



Proposed Marlborough Environment Plan

Topic 8: Heritage and Notable Trees

Hearing dates: 12 March and 3 April 2018

S42A Report Writer: Paul Whyte, Brad Cadwallader and John Gray

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)

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List of Abbreviations

ADP	Accidental discovery protocol
PMEP	Proposed Marlborough Environment Plan
MDC	Marlborough District Council
MHWS	Mean High Water Spring mark
NPSET	National Policy Statement on Electricity Transmission
NZCPS	New Zealand Coastal Policy Statement 2010
RMA	Resource Management Act 1991
STEM	Standard Tree Evaluation Method
Te Pokohiwi	Te Pokohiwi o Kupe

Submitter abbreviations

DOC	Department of Conservation
HNZPT	Heritage New Zealand Pouhere Taonga
KCSRA	Kenepuru and Central Sounds Residents' Association
Ngāti Kuia	Te Rūnanga O Ngāti Kuia
Ngāi Tahu	Te Rūnanga O Kaikōura and Te Rūnanga O Ngāi Tahu
NMDHB	Nelson Marlborough District Health Board
NZTA	New Zealand Transport Agency
Rangitāne	Te Rūnanga a Rangitane o Wairau
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 Panel¹.
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

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

- (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
 - (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.

Heritage Resources and Notable Trees

8. This report assesses submissions to provisions of the PMEP including:
- Volume 1 Chapter 10 Heritage Resources and Notable Trees
 - Volume 2 Chapter 2 Rules Heritage Resources
 - Volume 2 Chapter 2 Rules Notable Trees
 - Volume 2 Chapter 25 Definitions
 - Volume 3 Appendix 13
 - Volume 4 Zoning Maps
9. A schedule of heritage resources is identified in the PMEP in Appendix 13 and they are split into two categories. Schedule 1 comprises Category I Heritage Resources which includes all of the items on Heritage New Zealand Pouhere Taonga (HNZPT) Category I List. In total there are 15 items including buildings, pa sites, wāhi tapu sites, boats and a bridge. Schedule 2 comprises Category II and Locally Significant Heritage Resources and includes all of the items on HNZPT Category II list as well as heritage resources ‘considered to be locally significant’. There are 143 items including buildings, monuments and plaques, cemeteries, wāhi tapu sites, defence works, and a moa hunter site. The items include those that occur on public land administered by Council and DOC. No notable trees are included in Schedule 1 or 2, rather they are contained in Schedule 3. The inclusion of a new schedule (to be incorporated after Schedule 2) is a recommendation emanating from the Sites of Significance in the Statutory Acknowledgements.
10. Generally heritage resource and notable trees are dealt with separately in the chapter with each having its own issue, objectives, policies and rules. The methods of implementation and anticipated environmental results are ‘shared’, as is the Introduction, although the main emphasis in the Introduction appears to be on heritage resources. The Issue for Notable Trees is described as follows: ‘Trees that contribute to Marlborough’s historic heritage and/or amenity values are at risk of being removed or adversely affected.’²
11. Method of Implementation 10.M.1 in the PMEP confirms heritage ‘resources or trees identified will be those that meet the criteria in Policies 10.1.4 and 10.2.1 and/or those included on the New Zealand Heritage List/Rārangī Kōrero.’ The items are identified on the planning maps.

² Section 42A Report, paragraph 26.

12. The rules applying to the heritage resources are contained in Rules 2.24-2.27 in Chapter 2, Volume 2. Essentially repairs, maintenance and safety alterations are permitted subject to standards. The whole or part demolition or removal of Schedule 1 resources are a prohibited activity (there are no submissions opposing this rule). Any other activity requires resource consent as a discretionary activity.
13. The protective mechanisms for places or sites listed on the HNZPT list are administered by local authorities through district plans prepared under the RMA. This reflects s 6(f) RMA which requires the Council to recognise and provide for protection of historic heritage from 'inappropriate subdivision, use and development'. Local authorities also protect unregistered heritage resources that are significant to the district, or to local communities within it.
14. This report is divided into several parts – Heritage Resources, Notable Trees and significant sites. Marlborough's tangata whenua iwi interests are identified throughout the chapter. All accepted amendments made in these areas are addressed in the body of the text with recommendations addressed under the heading 'Decision'. Those submissions that are rejected are identified at the end of each decision.

Issues arising

- Legal provisions
 - Retention and protection of heritage resources
 - Potential adverse effects on heritage resources
 - Archaeological sites
 - Recognition of significant sites
 - Addition of significant sites
 - Addition of Notable Trees
15. In respect of a number of the issues arising, there is some overlap.

Legal provisions and PMEP definitions

16. The relevant legal provisions provide the reference point at the outset as follows:

Section 2 RMA Interpretation

historic heritage –

- (a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:
 - (i) archaeological:
 - (ii) architectural:

- (iii) cultural:
- (iv) historic:
- (v) scientific:
- (vi) technological; and
- (b) includes –
 - (i) historic sites, structures, places, and areas; and
 - (ii) archaeological sites; and
 - (iii) sites of significance to Māori, including wāhi tapu; and
 - (iv) surroundings associated with the natural and physical resources

Matters of national importance

Section 6 RMA Matters of national importance

...

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- (g) the protection of protected customary rights:
- (h) the management of significant risks from natural hazards.

Section 7 RMA Other matters is also of relevance:

7 Other matters

In achieving the purpose of this 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—

- (a) kaitiakitanga:
- (aa) the ethic of stewardship:
- ...
- (c) the maintenance and enhancement of amenity values:
- ...
- (f) maintenance and enhancement of the quality of the environment:
- ...

Definitions

17. 'Heritage resource' is defined in the PMEP as:

means any type of historic heritage place or area. It may include a historic building or item, historic site, a place/area of significance to Maori or heritage landscape. The term may be used to refer to both heritage resources listed in the Marlborough Environment Plan and to those registered by Heritage New Zealand.

18. Notable Tree is defined as:

as identified in Appendix 13.

Heritage Resources

General

19. Several submitters seek the retention of Volume 1's Chapter 10 in its entirety.³ Others request: that the terms 'natural heritage values' and 'historical heritage values' are distinguished throughout the PMEP; that reference to 'listing' is amended;⁴ that care is taken in how the term 'archaeological site' is used and that the terms 'modify' and 'destruction' are used in respect of archaeological sites; and that the same language is used as in the Heritage New Zealand Pouhere Taonga Act 2015 being either recorded or unrecorded sites.⁵
20. A number of submissions from Marlborough's tangata whenua iwi seek inclusion of an issue and/or objective that protects unregistered or undiscovered sites of significance to iwi; an Anticipated Environmental Result (AER) for cultural or iwi related sites, features, structures or resources is inserted into the PMEP;⁶ a new policy and related provisions to provide greater protection for wāhi tapu and wāhi taonga sites and a new policy that provides a future works pathway to identify these sites.

Objective 10.1

Retain and protect heritage resources that contribute to the character of Marlborough.

21. A number of amendments are suggested by two submitters to better reflect the intention of the RMA. The former requests reference to 'inappropriate development' as a reference to s 6(f) RMA⁷ while the latter requests reference to an understanding and appreciation of Marlborough's history and culture, given the definition of 'historic heritage' in the RMA.
22. In subsequent evidence, Te Ātiawa seeks an amendment after the final paragraph to the explanation to include 'with a sense of time and place and who we are'. The iwi also requests clarification as to the meaning of the term 'that contribute to the character' to allay concerns that the sites may not be protected, but in his reply to evidence the report writer agrees to the amendment to the first sentence of the explanation as set out below.⁸

Section 42A Report

23. The report acknowledges that s 6(f) RMA refers to 'inappropriate development' and it is referenced in the Introduction and policies, with the report writer acknowledging some further explanation in the objective is appropriate.

³ J and J Hellstrom (688.191) and KCSRA (869.47).

⁴ HNZPT (768.1 -.4) (768.24)

⁵ HNZPT (768.24)

⁶ Ngāti Kuia (501.42), Te Ātiawa (1186.26, 1186.59), Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu ('Ngāi Tahu') (1189.91, 1189.92).

⁷ Federated Farmers (425.170).

⁸ Te Ātiawa (1186.54), Ian Shapcott Evidence, pages 12-14. Section 42A Report, Reply to Evidence, page 23.

24. The report writer also agrees with the proposed amendments to better reflect the RMA. He also supports Te Ātiawa's reference to time and place and a sense of 'who we are'.
25. But in terms of Te Ātiawa's concerns, the report writer considers the word 'contribute' is reasonably clear, and the objective is reasonably high level with the policies and rules providing more detailed 'protection'.⁹

Consideration

26. The Panel considers the amendments recommended better reflect the intention of the RMA and clarification of the meaning of 'that contribute to' is required. We accept the amendments to these points as recommended below. We also consider that Te Ātiawa's amendment to the second line of the second paragraph of the explanation of the objective is also an insight into the fact that heritage provides us with more than just a sense of place. It brings together an emerging focus and recognition of Marlborough's cultural heritage and people together with that of its European history.

Decision

27. Objective 10.1 is amended as follows:

Objective 10.1 – Retain and protect heritage resources that contribute to an understanding and appreciation of Marlborough's and New Zealand's history and cultures. ~~to the character of Marlborough.~~

Historic heritage makes a significant contribution to the identity of Marlborough and provides us with a sense of time and place and who we are; and in doing so adds to the social and cultural wellbeing of our community. It is therefore important for heritage resources to be retained. However, retention alone does not necessarily ensure protection as many heritage resources, especially buildings, need to be maintained on an ongoing basis given their age. Where maintenance has not occurred or where past development has not taken into account a resource's heritage values, heritage resources may need to be actively enhanced to improve the contribution they currently make to our social and cultural wellbeing. Use and development of a heritage resource is not precluded as long as it is not considered inappropriate. This objective also reflects the Council's obligations under Sections 6(e) and 6(f) of the RMA.¹⁰

⁹ Section 42A Report, paragraph 63.

¹⁰ Ibid, paragraph 64.

Policy 10.1.2

Support community initiatives to retain and enhance heritage resources

28. This policy recognises that local communities can initiate projects to retain and enhance resources. Several submitters support the policy as notified. Federated Farmers considers, however, that a new policy should be added to Chapter 10 which seeks to increase public recognition of the effect both public and private landowners assume over heritage resources.¹¹

Section 42A Report

29. The policy reinforces the theme of community involvement with a submission point seeking a new policy be added to Chapter 10 in order to increase public recognition of the efforts (and protection) that private and public landowners provide for heritage sites located on their properties.¹²
30. The report writer indicates that instead of providing a new policy, this response is better addressed by further amending Policy 10.1.2 to include not only landowners but recognises and supports their initiatives, as the issue is more a process policy rather than an outcome.¹³ The report writer observes that this does not derogate from the need to consult with iwi which is covered in a further submission from the runanga.¹⁴

Consideration

31. The Panel agrees that landowners provide a vital role in the protection of heritage resources on private land. That role should be recognised through an addition to the policy. The recognition should transfer into ongoing and strengthening support for current and future landowner initiatives.

Decision

32. For the reasons given, the Panel amends the wording of Policy 10.1.2 as follows:

[RPS, R, C, D]

Policy 10.1.2 – Support community and landowner initiatives to retain and enhance heritage resources.

Local communities and landowners can initiate projects to retain and enhance heritage resources. The Council ~~will~~ recognises and supports such proactive efforts as an effective way

¹¹ Federated Farmers (425.182).

¹² Federated Farmers (425.184).

¹³ Section 42A Report, paragraph 79.

¹⁴ Te Ātiawa o Te Waka-a-Māui (1186.55).

of not only protecting Marlborough's historic heritage, but also creating a community awareness of this heritage.

Potential Adverse Effects on Heritage Resources

Policy 10.1.5

Avoid adverse effects on the historic heritage value of Category I heritage resources;

Policy 10.1.6

Where modifications are proposed to Category I heritage resources and other heritage resources, the adverse effects of the modifications on the values of the resources should be avoided, remedied or mitigated.

