Policy 4.3.4 to provide greater guidance when enhancement is considered (rather than deleting the policy and therefore providing no guidance around the enhancement aspect of Objective 4.3) as follows:

*Policy 4.3.4 – Encourage the enhancement of ~~Enhance~~ the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds.*

*Objective 4.3 seeks to maintain and enhance particular qualities of the Marlborough Sounds environment. Policy 4.3.2 generally provides direction relating to the identification and maintenance of these qualities. Policy 4.3.4 signals that beyond this, enhancement of these qualities should be encouraged. ~~This means that the Council can manage the use, development and protection of natural resources to enhance the qualities and values that contribute to the character of the Marlborough Sounds.~~ This can occur through regulatory methods. For example, environmental enhancement may be a means of remedying or mitigating the adverse effects of resource use and development. Resource consent applicants and the Council should have regard to these opportunities when preparing or processing resource consent applications. Other opportunities may exist beyond the use and development of natural resources. The implementation of non-regulatory methods to enhance particular parts of the Marlborough Sounds environment, particularly the landscape and biodiversity, will make significant contributions in this regard. These non-regulatory methods are signalled throughout the MEP.*

### **Consideration**

319. This amendment picks up where Federated Farmers had sought an amendment to Objective 4.3 with the insertion of the words 'where appropriate'. The amendment sought in evidence by Te Atiawa was not able to be adopted by the Panel as its submission did not explicitly seek that relief.
320. As pointed out then in the Panel's consideration of s 7 RMA Other Matters, s 7(f) reflected in the wording of Policy 4.1.3, Section 7(f) provides:

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<sup>203</sup> Section 42A Report, pages 52-53.



**In achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources shall have particular regard to ...**

321. The word 'encourage' before the word 'enhancement' as recommended in the report writer's amendment does not detract from the MDC's option to have particular regard to the development and protection of the qualities and values that contribute to the unique and iconic character of the Sounds when these are more clearly highlighted in Volume 1's Chapter 6 Natural Character, Chapter 7 Landscape, and Chapter 8 Indigenous Biodiversity.

**Decision**

322. Policy 4.3.4 and its explanatory statement are amended as follows:

*Policy 4.3.4 – Encourage the enhancement of ~~Enhance~~ the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds.*

*Objective 4.3 seeks to maintain and enhance the ~~particular~~ ecological, physical and cultural qualities, and amenity values, of the Marlborough Sounds environment. Policy 4.3.2 generally provides direction relating to the identification and maintenance of these qualities and values.*

*Policy 4.3.4 signals that beyond this, enhancement of these qualities and values should be encouraged. This means that the Council can manage the use, development and protection of natural resources to encourage the enhancement of ~~enhance~~ the ecological, physical, cultural qualities and amenity values that contribute to the character of the Marlborough Sounds. This can occur through regulatory methods. For example, environmental enhancement may be a means of remedying or mitigating the adverse effects of resource use and development. Resource consent applicants and the Council should have regard to these opportunities when preparing or processing resource consent applications. Other opportunities may exist beyond the use and development of natural resources. The implementation of non-regulatory methods to enhance particular parts of the Marlborough Sounds environment, particularly the landscape and biodiversity, will make significant contributions in this regard. These non-regulatory methods are signalled throughout the MEP.*