33. Submissions suggest including: rewriting Policy 10.1.5 and combining it with Policy 10.1.6 relating to adverse effects¹⁵; use of (other) various terms and referencing the schedules;¹⁶ recognising infrastructure assets attached to Category I Heritage Resources.
34. Transpower notes there are a number of utility assets attached to the Ōpaoa River Bridge which is currently listed as a Category I Heritage Resource including the fibre optic cables owned by the company. The proposed policy, as drafted, is seen as having the potential to compromise its ability to maintain and upgrade this cable in a manner that is consistent with NPSET.¹⁷
35. HNZPT states that with Policy 10.1.5 addressing the demolition, partial demolition, relocation and destruction of Category I heritage resources, a similar policy is requested for Category II.¹⁸ Ideally, with Category II resources, adverse effects are generally avoided. Given the reduced significance of these items, consideration should be given to the economics of retaining the item including the cost of upgrade for public safety (these matters are provided for in Policy 10.1.7). Relocation of Category II items should not be included in this policy and is best addressed under Policy 10.1.6 due to these items generally being less tied to their original location. HNZPT also suggests rewriting the policy to overcome vagueness with the term 'modification' in Policy 10.1.6 and to apply to all activities which would complement the amendments to Policy 10.1.5.¹⁹
36. Ms Sylvia Allan for HNZPT has concern at the ambiguity arising with the use of the undefined relativity about the term 'destruction', particularly when it is applied to items (now) in Schedule 3 of Appendix 13 which are very large sites of significance to Māori (some are whole

¹⁵ Federated Farmers (425.179).

¹⁶ HNZPT (768.31) in part (of adverse effects).

¹⁷ Transpower (1198.23).

¹⁸ HNZPT (768.32).

¹⁹ HNZPT (768.32).

islands).²⁰ In some cases, applying the word 'destruction' to such sites at both a policy and rule level will not be as effective as when applied to Schedule 1 sites which are generally buildings. In her opinion, either a definition of 'destruction' (which in the case of Schedule 3 sites includes modification) should be made or the policy should include 'modification'. It would marry up the policy protection afforded in Schedule 1 items and align with the explanation.

37. The witness seeks to add the word 'modification' to Policy 10.1.5 as follows:

Avoid adverse effects on the historic heritage values from the destruction, demolition or relocation of Category A ± heritage resources identified in Schedule 1 and from the modification or destruction of sites of significance to Māori identified in Schedule 3 of Appendix 13.

(As a consequence, she also suggests an additional modification to 10.AER.1.)²¹

38. Amendments are suggested by Federated Farmers to combine this policy with Policy 10.1.6 relating to adverse effects. HNZPT suggests rewriting Policy 10.1.6 to overcome vagueness with the term 'modification' and to apply to all activities and which would complement the amendments to Policy 10.1.5.²²
39. HNZPT also sought a change to the naming of Appendix 13's Schedules 1 and 2. Currently they referred to Schedule I and Schedule II respectively, naming that reflected the List references in the HNZPT List. It was explained that the similarity caused confusion and that a simple renaming to A and B would alleviate the issue.

Section 42A Report

40. The following are the recommendations of the Section 42A Report which are generally in agreement with the submissions of HNZPT and cover the spectrum of the issues arising from Policies 10.1.5-10.1.6:²³
- In terms of Policy 10.1.5, the current terms of Category I and Category II used in Appendix 13 should be replaced with the terms Category A and Category B to avoid confusion with HNZPT which uses these terms in its Heritage List/ Rārangī Kōrero (the List). Reference to a list in the PMP provisions is also deleted to avoid confusion with the HNZPT reference. The policy also specifically references the relevant schedules in Appendix 13 of the PMP.

²⁰ HNZPT, Sylvia Allan Evidence, , page 4.

²¹ HNZPT, Sylvia Allan, Evidence, paragraph 3.4.

²² S42A Report, paragraph 85, citing HNZPT (768.32)

²³ Section 42A Report, page 24.

- Wāhi tapu and other sites of significance currently contained in Schedules 1 and 2 should have their own schedule (a new Schedule 3 to be located after Schedule 2) given that their cultural values that make them significant often defy classification under Schedules 1 and 2 which essentially relate to European items other than for some Māori taonga or wāhi tapu. The report writer recommends later on in his report populating the new schedule with appropriate items from Schedules 1 and 2.
- Policy 10.1.5 should be amended to also avoid adverse effects on the destruction (rather than demolition) of items in the proposed new schedule. The report writer agrees 'destruction' is more appropriate than 'demolition' in respect of wāhi tapu sites. (This wording is consistent with the current intention of avoiding adverse effects on the Category A items, albeit that Schedule 2 wāhi tapu sites would be included in the new schedule.)
- Avoiding adverse effects on the 'relocation' (rather than the 'loss') of Category A built items should now be included in Policy 10.1.5 given the specific setting of an item is often very significant to its cultural and historic heritage values. Effectively, the 'relocation' of these items is prohibited (see Rule 2.27) but this appears to have been the intent of the policy as publicly notified.
- A new policy should be included for Category B items given that these items are not specifically addressed in the heritage policies. The new policy should essentially require adverse effects to avoid values from the destruction, demolition, partial demolition or relocation of items except where the item is of danger to public safety or repair. Accordingly the test should be less than for Category A items which in the report writer's opinion appears to be appropriate given their lesser status. Given the absence of a policy dealing with Category B items he agrees that a new policy is appropriate and provides sufficient flexibility in assessing applications.
- The changes to Policy 10.1.5 and the new policy suggested would result in a rewrite of Policy 10.1.6 to cover those items that are not subject to amended Policy 10.1.5 and the new policy in which adverse effects are to be avoided, remedied or mitigated. In the report writer's opinion this proposed new policy is appropriate and provides sufficient flexibility in assessing applications and covers all types of development rather than the less precise term of 'modification'.
- The changes to Policy 10.1.7 are generally consistent with the other suggested changes. Reference to wāhi tapu and other similar sites should be removed from Policy 10.1.7

given that Policy 10.1.8 specifically addresses this issue. Consideration of the relationship of the item with its surroundings is also included, which is consistent with Policy 10.1.4, and a more specific consideration is made in respect of economic considerations.²⁴

Consideration

41. The report identifies, as a result of submissions, that Policy 10.1.5 requires considerable clarification. There is potential confusion with the HNZPT List categories; also a link to Appendix 13 is required. Further, demolition of Category II buildings is not covered by the policy so a new policy is required.
42. One issue that did arise, when the recommendation was considered in conjunction with the recommendations for Method 10.M.2 with respect to the use of prohibited activity rules and Rule 2.27.1 (the prohibited activity rule itself) was consistent expression. It is clear that Policy 10.1.5 has a clear direction to avoid adverse effects on Category I [*sic*] heritage resources. That direction is implemented through the method and the rule. It is therefore essential that the activities to be regulated in this manner are consistently expressed in the provisions in other decisions, the Panel confirms that the activities to be prohibited are the whole or partial demolition, or removal, of a Category I [*sic*] heritage resource. It is these same terms that must be used to explain the policy of avoidance of adverse effects. In adopting the recommendations of the report writer, the Panel amends the expression of the activities in the explanations to Policy 10.1.5 and Method 10.M.2 for reasons of consistency.
43. The Panel did debate whether the term ‘removal’ or ‘relocation’ should be used in these provisions. On balance, the Panel favoured ‘removal’ because it avoids any movement of the heritage resource within the same site (the term relocation may imply that the resource could be moved within the same site). As the report writer emphasised, the physical context of the site may contribute to the heritage value.
44. For the report writer these amendments generally meet the concerns of the other submitters.
45. Given that the recommendation for Policy 10.1.5 would be restricted to demolition, partial demolition etc, it appears that Transpower’s concerns are met in respect of maintenance and upgrading, and would be subject to a new Policy 10.1.X. This should sit between Policy 10.1.5 and Policy 10.1.6.²⁵

²⁴ Section 42A Report, paragraphs 83-91.

²⁵ Section 42A Report, page 18.

46. HNZPT made submissions seeking modifications to Policies 10.1.6 to 10.1.9 including a proposal to tie these particular policies to items scheduled in Appendix 13. In its further submission, HNZPT sought to withdraw that part of its submission. The rationale, and a correct one in Ms Allan's opinion, was that those policies may apply to the consideration of other resource consent applications relating to places and items that are not included in the schedule, but where historic heritage values are at stake. The Section 42A Report recommends acceptance of the original submission without acknowledging the change in the further submission. Ms Allan included the changes to the outcomes sought by HNZPT in the appendix to her evidence.²⁶
47. A new policy relating to publicly dangerous buildings was proposed in the original submission with similar wording, with a similar outcome. This was addressed in her appendix.
48. Other than those changes, in Ms Allan's opinion, the revised policy provisions provide an appropriate context and flow of policy, within which sound RMA decisions will be able to be made.²⁷
49. Finally, an amended Policy 10.1.6 is considered appropriate for sites of significance to iwi.
50. In relation to policy provisions, Ms Allan appreciates and supports the Section 42A report writer's proposal to be more comprehensive in recognising that heritage policy should apply to items/aspects that would normally be within the purview of regional or coastal plans. New Policy 10.1.X should be treated the same as Policy 10.1.6 and be [RPS, R, C, D] as is now proposed for Policy 10.1.6. Further, the report writer's proposal that [C] should be added to Policies 10.1.9 to 11 (relating to archaeological sites) should be expanded to include [R] as land disturbance is frequently addressed and provided for as part of regional policy and rules, setting up potential conflict. This is particularly necessary in relation to Policy 10.1.11 where reference in the explanation to regional rules is proposed to be removed as part of a block of text.²⁸
51. In terms of HNZPT and its submission that the heritage policies should also be denoted as regional and/or coastal policies (which are signified at the start of the policy as [R] or [C] in the PMEP), we consider given that some of the regional rules relate to earthworks which could affect heritage items, and some heritage items may be located below MHWS, reference to these types of plans is appropriate when applying the policy (notwithstanding that the matter is introduced as a further submission).

²⁶ HNZPT, Sylvia Allan Appendix to Evidence, Policies 10.1.5-10.1.6, pages 1 and 2.

²⁷ HNZPT, Sylvia Allan Evidence paragraphs 35-37 Appendix page 1.

²⁸ HNZPT, Sylvia Allan Evidence, paragraph 3.10.

52. The Panel also agreed that the inclusion of a new schedule, Schedule 3 Sites and Places of Significance to Marlborough’s tangata whenua iwi, in Appendix 13, is warranted. The Panel explored with iwi representatives at the hearings the movement of a number of wāhi tapu, urupa and the argillite quarries from schedules 1 and 2 respectively to the new Schedule 3 and that was accepted as being appropriate. Those items are as follows:

Reference	HNZPT No (if applicable)	Heritage Resource	Address	Value applies to
6	Waahi Tapu 7364	Pa site, burial site, battle site	Moioio Island Tory Channel	Island
9	Waahi Tapu 7737	Brothers Island	The Brothers/Nga Whatu, Cook Strait	Island

53. Move the following items from Schedule 2 to Schedule 3.

Reference	HNZPT No (if applicable)	Heritage Resource	Address	Value applies to
1-4	7755	Argillite quarries	Oparapara (Samson Bay), Croisilles – French Pass Road, Croisilles Harbour	Representative samples of quarry sites from which metasomatized argillite for tool manufacture was obtained
49	7333 Waahi tapu area	Urupā and archaeological remains of the original Māori occupiers, and later Māori and European whaling families	Te Awaiti Bay, Arapawa Island, Tory Channel	
50		William Keenan the Elder whanau urupā	Te Awaiti Bay, Arapawa Island, Tory Channel	
131	5979 9561	Moa hunter site Wairau Bar/Te Pokohiwi ²⁹	19 hectare gravel bar where Wairau River meets sea at Cloudy Bay	

54. There are some consequential small amendments to the columns necessary under cl 16 that we describe later in this decision.

²⁹ HNZPT (768.71-.73).

55. The Panel was also mindful that Ngati Toa also sought the same relief in the Topic 2 hearing.
56. In respect of the Pokohiwi area at the Wairau River mouth, later in this decision, other amendments are made to the description of that heritage site (131) that will be incorporated in the new Schedule 3 description below.

Decision

57. The decision is made to amend Categories 1 and 2 throughout the heritage provisions in the PMEP to read Categories A and B. (From this point on the decision relating refers primarily to Categories A and B rather than Categories 1 and 2. This approach differs from that taken in the decision generally where reference is always made to the notified form of the PMEP.)
58. A new Schedule 3 is to be inserted in Appendix 13 entitled “Appendix 3: Sites and Places of Significance to Marlborough’s tangata whenua iwi”. A consequential change to the notified Schedule 3 Notable Trees is required. This will become Schedule 4 Notable Trees. The new Schedule 3 will be populated from schedules 1 and 2 as follows:

MEP Reference	HNZPT List No (if applicable)	Heritage Resource	Address	Value applies to
6	Waaāhi Tapu 7364	Pa site, burial site, battle site	Moioio Island Tory Channel/ <u>Kura Te Au</u>	Island
9	Waaāhi Tapu 7737	Brothers Island	The Brothers/Nga Whatu, Cook Strait	Island

59. Move the following items from Schedule 2 to Schedule 3. These will be subsequently numbered.

MEP Reference	HNZPT List No (if applicable)	Heritage Resource	Address	Value applies to
1-4	7755	Argillite quarries	Oparapara (Samson Bay), Croisilles – French Pass Road, Croisilles Harbour	Representative samples of quarry sites from which metasomatised argillite for tool manufacture was obtained
49	7333 Waaāhi tapu area	Urupā and archaeological remains of the original Māori occupiers, and later Māori and European	Te Awaiti Bay, Arapa <u>owa</u> Island, Tory Channel/ <u>Kura Te Au</u>	<u>Urupā</u>

		whaling families		
50		William Keenan the Elder whanau urupā	Te Awaiti Bay, Arapaowa Island, Tory Channel/ <u>Kura Te Au</u>	<u>Urupā</u>
131	5979 9561	Moa hunter site Wairau Bar/Te Pokohiwi ³⁰ <u>Wāhi tapu, archaeological and cultural heritage area –</u> <u>A. Wairau Bar/Te Pokohiwi</u> <u>B. Wairau Lagoons</u>	19 hectare gravel bar <u>Locality where Wairau River meets sea at Te Koko-o-Kupe/ Cloudy Bay</u>	<u>All cultural and archaeological and historic heritage values within A and B</u>

60. As a consequence of adding Schedule 3 to Appendix 13, include a definition of Sites and Places of Significance to Marlborough's tangata whenua iwi in Chapter 25, as follows:

Sites and Places of Significance to Marlborough's tangata whenua iwi means as identified in Schedule 3 of Appendix 13

61. The amendments to Policy 10.1.5 are as follows:

Policy 10.1.5 – Avoid adverse effects on the historic heritage values of Category ~~I~~A heritage resources identified in Schedule 1 of Appendix 13 and Sites and Places of Significance to Marlborough's tangata whenua iwi identified in Schedule 3 of Appendix 13.

Schedule 1 contains Category A historic buildings and structures (or parts of buildings or structures), places, sites, monuments and plaques. Category A means they are of special or outstanding significance. This is the same meaning as Category I historic places in the New Zealand Heritage List / Rārangī Kōrero. Schedule 3 identifies Sites and Places of significance to Marlborough's tangata whenua iwi. Heritage resources sourced from the New Zealand Heritage List/Rarangi Korero are assigned either a Category I or Category II status. Heritage resources classified as Category I are nationally significant.

Any loss or damage of or significant change to a Category I heritage resource an item contained in Schedule 1 or 3 would result in a significant and potentially irreversible loss of historic heritage that is important in a national context. For this reason, any adverse effects on the historic heritage values of Category I resources in Schedule 1 and 3 must be avoided. This

³⁰ HNZPT (768.71-.73).

will see a prohibited activity rule that forbids ~~loss or destruction~~ the whole or partial demolition, or removal, of a Category A resource in Schedule 1 and the destruction of a resource in Schedule 3 of Appendix 13.

62. The following new policy is added after Policy 10.1.5:

[RPS R, C, D]

Policy 10.1.x – Avoid adverse effects on historic heritage values from the demolition or partial demolition of Category B heritage resources identified in Schedule 2 of Appendix 13, except where the item is of danger to public safety and repair is not the best practicable option after having regard to the matters in Policy 10.1.7.

Demolition or partial demolition of Category B items should be avoided unless it is a matter of public safety and repairs cannot be achieved having regard to the matters set out in Policy 10.1.7.

63. As a result of the inclusion of a new policy, a consequential change is required for 10.M.2 and this will be addressed later in the decision.

64. Policy 10.1.6 is amended as follows:

Policy 10.1.6 – While the MEP seeks to avoid all adverse effects to heritage resources, ~~where~~ modifications are proposed to Category A heritage resources and Category B and other heritage resources, the adverse effects of the modifications on the values of the resources should be avoided, remedied or mitigated.

Policy 10.1.7

When assessing resource consent applications in relation to heritage resources, have regard to:

(a) – (k)

65. This policy relating to matters to be considered when assessing resource consents in relation to heritage resources was supported as notified by two submitters.³¹ Others seek: add positive effects to the policy;³² reference to economic feasibility, the type of effects, and making reference to the surroundings of heritage resources;³³ an amendment to contain explicit consideration of cultural sites of significance to tangata whenua and a commentary to explain that not all sites of significance to iwi are included in the historic register of MDC and that there are many such resources not in the public forum.³⁴

³¹ I B Mitchell (364.49) and KiwiRail Holdings Ltd (873.29).

³² Federated Farmers (425.178).

³³ HNZPT (768.34).

³⁴ Te Ātiawa (1186.57).

Section 42A Report

66. The report indicates that changes to Policy 10.1.7 are generally consistent with other suggested changes. Reference to wāhi tapu and other similar sites are recommended to be removed from the policy, given that Policy 10.1.8 specifically addresses the issue. Consideration of the relationship of the item with its surroundings is recommended to be included, which is consistent with Policy 10.1.4 and a more specific consideration is recommended to be made in respect of economic considerations.
67. The recommendations are as follows:

‘Policy 10.1.7 – When assessing resource consent applications in relation to heritage resources included in Schedule 1 and 2 of Appendix 13, have regard to:

... (b) the effects ~~effect demolition, removal, alteration or additions will have~~ on the historic and heritage values of the heritage resource, including the relationship between distinct elements of the heritage resource and its surroundings;

... (j) the economic feasibility of all reasonably practicable options to avoid, remedy or mitigate adverse effects ~~options for retaining a heritage resource when its demolition is proposed;~~ and

... This policy sets out the matters that the Council should have regard to when assessing any resource consent application with adverse effects on the historic heritage values of identified ~~to demolish, remove, alter or add to a~~ heritage resource. These matters are designed to ensure that the significance of the heritage resource is recognised and appropriately provided for in the decision making process.’

Consideration

68. In terms of Policy 10.1.7, Ms Allan in her evidence³⁵ for HNZPT considers that references in Policies 10.1.X, 10.1.5, 10.1.7 and 10.1.8 to the Schedules in Appendix 13 have the potential effect of not enabling consideration of historic heritage for sites other than those in the schedules to Appendix 13. The Section 42A Report identifies that the PMEP as notified had reference to schedules in Policies 10.1.6-10.1.8, except for Policy 10.1.7.
69. The report writer acknowledges that the reference to schedules in Policy 10.1.7, however, can be deleted for that deletion would enable consideration of applications in respect of matters/aspects not necessarily in the schedules.³⁶

³⁵ HNZPT Sylvia Allan Evidence, paragraph 3.5.

³⁶ Section 42A Report, Reply to Evidence, page 24.

70. The Panel considers the policy as recommended to be amended in the Section 42A Report is inconsistent with other provisions within the chapter. We require an amendment to the policy as set out in the Section 42A Report but with deletion of the references to ‘Schedule 1 and 2 of’ in the recommended wording.
71. There was some debate about whether the reinstatement amendment to Policy 10.1.7 means that (j) reverts to the notified wording of the subsection. The amended (j) was included at the suggestion of HNZPT and relates to economic feasibility of all reasonably practical options for the retention of heritage resources.³⁷ The notified form of (j) was preferred by the Panel as the word ‘options’ allows a wider range of considerations than purely economic feasibility.

Decision

72. Policy 10.1.7 is amended as follows:

[RPS, R, C, D]

Policy 10.1.7 – When assessing resource consent applications in relation to heritage resources included in Appendix 13, have regard to:

... (b) the effects ~~effect demolition, removal, alteration or additions will have~~ on the historic heritage values of the heritage resource, including the relationship between distinct elements of the heritage resource and its surroundings;

... (j) options for retaining a heritage resource when its demolition is proposed; and

... This policy sets out the matters that the Council should have regard to when assessing any resource consent application with adverse effects on the historic heritage values of identified to demolish, remove, alter or add to a heritage resources. These matters are designed to ensure that the significance of the heritage resource is recognised and appropriately provided for in the decision making process. ...

Policy 10.1.8

When assessing resource consent applications to destroy or modify a registered waahi tapu site or area, or to undertake activities in a place of significance to Marlborough’s tangata whenua iwi, have regard to: (a) - (g)

73. These provisions set out the matters that the Council should consider when assessing any resource application.
74. One submitter considers the policy should be deleted and the other policies apply to the sites;³⁸ another considers that reference be made to an ‘identified’ rather than a ‘registered’

³⁷ HNZPT, Sylvia Allan, Oral Evidence.

³⁸ Federated Farmers (425.176).

wāhi tapu site or area and to the use of monitors;³⁹ while another also requests the deletion of the word ‘registered’;⁴⁰ one other suggests amendments mainly relating to consistency of language and also makes another suggestion requiring amendments to references to the policies also being regional plan/coastal policies which are not currently within the frames of reference.⁴¹

Section 42A Report

75. The report directly addresses HNZPT’s submission that heritage policies should also be directed as regional and/or coastal policies (significant at the start of the policy as [R] or [C] in the Plan. The report writer considers that as some of the regional rules relate to earthworks which may affect heritage items and some may be located below MHWS, these references should be included.

76. Policy 10.1.8 is recommended to be amended as follows:

‘Policy 10.1.8 – When assessing resource consent applications in relation to sites of significance to Maori, including wāhi tapu, included in Schedule 3 of Appendix 13, ~~to destroy or modify a registered wāhi tapu site or area, or to undertake activities in a place of significance to Marlborough’s tangata whenua iwi,~~ have regard to:

(a) ~~the effects of demolition, removal, alteration or additions~~ on the heritage values of the heritage resource, including effects on the spiritual and cultural values of iwi;

(b) the position of the relevant iwi;

(c) the views of Heritage New Zealand, for heritage resources on the New Zealand Heritage List / Rārangī Kōrero;

(d) the effects of the destruction or alteration on the heritage resource or the effects of the proposed activity on the spiritual and cultural values of iwi;

...

This policy sets out the matters that the Council should consider when assessing any resource consent application with adverse effects on the historic or cultural heritage values of an identified ~~to destroy or modify a wāhi tapu site or area,~~ or other area of significance to Marlborough’s tangata whenua iwi. These matters are designed to ensure the cultural and spiritual significance of the site or area is recognised and appropriately provided for in the decision making process.’

³⁹ Ngāti Kuia (501.46).

⁴⁰ Te Ātiawa (to come)

⁴¹ HNZPT (768.35).

Consideration

77. This policy is inconsistent with other relevant provisions in the PMEP. In the Section 42A Report, Policy 10.1.8 replaces the words ‘Marlborough’s tangata whenua iwi’ with the word ‘Māori’ in the second line which widens the whole spectrum of heritage to ‘all Māori’ which is not the intent throughout the PMEP. The significance should relate what Marlborough’s tangata whenua iwi consider to be sites of significance and wāhi tapu.
78. The amended policy also has added in the words ‘for heritage resources on the New Zealand Heritage List/Rarangi Korero’ to Policy 10.1.8(c). This should not be included.
79. Our conclusion comparative to the wording suggested by the report writer is to replace the word ‘Māori’ in the first paragraph and in (a) with the words ‘Marlborough’s tangata whenua iwi’, and delete from (c) ‘for heritage resources on the New Zealand Heritage List/Rarangi Korero’ as that reference in the PMEP will confuse the Appendix 13 scheduling.
80. In addition, insert the words ‘In addition to the matters set out in Policy 10.1.7’ in the start of the statement of the policy.

Decision

81. Amend Policy 10.1.8 as follows:

[RPS, C, D]

Policy 10.1.8 – In addition to the matters set out in Policy 10.1.7, ~~When assessing resource consent applications, to destroy or modify a registered wāhi tapu site or area, or to undertake activities in a place of in relation to sites of significance to Marlborough’s tangata whenua iwi included in Schedule 3 of Appendix 13, have regard to:~~

(a) ~~the effects of demolition, removal, alteration or additions on the heritage values of the heritage resource, including effects on the spiritual and cultural values of Marlborough’s tangata whenua iwi;~~

(b) the position of the relevant iwi;

(c) the views of Heritage New Zealand Pouhere Taonga;

~~(d) the effects of the destruction or alteration on the heritage resource or the effects of the proposed activity on the spiritual and cultural values of iwi;~~

...

This policy sets out the matters that the Council should consider when assessing any resource consent application with adverse effects on the historic or cultural heritage values of an identified ~~to destroy or modify a~~ wāhi tapu site or area, or other area of significance to

Marlborough's tangata whenua iwi. These matters are designed to ensure the cultural and spiritual significance of the site or area is recognised and appropriately provided for in the decision making process.

Archaeological sites

Policy 10.1.9

Except as set out in Policy 10.1.11, primarily rely on Heritage New Zealand and the requirements of the Heritage New Zealand Pouhere Taonga Act 2014 to regulate archaeological sites within Marlborough.

82. Policy 10.1.9 is supported by two submitters.⁴² Others seek: the Council should provide information to applicants regarding the presence of archaeological sites so a full assessment can be identified;⁴³ several amendments mainly relating to the consistency of language;⁴⁴ while another implies the policy should be deleted because it could cause confusion.⁴⁵

Section 42A Report

83. The report writer considers the policy is useful to clarify the MDC's stance in respect of archaeological sites, given the confusion that can arise. He notes that the policy is largely supported by HNZPT and its suggested attachment details information on archaeological sites and also satisfies Ngāti Kuia's submission of support.

Consideration

84. As identified by HNZPT, the policy is inconsistent with other provisions. The Council should provide information to resource consent applicants as to the presence of archaeological sites so that effects can be identified. An amendment is required to reference a new schedule in Appendix 13 (Schedule 5) of archaeological requirements as set out in the Section 42A Report⁴⁶.
85. The report writer (and the Panel) considered the inclusion of a new Schedule 5 setting out the archaeological requirements of the HNZPT Act. This is based on Attachment 2 of HNZPT's submission, headed as 'Schedule of Archaeological Requirements'.⁴⁷
86. The Panel also considered the inclusion of 'Marlborough's tangata whenua iwi' to the heading above Policy 10.1.9 to be appropriate in order to better reflect the policies content.

⁴² I B Mitchell (364.51), Federated Farmers (425.175).

⁴³ Ngāti Kuia (501.47).

⁴⁴ HNZPT (768.35).

⁴⁵ Ngāi Tahu (1189.88).

⁴⁶ Section 42A Report, page 20 and page 38-39.

⁴⁷ Section 42A Report, paragraph 197.

Decision

87. That the heading is amended by the following:

Archaeological sites and sites of cultural significance to Marlborough's tangata whenua iwi.

[RPS, R, C, D]

88. Policy 10.1.9 is amended by the following:

Except as set out in Policy 10.1.11, and the schedule of Archaeological Requirements in Appendix 13 Schedule 5 primarily rely on Heritage New Zealand and the requirements of the Heritage New Zealand Pouhere Taonga Act 2014 to regulate archaeological sites within Marlborough.

89. That a new Schedule 5 to Appendix 13 is inserted as follows:

Schedule 5: HNZTPA Archaeological Site Requirements

This Schedule sets out information to alert the public to their responsibilities regarding archaeological sites. This is relevant with regard to:

1. Demolition/destruction of any structure associated with human activity prior to 1900, whether or not it is scheduled in the Marlborough Environment Plan as historic heritage.
2. Earthworks or other works that may disturb pre-1900 surface or sub-surface archaeological sites or material.

An archaeological site is as defined by the Heritage New Zealand Pouhere Taonga Act 2014 as being any place in New Zealand, including any building or structure (or part of a building or structure), that:

- i. was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and
- ii. provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand.

It is also possible for Heritage New Zealand Pouhere Taonga (Heritage New Zealand) to declare a post-1900 site as an archaeological site.

Consent required from Heritage New Zealand

An authority (consent) from Heritage New Zealand must be obtained prior to the commencement of works noted in 1 or 2 above, and preferably before submitting any resource consent application.

It is an offence to modify or destroy an archaeological site, or demolish/destroy a whole building, without an authority if the person knew or ought to reasonably suspect it to be an archaeological site. For further information, contact Heritage New Zealand. The relevant legislation is the Heritage New Zealand Pouhere Taonga Act 2014, in particular sections 42 and 44 of that Act.

Known or suspected archaeological sites

The following resources may assist in determining if an archaeological site is or may be present:

- Historical heritage items scheduled in the Marlborough Environment Plan in Appendix 13.
- Outstanding Natural Features and Landscapes and Coastal Marine Areas in Appendix 1 with specified archaeological and/or historical heritage values.
- Sites listed by the New Zealand Archaeological Association's Archaeological Site Recording Scheme (Latest information is on the NZAA website) at www.archsite.org.nz.
- Marlborough District Council GIS information that highlights recorded sites.
- Written and oral histories of the area, including those of Tangata Whenua.

Archaeological discovery without an authority (Protocol)

If an authority has not been obtained and there was no reasonable cause to suspect archaeological sites are present (if there is reasonable cause then an authority should be obtained), the following protocol must be followed when an archaeological site is discovered:

- (a) immediately cease operations;
- (b) inform Heritage New Zealand and the relevant iwi authorities;
- (c) apply for the appropriate authority, if required;
- (d) inform the Council and apply for the appropriate resource consent, if required;
- (e) take appropriate action, after discussion with the Heritage New Zealand, Council and relevant iwi authority to remedy damage and/or restore the site.

Policy 10.1.10

Liase with Heritage New Zealand, the New Zealand Archaeological Association and Marlborough's tangata whenua iwi to develop and implement an appropriate discovery protocol for archaeological sites.

90. This policy is supported by two submitters. Others consider: that a policy is required and notes that such protocols are only used where an archaeological site is suspected;⁴⁸ words should be added in terms of the Council meeting costs of archaeological or cultural impact studies for sites that are accidentally disturbed.⁴⁹

Section 42A Report

91. The report writer considers the policy is useful as it signals the Council will develop a protocol in association with other parties which will be useful as a non-regulatory tool attaching to resource consents. He does not agree with the Council meeting the costs as this will clearly fall on any applicant as anticipated by the Heritage New Zealand Pouhere Taonga Act 2014. In relation to the submissions from Ngāi Tahu, the report writer agrees with the thrust of their submission which provides useful additional information.⁵⁰

⁴⁸ HNZPT (768.37).

⁴⁹ Federated Farmers (425.74).

⁵⁰ Section 42A Report, paragraph 108.

92. Policy 10.1.10 is recommended to be amended by the following:

[RPS, C, D]

Work with Marlborough's tangata whenua iwi, and in liaison ~~Liase~~ with Heritage New Zealand Pouhere Taonga, and the New Zealand Archaeological Association ~~and Marlborough's tangata whenua iwi~~, to develop and implement an appropriate discovery protocol for archaeological sites which may be included as a condition of consent on relevant planning application decisions, acknowledging that:

(a) cultural impact assessments and cultural monitors will be required to ensure the appropriate management of values, artefacts and koiwi in some instances; and

*(b) different approaches to ADP may be preferred by different iwi.*⁵¹

Consideration

93. The Panel considers more detailed information than this amended policy provides is required, including reference to working with tangata whenua iwi and reference to resource consents.
94. We consider that the policy as recommended should be amended by replacing the reference to 'planning applications' with 'resource consent'. The explanation is to be amended by amalgamating the concepts in recommended (a) and (b) into the explanation.

Decision

95. Policy 10.1.10 is amended as follows:

[RPS, C, D]

Policy 10.1.10 – Work with Marlborough's tangata whenua iwi, and in ~~Liase~~ liaison with Heritage New Zealand Pouhere Taonga, and the New Zealand Archaeological Association ~~and Marlborough's tangata whenua iwi~~ to develop and implement an appropriate accidental discovery protocol for archaeological sites which may be included as a condition of consent on relevant resource consent decisions.

96. The explanation to Policy 10.1.10 is amended by adding the following before the last sentence:

... the Council will liaise with Heritage New Zealand Pouhere Taonga, the New Zealand Archaeological Association and Marlborough's tangata whenua iwi to establish protocols to guide appropriate action in the event of a discovery of an archaeological site. In some instances, cultural impact assessments and cultural monitors will be required to ensure the

⁵¹ Ngāi Tahu (1189.89).

appropriate management of values, artefacts and koiwi. In developing the protocols it is acknowledged that iwi may have different approaches to Accidental Discovery Protocol. These protocols will be published and provided to the community.

Policy 10.1.11

Control land disturbance activities in places of significance to Marlborough’s tangata whenua iwi.

97. Three submitters support the policy as notified; another supports the policy but with reference to a schedule as discussed;⁵² another supports the policy but notes the need for rules to enforce the policy.⁵³

Section 42A Report

98. The policy repeats elements of previous policies but it is nevertheless seen as part of the PMEP strategy with respect to significant sites for iwi. The report writer considers that the addition of the schedule will provide more certainty and will address some of the concerns of Federated Farmers who submitted in opposition to HNZPT. The addition of the reference to the schedule therefore results in some changes to the explanation.

99. The report suggests a consequential change should be added to the existing subheading of Archaeological Sites, and sites of cultural significance to tangata whenua iwi to better reflect the content of the policies.

Consideration

100. There should be consequential change as a result of decisions to include a new Schedule 3 in Appendix 13, identifying sites of significance to tangata whenua iwi.

101. The policy should be amended as set out in the original Section 42A Report.⁵⁴ The explanation is not to be deleted and instead add ‘identified’ before ‘places’ and add in ‘Schedule 3’ after ‘significance’ in the third schedule to that text.

Decision

102. Amend Policy 10.1.11 to the following:

[C, D]

Policy 10.1.11 – Control land disturbance activities in places of significance to Marlborough’s tangata whenua iwi, identified in Schedule 3 of Appendix 13.

⁵² HNZPT (768.38).

⁵³ Ngāti Kuia (501.48).

⁵⁴ Section 42A Report, paragraph 109.

Policies 10.1.9 and 10.1.10 guide how the Council will assist in the protection of archaeological sites in Marlborough. Policy 10.1.11 enables activities that potentially adversely affect sites identified in Schedule 3 to be assessed. ...

Māori occupation of Marlborough in the past was extensive and not all sites of spiritual or cultural significance to Marlborough's tangata whenua iwi will be known and/or recorded. It also means that the significance cannot necessarily be attributed to a discrete site. For this reason, the policy applies to "identified places" of significance in Schedule 3. Land disturbance within these places is to be controlled through regional and district rules so that the potential impact of excavation, filling or vegetation removal on the mana of the relevant iwi can be assessed. This will enable Marlborough's tangata whenua iwi to exercise kaitiakitanga through involvement in the resource consent process as affected parties.

Consequential change to heading to Policies 10.1.9 to 10.1.11

103. The current notified heading to the section containing Policies 10.1.9 to 10.1.11 is 'Archaeological sites'. The decisions made above to amend those policies have been made against a background finding that the PMEP needs to be clearer that those policies address sites of cultural significance to Marlborough's tangata whenua iwi. As a consequential change, therefore, it is necessary to amend the Heading to those policies to state that.

Decision

104. Amend the heading to Policies 10.1.9 to 10.1.11 to read:

Archaeological sites and sites and places of cultural significance to Marlborough's tangata whenua iwi

Notable Trees

Objective 10.2

Retain and protect trees that make a notable contribution to Marlborough's character.

105. Several submitters support the objective with two also supporting the policies. One submitter states that given the provisions of s 6(f) RMA, the objective should be amended as follows:⁵⁵

'To recognise and where appropriate protect notable trees from inappropriate subdivision, use and development.'

Section 42A Report

106. The report writer does not recommend a change to Objective 10.2. The report observes that explanation to the objective refers to s 6(f) RMA in terms of heritage value. But the

⁵⁵ Federated Farmers (452.172).

explanation also refers to the contribution notable trees make to the character and amenity values of an area, referring to s 7(c) RMA, which does not refer to 'inappropriate' development. This would be determined through the resource consent process. No change is favoured as this is a high level policy and any change would be misleading.

107. Nevertheless, some amendment to the explanation is appropriate although s 6(f) RMA only applies to trees with heritage values. The report writer recommends amending Objective 10.2's explanation as follows:

'Objective 10.2 – Retain and protect trees that make a notable contribution to Marlborough's character.

... This objective also reflects the Council's obligations under Sections 6(f) which is to protect those trees with historic heritage values from inappropriate subdivision, use and development and 7(c) of the RMA which is to have particular regard to the maintenance and enhancement of amenity values.'

Consideration

108. We consider ss 6 and 7 RMA should be referred to in the explanation and this has been set out in the Section 42A Report. The words 'which is' should be removed from qualifying the two provisions of the RMA as not being necessary to understand the two sections of the RMA.

Decision

109. Objective 10.2 is therefore amended as follows:

Objective 10.2 – Retain and protect trees that make a notable contribution to Marlborough's character.

Trees which have significant heritage value or make a significant contribution to the character and amenity values of an area are to be retained, given the contribution they make to our social and cultural wellbeing. Retaining such notable trees ensures that current and future generations can continue to appreciate and benefit from these trees. This objective also reflects the Council's obligations under Sections 6(f) to protect those trees with historic heritage values from inappropriate subdivision, use and development and 7(c) of the RMA to have particular regard to the maintenance and enhancement of amenity values.

Policy 10.2.3

Consider approving any application to remove, trim or prune a notable tree or trees where:

- (a) the tree or trees are dying, diseased or have otherwise lost the essential qualities for which the tree was originally identified;
- (b) the tree or trees have become a danger to people; or
- (c) the tree or trees are significantly restricting a particular use of the site that offers greater positive effects in terms of historic heritage or amenity values.

110. One submitter seeks an addition to the policy as follows:⁵⁶

Consider approving any application to remove, trim or prune a notable tree or trees where: ...

(d) the tree is a significant cause of wilding tree spread affecting indigenous biodiversity.

111. Another submitter suggests the following:⁵⁷

Consider approving any application to remove, trim or prune a notable tree or trees where: ...

(c) the tree or trees are significantly restricting a particular use of the site that offers greater positive effects in terms of historic heritage or amenity values, or are restricting the ongoing operation of regionally significant infrastructure.

112. Another submitter requests an amendment to ensure the policy recognises the statutory requirement to trim trees that may present a hazard to the National Grid under the Electricity (Hazards from Trees) Regulations 2003.⁵⁸

Section 42A Report

113. The report writer considers all three submissions seeking these amendments are sensible as they provide specific guidance in circumstances that could easily arise in the Marlborough region.

Consideration

114. All of these proposed amendments have merit because they refer to risks to regionally significant infrastructure and to the real risks of wilding spread. The Panel discussed whether it would be useful to combine (c) and a new (d) and possibly (b).

115. Policy 10.2.3 is amended as recommended by the report writer as follows with the deletion of the recommended words 'or are likely to become' as they introduce an aspect of uncertainty.

⁵⁶ DOC (479.103).

⁵⁷ NZTA (1002.45).

⁵⁸ Transpower (1198.24).

Decision

116. Policy 10.2.3 is amended to read:

Policy 10.2.3 – Consider approving any application to remove, trim or prune a notable tree or trees where:

- (a) the tree or trees are dying, diseased or have otherwise lost the essential qualities for which the tree was originally identified;*
- (b) the tree or trees have become a danger to people; or*
- (c) the tree or trees are significantly restricting a particular use of the site that offers greater positive effects in terms of historic heritage or amenity values; or*
- (d) the tree or trees are restricting the ongoing operation of regionally significant infrastructure; or*
- (e) the tree or trees are a significant cause of wilding tree spread affecting indigenous biodiversity.*

Methods of Implementation

117. HNZPT suggests a number of assessments relating to the renaming and renumbering of schedules that reflect their other proposed amendments by way of submissions. The report writer signals his agreement with a number of these amendments.

Method 10.M.1

Identifying Marlborough’s significant heritage resources and notable trees

118. HNZPT introduces the term ‘confidentiality of files’ which the report writer interprets as the iwi system of ‘silent files’ which relate to non-disclosure by iwi of highly sensitive cultural sites.⁵⁹ Marlborough does not yet have such a system which may only occur once sites of significance and wāhi tapu are identified by Marlborough’s tangata whenua iwi. This will only occur when the plan change process related to the new Schedule 3 is complete.

119. Te Ātiawa refers to the incomplete nature of Schedule 3 sites at this stage, a reference to which is introduced into this method by the report writer.⁶⁰

Consideration

120. The Panel considers it is important to recognise the existence of sites and places of significance to tangata whenua iwi in the PMP and that they have an important contribution to make to Marlborough’s heritage. Te Ātiawa stresses how many of these sites exist but are

⁵⁹ HNZPT (768.39).

⁶⁰ Te Ātiawa (1186.225). See also Section 42A Report, page 36.

not yet identified in Schedule 3 as proposed below. Iwi management plans are identified as a potential source of identification.

121. A decision has been made earlier to introduce a new Schedule 3: Sites and Places of Significance to Marlborough's Tangata Whenua Iwi (Policy 10.1.11). That needs to be referred to in 10.M.1 before the reference to 'Notable Trees'. See also the reference to Appendix 13 Register of Significant Heritage Resources.⁶¹

Decision

122. Method 10.M.1 is amended to read:

The Council will identify significant heritage resources and notable trees within Appendix 13 of the MEP. Each individual resource or tree will be described in a schedule and included on planning maps.

Resources or notable trees identified will be those that meet the criteria in Policies 10.1.4 and 10.2.1 and/or those included on the New Zealand Heritage List/ Rārangī Kōrero. Heritage resources and notable trees will be divided into the following Schedules:

- Schedule 1: Category A Historic Buildings, Structures, Places, Sites and Areas
- Schedule 2: Category B Historic Buildings, Structures, Places, Sites and Areas
- Schedule 3: Sites and Places of Significance to Marlborough's Tangata Whenua Iwi
- Schedule 4: Notable Trees
- Schedule 5: HNZTPA Archaeological Site Requirements

123. Schedule 3 is not yet complete and it is likely that further sites within Marlborough will be added by way of plan change.

Method 10.M.2

District rules

124. HNZPT proposes a number of amendments relevant to the naming and renaming of a number of schedules to reflect their other proposed amendments, and observes that method 10.M.2 should be amended to reflect the final state of the rules.⁶² Marlborough Roads⁶³ and NZTA⁶⁴ request that the reference to 'regional rules' in this method is deleted as they are not relevant to the types of activities the rules provide for. Heritage rules only refer to district rules.

⁶¹ Section 42A Report, paragraph 135.

⁶² HNZPT (768.40).

⁶³ Marlborough Roads (967.70).

⁶⁴ NZTA (1002.46), Kathryn Barrett tabled letter, page 26.

125. Under this heading Te Ātiawa consider that the method should be extended to include reference to sites of significance to iwi in the list of matters that require resource consent.

Section 42A Report

126. While the most relevant rules will be district orientated, the report writer points out that some of the earthworks rules and coastal rules may apply (below MHWS); works in riverbeds are regional and could be invoked during land disturbance and/or modification activities.⁶⁵ This suggests that some further amendment to the heading and explanation is appropriate.

Consideration

127. The Panel does not consider it appropriate in a method to set out reference to matters that require consent and we consider those activities identified by bullet points in the notified PMEP should be deleted as set out in the report writer's original recommendations.⁶⁶ The identification of 'District' in the heading to the method reflects the more accurate identification of the content of the method with the deletion of the word 'District'. Ms Allan accepts this amendment as a more accurate description. She also suggested the addition of various District, Coastal and Regional notations.⁶⁷

Decision

128. Method 10.M.2 District Rules is amended by the following:

District and regional rules will be used to ensure that identified heritage resources and/or notable trees are appropriately protected. ~~The following activities will require resource consent.~~

- ~~• Any relocation, alteration of or addition to a scheduled heritage resource;~~
- ~~• Construction of a new building within the defined setting of a of a Category I heritage resource;~~
- Any demolition of a Category II heritage resource;
- ~~• Any removal or significant trimming of a scheduled notable tree;~~
- ~~• Any excavation, laying of overhead or underground services or construction of buildings within close proximity to scheduled notable trees.~~

A tree protection zone will be established to provide certainty with respect to the application of district rules seeking to protect notable trees from the adverse effects of activities undertaken

⁶⁵ Section 42A Report, page 36.

⁶⁶ Section 42A Report, paragraph 136.

⁶⁷ HNZPT, Sylvia Allan Evidence, Appendix: Section 42A Report, page 27.

in close proximity to them. The zone will take into account that the potential for adverse effects will vary depending on the size and dimensions of the tree.

Permitted activity rules will be used to enable responsible maintenance of heritage resources, ~~and~~ to provide for interpretive signage and to enable ~~and~~ minor trimming of notable trees.

Land disturbance not involving destruction in places of significance to Marlborough's tangata whenua iwi will be discretionary activities. This, in conjunction with affected party approval, will allow the adverse effects of the land disturbance on the spiritual and cultural values of the relevant iwi to be assessed.

A prohibited activity rule will apply to the loss, partial demolition, or demolition or removal or destruction of Category 1A heritage resources or the destruction of sites and places of significance to Marlborough's tangata whenua iwi

Method 10.M.5

Discovery protocol

129. The original method was recommended by the S42A Report to be amended to include the wording 'and there is no reason to suspect the presence of archaeological sites'. HNZPT requests that in addition to archaeological sites, Council will provide information relating to areas where there is reasonable cause to suspect the presence of unrecorded sites.⁶⁸ In the report writer's opinion, and the Panel's, it is difficult for Council to provide this information without expert knowledge and he does not recommend its inclusion.⁶⁹

130. The report writer's recommendation is to improve the wording of Method 10.M.5 as it is confusing. This may be achieved with the removal of the phrase 'and there is no reason to suspect the presence of archaeological sites'.⁷⁰

Consideration

131. Sylvia Allan for HNZPT and Ngāi Tahu gave evidence of the difficulties relating to an accidental discovery protocol (ADP) to be applied when finding unexpected archaeological sites during the implementation of a consent. Both witnesses consider that a protocol should be developed, including a statement on its limitations and its relationship with any necessary archaeological authority under the Heritage New Zealand Pouhere Taonga Act.⁷¹ The Panel agrees with those views.

⁶⁸ HNZPT (768.43).

⁶⁹ Section 42A Report, paragraph 133.

⁷⁰ Ibid, paragraph 139.

⁷¹ HNZPT, Sylvia Allan Evidence, paragraphs 3.8-3.9; Ngāi Tahu, Tanya Stevens Evidence, paragraphs 79-80.

Decision

132. That 10.M.5 Discovery protocol is amended by the following:

In conjunction with Heritage New Zealand Pouhere Taonga, the New Zealand Archaeological Association and Marlborough's tangata whenua iwi, the Council will develop, maintain and implement a discovery protocol for archaeological sites where an archaeological authority has not been obtained. This will detail the procedures to be followed if any feature, artefact or human remains are discovered or are suspected to have been discovered. Information will be included within the protocol on the rohe of different iwi to enable people to make contact with the relevant iwi. The protocol will assist in ensuring that the relevant provisions of the Heritage New Zealand Pouhere Taonga Act 2014 can then be applied. The protocol will be included in Appendix 13 containing the Schedule of Archaeological Requirements.

Anticipated Environmental Results and Monitoring Effectiveness

10.AER.1 and 10.AER.2

133. In respect of 10.AER.1, which relates to the protection and identification of heritage resources making a significant contribution towards Marlborough historic heritage, one submitter requests that the extent of the monitoring of effectiveness is increased and more focused.⁷² The report writer generally agrees with the changes although noting that as demolition of Category A items and the destruction of 'Schedule 3' items is a prohibited activity, some amendment is appropriate.
134. In respect of 10.AER.2, which relates to notable trees making a significant contribution towards Marlborough's historic heritage and amenity values, one submitter seeks that the surveys should be carried out at 7 year intervals, not 10 years, and that the wording concerning the ambit of the survey needs to be expanded to make it clear the survey should not only identify the condition of notable trees but also be required to identify any remedial action arising from such survey.⁷³
135. In the report writer's opinion some of the requested matters are not anticipated environmental results but rather relate to methods, in which 10.M.1 refers to the Standard Tree Evaluation Method (STEM) method⁷⁴ to assess trees. An assessment within 10 years of the PMEP becoming operative appears reasonable and no change is required to 10AER.2.⁷⁵

⁷² HNZPT (768.45).

⁷³ KCSRA (869.49).

⁷⁴ Section 42A Report, page 60 Report of John Gray, Report of Cadwallader Tree Consultancy, Assessment of Submitted Trees.

⁷⁵ Section 42A Report, paragraphs 140-141.

Decision

136. That 10.AER.1 is amended as follows:

...

No loss of Category 1A heritage resources and no destruction of Schedule 3 heritage resources as measured through the grant of resource consent applications to demolish, partially demolish Category 1A heritage resources.

Limited loss, if any of other heritage resources as measured through the grant of resource consent applications to modify such resources.

The instances of archaeological site damage recorded by Heritage New Zealand Pouhere Taonga decrease.

Maintain or improve resident satisfaction with the heritage activity of the Council as measured by customer satisfaction surveys. ...

137. The submission seeking amendment to 10.AER.2 is rejected.

Heritage Resources Rules 2.24-2.27

New Rule - 2.24 Permitted Activities

138. HNZPT submits that provision should be made for the creation of one sign associated with heritage resources by including a new Rule 2.24.4 for limited signage as a permitted activity.⁷⁶ That is asserted to be important for information and interpretation purposes.

139. This was agreed by the report writer⁷⁷ who suggests some limited signage should be identified, given there is currently no provision of this type of activity. The size should be not greater than 0.5 square metres.

140. As to a limit on the size of the heritage signage requested the Panel decided to increase the size of the sign to 2 square metres, and remove the recommended (b) from the standard as it is unnecessary due to it being covered by other statutory means and does not relate to the heritage value for which the permitted activity is being allowed. The Panel's view was that with the common combination of illustration panels and interpretive descriptions at heritage sites. There is no requirement for a discretionary activity class as the PMP does not have a great number of restricted activities in order that it is kept simplified.

⁷⁶ HNZPT (768.53, .54).

⁷⁷ Section 42A Report, paragraph 163.

141. We note a consequential change has occurred to Method 10.M.2 Rules to include interpretive signage as a permitted activity.

Decision

142. A new rule is included as follow:

2.24.X. Erection of one sign within the site of a Heritage Resource included in Schedule 1, 2 or 3 that is not greater than 2m² and is not flashing or illuminated for the purposes of:

(a) setting out information relating directly to the onsite activities or uses; or

(b) interpretative material on the historic heritage values of the place.

Rule 2.24.1 Repair or maintenance of a Heritage Resource

143. HNZPT request the rule includes a reference to Appendix 13 as this will then exclude archaeological sites (leaving their management to HNZPT) and sites of significance to Māori (which are now dealt with under other rules).⁷⁸

144. The Panel considered the report writers recommended inclusion of reference to 'Schedule 1 or 2'⁷⁹ was not required.

Decision

145. The Panel amended 2.24.1 to read:

Repair or maintenance of a Heritage Resource identified in Appendix 13.

Rule 2.24.3

Maintenance (meaning protective care) of an archaeological site, where that maintenance includes:

- (a) keeping the site in good condition by controlling noxious weeds, cutting grass and light stock grazing;**
- (b) land disturbance by cultivation that does not extend beyond the area or depth previously disturbed;**
- (c) maintenance and upgrading of a paved road, modified berm or path provided that the land disturbance does not extend beyond the area or depth previously disturbed.**

146. This rule needs to include reference to Appendix 13, Schedule 3 sites to ensure maintenance can occur of those sites. The rule also requires amendment to include fencing to ensure stock can be fenced out.

Decision

147. Rule 2.24.3 is amended as follows:

⁷⁸ HNZPT (464.55).

⁷⁹ Section 42A Report, paragraph 168

Rule 2.24.3: Maintenance (~~meaning protective care~~) of an ~~archaeological~~ site of significance to Marlborough's tangata whenua iwi identified in Schedule 3 of Appendix 13, where that maintenance includes:

- (a) keeping the site in good condition by controlling noxious weeds, cutting grass and light stock grazing;*
- (b) land disturbance by cultivation or fencing that does not extend beyond the area or depth previously disturbed; or ...*

Rule 2.25.1.6

The repair or maintenance can include the patching, restoration or minor replacement of materials, elements, components, equipment or fixtures

148. HNZPT state that Standard 2.25.1.6 is more suited to be part of the definition of repair or maintenance and should be removed.⁸⁰ Instead, the rule should reference Appendix 13 which will then exclude archaeological sites (leaving their management to HNZPT) and sites of significance to Māori (dealt with under other rules).

149. The report writer agrees that it is appropriate to reference Appendix 13 but believes that the words relating to repair or maintenance can remain as they provide detail as to what is allowed (and appear in keeping with the existing definitions of 'maintenance' in the PMEP). He does not consider these words should be deleted.⁸¹

Consideration

150. This rule needs to include reference to Appendix 13 in order to exclude, amongst other things, archaeological sites. Removal of the reference to the schedules as recommended in the Section 42A Report should also take place.

Decision

151. Rule 2.25.1.6 is amended as follows:

Rule 2.25.1.6. – The repair or maintenance of a Heritage Resource identified in Appendix 13 can include the patching, restoration or minor replacement of materials, elements, components, equipment or fixtures.

Rule 2.26.2

Any land use activity involving a Heritage Resource not provided for as a Permitted Activity.

⁸⁰ HNZPT (464.59).

⁸¹ Section 42A Report, paragraphs 152-153.

152. HNZPT suggest additional activities concerning land disturbance in Appendix 1 Outstanding Landscapes and Natural Features, and subdivisions identified in the schedules of the PMEP should be subject to resource consent as a discretionary activity.⁸²
153. HNZPT suggests that it would be beneficial for the sake of clarity that this rule should set out some of the other land use activities (such as forestry and network utilities) and needs also to reference restricted, discretionary and prohibited activities. The word ‘involving’ in the notified rule is asserted to be somewhat vague with potential ‘adverse effects on’ a better substitute.⁸³

Section 42A Report

154. The report writer believes the rule should be amended to reflect other changes suggested in the chapter but there is no requirement to specify other activities, given that other activities are already subject to rules and other provisions of the PMEP.
155. The report writer considers such an additional rule would be a blunt instrument as the zone rules in the PMEP control land distribution in Appendix 1. Regard too can be had to heritage issues in resource consent applications.
156. Similarly, in respect of subdivision, there are specific rules in Chapter 24 Subdivision which, as a minimum, is a controlled activity with Council reserving control over a number of matters (Rules 24.3.1.9-24.1.3.26) which are likely to provide protection for heritage resources including use of the site. Subdivision is subject also to other rules such as land disturbance. Further, HNZPT Act provisions under the auspices of HNZPT also apply to the disturbance of archaeological sites.⁸⁴
157. This rule is a ‘catch all’ which may be considered satisfactory. Further, the suggested term ‘potential adverse effects’ is also somewhat uncertain. The report writer suggests the term ‘that relates to’ would provide the necessary clarity.⁸⁵

Consideration

158. The rule requires some amendment to improve its wording with the insertion of ‘or limited as a’ before ‘prohibited activity’ for consistency with the expression of discretionary activity rules in the PMEP. The Panel accepts the changes recommended as clarifying the wording.

⁸² HNZPT (464.61).

⁸³ HNZPT (464.62).

⁸⁴ Section 42A Report, paragraphs 157-158.

⁸⁵ Section 42A Report, paragraph 160.

Decision

159. Rule 2.26.2 to read:

2.26.2 Any land use activity ~~involving~~ that relates to a Heritage Resource identified in Schedule 1, 2 or 3 of Appendix 13 is not provided for as a Permitted Activity or limited as a Prohibited Activity.

Rule 2.27.1

The whole or part demolition or removal of a Category I Heritage Resource.

160. HNZPT suggest that Rule 2.27.1 ‘part demolition’ is changed to ‘partial demolition’, while the word ‘removal’ is said to be ambiguous and could be taken to also mean demolition.⁸⁶ The word ‘relocation’ should be used. In addition, the rule should also reference the heritage resources in Appendix 13.

161. These amendments are accepted by the report writer as they improve the reading of the PMEP and are consistent with the submissions in other parts of the chapter.⁸⁷

162. HNZPT also consider that the destruction of a wāhi tapu site or other site of significance to Māori should be a prohibited activity.⁸⁸ This amendment too is considered appropriate by the report writer, given the fact that these sites have important cultural and historic value the Council must protect. He notes that while the submission is opposed by Federated Farmers in a further submission, it generally is not seen as a significant change. Destruction of wāhi tapu sites in the notified Schedule 1 was a prohibited activity (and did not attract any opposing submissions).⁸⁹

163. Sylvia Allan suggested that ‘modification’ is added as well as ‘destruction’ in order to provide better protection for items as prohibited activities. Subsequently, the witness suggested ‘destruction or partial destruction’.

Consideration

164. We consider both suggested amendments should be approved for the reasons given by the report writer. And also the wording of Rule 2.27.1 should also include an exception for ‘a Dangerous Building under the Building Act 2004’. Such a building presents a significant hazard and risk to public safety. The provisions of the plan allow for consideration of that risk, but also the potential loss of heritage values, through the resource consent process.

⁸⁶ HNZPT (464.61).

⁸⁷ Section 42A Report, paragraph 161.

⁸⁸ HNZPT (464.64).

⁸⁹ Section 42A Report, paragraph 162.

165. An additional rule (Schedule 3 sites) is recommended as a consequence to HNZPT's concern about the seriousness of the destruction of tangata whenua iwi sites of significance including wāhi tapu.⁹⁰ The Panel understands HNZPT's concerns but, given the importance of the issue, agrees with the report writer that there is some uncertainty in terms of 'partial destruction'. Some protection is afforded by 'modification' as a discretionary activity and it is still necessary to obtain archaeological authority.⁹¹ However for destruction of sites of significance to Marlborough's tangata whenua iwi requires a new prohibited activity rule.

Decision

166. Rule 2.27.1 is amended by the following:

2.27.1 The whole or ~~part~~ partial demolition or ~~removal~~ relocation of a Category 1 A Heritage Resource identified in Schedule 1 of Appendix 13, except for a Dangerous Building under the Building Act 2004.

167. Add a new rule 2.27.2 as follows:

2.27.2 The destruction of a site or place of significance to Marlborough's tangata whenua iwi identified in Schedule 3 of Appendix 13.

Appendix 13 Register of Significant Heritage Resources

168. Consideration of the submissions under this heading will assist in clarifying some of the amendments necessary to guide the reader through the PMEP's preparation of this chapter.
169. HNZPT provides a number of helpful amendments:⁹² a new schedule to Appendix 13 for sites of significance and wāhi tapu for Marlborough's tangata whenua iwi directly after the existing Schedule 2 and the transfer of existing iwi sites to this schedule; replacement of the terms 'Category 1' and 'Category 2' in the Schedules to the PMEP with 'Category A' and 'Category B' to avoid confusion between items in the New Zealand Heritage List/Rārangi Kōrero (the List) and those schedules in district plans; deletion of the term 'locally significant' in Schedule 2 as this has become redundant.
170. Marlborough's tangata whenua iwi raised a number of other matters. Te Ātiawa consider the title of Appendix 13 is inappropriate – modify the title of the register to reflect that it is a list

⁹⁰ HNZPT (464.63).

⁹¹ Section 42A Report, page 27.

⁹² HNZPT (768.71-.73).

of significant buildings, structures, trees, or create another list of significant cultural resources.⁹³

171. Te Ātiawa also requests the introductory paragraph should identify that the register is not complete and indicate that there are significant resources within Marlborough that are not contained within the register.⁹⁴
172. Ngāti Kuia requests that Appendix 13 is amended to include any current or future management plans, and that it is amended to include sites of significance to Māori (but no details of these sites are provided).
173. Ngāti Kuia also requested that Appendix 13 be amended to include reference to sites of significance, but no details are provided.⁹⁵
174. HNZPT also considers the inclusion of an appendix setting out archaeological requirements in terms of the HNZPT Act would be beneficial with an example attached to their submission.⁹⁶

Section 42A Report

175. The Section 42A Report considers this will be useful, given the confusion that can arise between resource consent and archaeological authority procedures: see Policy 10.1.9.⁹⁷
176. The report writer also agrees that the title of Appendix 13 requires amendment.

Consideration and decision

177. The Panel accepts the recommendations as follows:

Schedule 3: Sites and Places of Significance to Marlborough's Tangata Whenua Iwi

178. The Panel also agrees that information should be included about the incomplete Schedule 3 and the report writer suggests that appropriate wording is added to Methods of Implementation 10.M.1. (This may be seen now the Panel having amended the last sentence to Method 10.M.1 above.)⁹⁸
179. Consequential changes to headings are also set out. Further, the existing sites relating to Marlborough's tangata whenua iwi from Schedule 1 and Schedule 2 are to be extracted and included in new Schedule 3 as set out in the Section 42A Report.⁹⁹

⁹³ Te Ātiawa (1186.224).

⁹⁴ Te Ātiawa (1186.225).

⁹⁵ Ngati Kuia (501.45, .85).

⁹⁶ HNZPT (768.69), Attachment 2.

⁹⁷ HNZPT (768.69).

⁹⁸ Section 42A Report, paragraph 210.

⁹⁹ Section 42A Report, paragraphs 219, 220.

180. As to the inclusion of reference to iwi management plans, these are not considered necessary within the content of Appendix 13 as they are included in amended Method 10.M.1.¹⁰⁰

Specific requests to add to the Register of Significant Heritage Resources

181. KSCRA and Alastair McKenzie request that the Sounds Soldiers Memorial at Torea Saddle be added to Appendix 13 (after Schedule 1 or 2).¹⁰¹

182. PJ Sim requests that Appendix 13 is amended to include Waikawa West Pt Sec B1 Māori Block site (property number 527547, Lot 1 DP 4615) at the northern end of Ranui Street (reputed to be a local landmark containing two wāhi tapu sites, water spring and urupā and is of importance to Te Ātiawa as an area used to grow fruit, vegetables and berries).¹⁰²

183. HNZPT requests that the word 'proposed' be added in parentheses after the Heritage New Zealand List Number for:

- PMEP Reference 61 - Kakapo Bay Whaling Station
- PMEP Reference 73 - Omaka Presbyterian Church
- PMEP Reference 74 - Sunnymead Farm Cottage
- PMEP Reference 106 - Ōpaoa Wharf Building

as the items have not been fully processed yet for inclusion on the HNZPT register.¹⁰³

Section 42A Report

184. If the items, identified above, are included, the report writer observes, that HNZPT should give an indication of the likely timetable for scheduling because the qualification 'proposed' would be required to be deleted where included and that can only occur by way of a plan change.¹⁰⁴

Consideration

185. For HNZPT, Sylvia Allan, suggested to replace 'List' from schedules 1 and 2 for the table heading 'HNZ List No'. From her perspective this resolved the issue of whether a heritage resource process is complete.

Decision

186. The second column in schedules 1, 2 and [new] 3 no longer reference 'list' in the title as set out in the Section 42A Report. It will now be referred to as 'HNZPT No.'

¹⁰⁰ See paragraph 144 of this report.

¹⁰¹ KCSRA (56.1) and Alastair MacKenzie (531.1).

¹⁰² PJ Sim (1299.1).

¹⁰³ Section 42A Report, paragraph 208.

¹⁰⁴ HNZPT (768.75-.78).

Extension to Kakapo Bay site – Schedule 2, Reference 61

187. HNZPT seeks an extension of the Kakapo Bay (PMEP Reference 61) heritage site to reflect its proposed listing which encompasses the bay. The submitter provided its chief evidence for scheduling through Mr James Jacobs from HNZPT who identified its archaeological significance for its layers of Māori and European history. It is currently a proposal for entry on HNZPT's List.
188. The bay contains evidence of Māori occupation (13th and 14th century) and is well known as the location of early whaler John Jacky Guard's shore whaling station from ca 1829. The Guard family is one of New Zealand's oldest European families and was associated with people of significance in New Zealand history among whom was James Wynen (one of the founders of Blenheim) and Wesleyan missionary Rev Samuel Ironside.
189. The murder of Wynen's Ngāti Toa wife Rangiwā Kuika and son here in 1842 is regarded as one of the catalysts for the event known as the Wairau Incident. Rangiwā Kuika and son are buried in a marked area to the north of the site.
190. By 1832 Jacky Guard had purchased the bay from Te Rauparaha and Te Rangihāeata (Ngāti Toa). After whaling the site became a farming settlement and a fishing base.
191. It was asserted by Mr Jacobs that the PMEP is too limited on the extent of Kakapo Bay proposed for scheduling. While the whole bay is proposed by HNZPT for inclusion, the current PMEP identification applies only to the land known as the Guard Family Cemetery. HNZ says that does not provide appropriate recognition and protection to the historic values of the bay land which has been in the Guard family for approximately 187 years.
192. HNZPT indicates that the site area fulfils the requirements for heritage protection for Kakapo Bay under Appendix 13 (a)–(f) recording at (f) 'the whole bay forms an area of high historical significance, due to the length of documented occupation and the number of associated historical events. There are also quantities of whale bones on the floor of the bay which continues its heritage significance beyond the shore line.'
193. In her evidence Ms Allan provided Figure 4: Kakapo Bay Site illustrating the extent of the site outlined in blue.

Section 42A Report

194. The report writer involved in assessing the submissions for Schedule 2 Category B, Kakapo Bay heritage items and significant resources identifies not all the items sought to be included by HNZPT have not been fully processed for inclusion in the HNZPT Register.¹⁰⁵
195. The wording in the PMEP implies the whole bay is to be scheduled, but the mapping shows only the cemetery being scheduled.¹⁰⁶ The writer's conclusion is that the whole bay forms an area of high historical significance. His conclusion is that the listing reference 61 in Schedule 2, Appendix 13 of the PMEP should be altered to include the whole of Kakapo Bay outlined in blue in the Further Submissions of HNZPT, June 2017, observing that this recognition would not place an undue burden over a number of properties.

Consideration

196. Ms Allan makes the point that the current description 'land and building footprint' does not do justice to the value of the locality. She says this should be changed to 'land, historic features and sub-surface archaeological remains'.¹⁰⁷ Figure 4 of her evidence graphically illustrates the extent of the historic boundaries which encompass many privately owned building lots.
197. Mr Jacobs recognises that giving protection to the historic values of the whole bay would involve protection over a number of privately owned properties, as the land involved has more recently been subdivided and partially built on.
198. HNZPT provided the Panel with extensive documentation detailing its meetings with some of the landowners.¹⁰⁸ We were advised that HNZPT had worked with landowners in person (via meetings, letters and emails) to gain support for scheduling.¹⁰⁹ The need for future resource consents was noted in several places. The residents were thus notified of the proposal and HNZPT advised the Panel that they did not raise any concerns.
199. While the Panel recognises the importance of protecting aspects at this location for the heritage of Marlborough, it concluded that before that could occur, discretionary activity status for building consents within the boundary now sought in Figure 4, needs to be fully spelled out for the residents; HNZPT's future management of the site also needs clear

¹⁰⁵ Section 42A Report. Report on submissions and further submissions: Submissions Concerning Nominations of Buildings, Structures or Sites for inclusion in Appendix 13 of the Marlborough Environment Plan. Matter 3: Amendment to notified Kakapo Bay Whaling station site.

¹⁰⁶ Ibid

¹⁰⁷ HNZPT, Sylvia Jean Allan, Evidence, paragraph 7.28 Figure 4: Kakapo Bay site, page 19 edged in blue depicting the site which clarifies that the scheduling encompassed the whole of its proposed site.

¹⁰⁸ HNZPT, Response to Minute 26

¹⁰⁹ HNZPT, James Jacobs Evidence, paragraph 7.4.

identification. This was not adequately carried out to landowners in any of the correspondence provided to the Panel by HNZPT although the need for resource consent was noted in various places in the attached correspondence during consultation.

200. Further, the Panel noted the fact that there appears to be a discrepancy between the extent of the potentially scheduled boundaries in HNZPT's Figure 4, which encompass the whole of the proposed listed site, and a file note of HNZPT dated 9 June 2017 put in evidence which notes '*Heritage New Zealand clarified it followed a contour line to encompass **the flat part of the bay** rather than the northern slopes*'. [Our emphasis] The owners accepted this.
201. The Panel was left in doubt that the HNZPT's assertion the landowners agreed to the listing in the PMEP was carried out after adequate and full consultation as to regulatory impacts of the listing.

Decision

202. The Panel concludes that further work needs to be undertaken by HNZPT before Kakapo Bay is scheduled, and if that possibility is to proceed that would have to occur by way of plan change/variation. The submission is declined.

Omaka Presbyterian Church – Schedule 2, Reference 73

203. HNZPT seeks that the Omaka Presbyterian Church in Renwick retain its listing in Schedule 2, Appendix 13 as PMEP Reference 73 despite its own scheduling process not having been completed for this building due to resource consents. This puts it in disagreement with the parish which represents the Presbyterian Church Trustees (Wairau Presbyterian Church). The Trustees initially wished to have the ability to remove it from the site and hence from PMEP protection.¹¹⁰
204. It is Mr Jacobs' evidence for HNZPT that the small timber building at Renwick, Marlborough was the first church of any denomination to be built on the Wairau Plains and amongst the oldest documented buildings (opened in 1859) in Marlborough.¹¹¹ Despite having been moved several times on its original site of 1.5 acres the structure is significant as an early example of an 1850s timber country church. The building also has spiritual and social significance for generations of local community members. Currently it is located on the boundary nearest State Highway 6.

¹¹⁰ Presbyterian Church Property Trustees – Wairau Presbyterian Parish (1043.1). Simon F Gaines, Counsel, Submission, paragraphs 7-8.

¹¹¹ HNZPT, James Jacobs, Evidence, paragraph 7.4.

Section 42A Report

205. The Section 42A report writer places the church building as meeting four out of the six requirements for such historic recognition:

- It has value as a local landmark, over a significant length of time.
- The land was gifted by the founder of Renwick town Mr Thomas Renwick. By the time the building was moved to its present site, there had been a church built near the current site in 1886. Its current purpose appears to be from anecdotal evidence for community purposes.
- It reflects past skills, style, materials and construction that make it of value – it is a good early example of a simple country church built with local materials by local craftsman; what is unusual is that it is lined with matai boards that have never had a form of coating applied in all of its 160 years.
- Simple early examples of country churches like this are rare still in their churchyard setting, if not on the original setting.

206. There is no known association with iwi and the building and does not form part of a precinct of heritage value.¹¹²

207. The report writer recommends that the Omaka Presbyterian Church remain listed on Schedule 2, Appendix 13 of the PMEP as Reference 73.

'It is noted that the Heritage New Zealand Listing Report (List No. 1474, Proposed) identifies the property on which the church sits. It is recommended that only the "Building Envelope and Interior" are recognised, as it is currently proposed in Schedule 2, Appendix 13'.

208. It is noted in the report that the church is incorrectly mapped in the notified plan. The building mapped appears to be the adjoining larger church building immediately to the west of Omaka Presbyterian Church on the same property (see Map 53). If the decision is made to retain the Omaka Presbyterian Church (First Church), then the correct building would need to be mapped Map 53 in Volume 4.

¹¹² Section 42A Report. Matter 4 – Removal of Omaka Presbyterian Church.

209. The correct building is shown in the map below.



Evidence

210. Evidence for the Church was given by the Reverend Brendan O’Hagan who explained the Presbyterian Church does not own property for its own sake but as a means to achieve God’s mission. The Church Property Trustees are appointed to support the work of active participation in the Church to monitor the flexibility of its assets held to ultimately assist in the delivery of God’s mission. The church is no longer being used for its own purposes and is unlikely to be so used in the future, while the parish does not have resources for preservation work/earthquake strengthening.
211. Since the submission was lodged the Trustees have been aware that the Schedule 2 Heritage listing does not prevent the modification, demolition or relocation of the building. The proposed listing also does not prevent the construction of new buildings or structures on the surrounding land. But as a Schedule 2 listing, these activities might require a resource consent. The Trustees now consider future opportunities may arise to utilise the land where the building is located. There is land at the back and front of the existing hall where relocation could occur, that is, relocation could occur *within the same site* (the Reverend’s emphasis). As a result, the parish no longer opposes the proposed listing as a Category B Heritage Resource

provided it had an assurance that any rules/standards framework is both reasonable and certain.¹¹³

212. Mr Simon Gaines provided legal submissions for the trustees. He supplied an analysis of the various provisions of the PMEP that apply to this building and its relocation. He advised that assurance is sought that any rules/standards/framework is both reasonable and certain.¹¹⁴
213. Ms Allan considers the policy rules and methods (including the Council's proposed Method 10.M.3) would provide an appropriate framework to manage the resource if listed. The method includes a level of financial support.¹¹⁵
214. Mr Jacobs detailed a meeting between HPT and the trustees where the details of listing by the HNZPT and scheduling the plan were discussed. The main area of concern seemed to be that scheduling would force the trustees to allocate funds to repair the building. But this will not be the case. Mr Jacobs also advised that NZHPT provides conservation advice free of charge to the owners of Heritage listings and the property may be eligible for funding through the National Heritage Preservation Incentive Fund administered by HNZPT.¹¹⁶

Consideration

215. After weighing all the evidence and the advice of the report writer, and after a site visit, we considered that the rules would enable the church to be relocated nearer to its frontage boundary, given the heritage values it retains and the recommendation by the parish. While very small, the building's heritage attributes would attract visitors if provided with heritage signage and positioning. The Trustees were primarily wanting flexibility to move the building within the site and HNZPT had no issue with that.

Decision

216. The Omaka Presbyterian Church remains listed on Schedule 2, Appendix 13. The correct building needs to be identified on maps 53 and 158, as described above. The Trustees' submission is rejected but in doing so note that on the basis the PMEP will allow relocation on the same site.

¹¹³ Presbyterian Church Property Trustees (1043.1), Reverend Brendan O'Hagan, paragraphs 3-14.

¹¹⁴ Wairau Presbyterian Parish, Simon Gaines Submissions, paragraph 12.

¹¹⁵ HNZPT, Sylvia Allan Evidence, paragraph 7.14 – 7.15

¹¹⁶ HNZPT, James Jacobs Evidence, paragraphs 5.4 – 5.5

New sites proposed for inclusion – Appendix 13

Sounds Soldiers Memorial, Torea Saddle

217. KCSRA¹¹⁷ seeks that the memorial be included in Appendix 13 to be awarded Heritage Resource Status. Further detail is provided by excerpts from the published book 'The Sounds Soldiers Memorial – Stories of the Fallen'.
218. The memorial is identified as an iconic memorial built by public contribution from a small community to remember those who did not return from WWI and WWII.

Section 42A Report

219. The Section 42A Report recommends that the Sounds Soldiers Memorial at Torea be listed in Appendix 13, Schedule 2, the reasons being:
- The memorial has had value as a local landmark over a significant length of time (since 1921). It is positioned as an interesting attraction on the saddle of the modern Queen Charlotte Track.
 - The memorial reflects past skills, style, materials, methods of construction or workmanship that would make it of educational or architectural value. It is built of marble and other stone from the top of the North Island, typical of New Zealand country memorials.
 - It is a local monument built through public subscriptions from a small community collected during 1920 to remember sons, brothers, husbands and friends. It is rare in relation to particular historical themes.
 - It is important to Marlborough's tangata whenua iwi. It remembers the lives of fallen soldiers from this community both Māori and European.
 - It is not part of a heritage precinct but its setting on the Torea Saddle signifies the heritage and association of the soldiers from both Queen Charlotte and Kenepuru Sounds, and therefore is of heritage value.

Decision

220. Appendix 13, Schedule 2, and maps 76 and 126 are amended to include the Sounds Soldiers Memorial with the 'value applies to' column being 'monument'.

Wairau Hospital Nurses Home

221. The chief submitter to the retention of this 92 year old building (built in 1926) is HNZPT, seeking it to be listed in Schedule 2, Appendix 13 of the PMEP. It is a historic place on HNZPT's

¹¹⁷ KCSRA (56.1)

list (List No. 1534) 2010. HNZPT's assessment on this building is that it meets all the requirements listed in Heritage Assessment values (a)–(d) although with no known association with iwi (e) and it does not form part of a precinct or heritage area (f).

222. Built to improve the quality of accommodation and study facilities for student nurses at Wairau Hospital, its core is two-storied brick with a reputation for architectural and social significance. It is an example of an institutional building that is now increasingly less common as district health boards no longer require on-site residential wings for nurses.

223. Ms Allan for HNZPT cites international investigations (such as those by Donovan Rypkema) which demonstrate that heritage is economically beneficial to owners and as part of a community. In Ms Allan's opinion the building should be included in Schedule 2, Appendix 13. Scheduling could afford it some protection until such time as any case for demolition is made, including raising its significance and encouraging adaptive re-use.¹¹⁸

224. The NMDHB opposes both the policy and the scheduling of the building. In May 2018 in a letter to the MDC,¹¹⁹ the Board advised it would proceed with the building's demolition unless it could be sold or repurposed for other means. (This possibility was first raised by NMDHB with Council in correspondence dated 7 July 2010.) The Board has now determined there is no future use for the building and it is proposing to have the building demolished. The key elements behind the Board's decision are:

- The building has a significant amount of asbestos and is considered a seismic risk.
- Initial costing for removing the asbestos is said to be significant and the work to bring the facility back to code compliance will also be significant (the Section 42A Report also records demolition costs will be significant).
- Currently NMDHB is incurring expenditure to maintain the security perimeter fencing – funding that could better provide for health services in the community.
- The location of the Nurses' Home is within the identified expansion zone for Wairau Hospital building development.
- HNZPT have not identified where the additional land for relocation is situated. It is critical that any expansion to hospital facilities must be in a location that is configurable

¹¹⁸ HNZPT Sylvia Allan Evidence, paragraph 7.10.

¹¹⁹ NMDHB letter Eric Sinclair, General Manager Finance and Performance and Facilities, dated 7 May 2018, paragraphs a, b, c.

for hospital services to operate in an effective and efficient manner. Additional parking is also a requirement.

Section 42A Report

225. The Section 42A Report recognises the importance and social history of the building together with its rarity. It meets four of the positive criteria for the heritage assessment undertaken by the report writer. Nevertheless, the report writer recommends (albeit with regret) that the building should not be listed, primarily on the basis of amendments to the Building Act (relating to earthquakes risk assessment undertaken in 2016) and that the request to include the Nurses Home in the PMEP be declined.¹²⁰

Consideration

226. As pointed out by Mr Jacobs in support of HNZPT¹²¹, however legal precedent has addressed the relationship between the requirements of the Building Act 2016 and the RMA and concluded that the two pieces of legislation are not in conflict with one another.¹²² Aspects of the Building Act should not influence the determination as to whether a property should be scheduled in a district or related type of plan under the RMA for its heritage significance. The determination of whether a property should be scheduled as heritage in a plan should be based solely on the criteria and requirements present in policies contained in the plan.
227. The Panel visited the site of the Nurses' Home which is located behind the current hospital. There is little doubt in our mind, if asbestos is removed and earthquake strengthening took place, and costs were met, the building would be eminently suitable for some form of adaptive re-use.
228. The latest information from the Board confirms, however, that it will be going ahead with the hospital's expansion, that the remainder of the site will not be suitable for relocation, even if the building could be brought up to earthquake standard (a recent assessment undertaken in 2018 places it at 15% of IL2 which is very high risk), and the asbestos could be removed.¹²³
229. HNZPT did not identify where the building could be moved to, even if it could be saved. On the Panel's site visit it was clear the building is hemmed in by substantial development and could not be relocated. This is perhaps why the Section 42A report writer, in spite of his

¹²⁰ MDC, Section 42A Report. Report on submissions and further submissions: Submissions Concerning Nominations of Buildings, Structures or Sites for inclusion in Appendix 13 of the Marlborough Environment Plan.

¹²¹ HNZPT, James Jacobs Evidence, paragraph 6.7 citing *Lambton Quay Properties v Wellington City Council* CIV-2013-485-007919 [2014] NZHC 878.

¹²² HNZPT, Sylvia Allan Evidence, paragraph 7.10.

¹²³ NMDHB, Eric Sinclair Response to Hearing Panel's Minute, page 1.

recommendation, states: 'As an overview, and based on my experience, taking into account the above methods of assessment, I would in all probability, rate this building as of 'some' significance. A rating of (C).'

¹²⁴

Decision

230. For all these reasons the Panel has concluded that the Wairau Hospital Nurses' Home should not be scheduled in Appendix 13. The submission is declined.

Ōpaoa Wharf Building

231. The Ōpaoa Wharf Building was formally entered in the New Zealand Heritage List/Rārangi Kōrero as a Category B historic place. Due to an error, however, it was removed due to HNZPT being incorrectly advised it was demolished. Re-listing has not yet progressed due to resource consents, and it is treated as a proposed listing as the building still warrants protection under the RMA. HNZPT therefore supports the inclusion of the building in the Schedule.

Section 42A Report

232. In terms of criteria:

- The Section 42A Report identifies that the building was built in 1915 to replace an earlier one.
- It was originally the headquarters of WE Clouston and Co, shipping agents and merchants.
- It is a basic wharf shed clad in corrugated iron and the general building fabric is in poor condition with the exception of the south side lean-to which has been highly modified and the building is likely to retain little of its original features. The structure in its present location is likely to retain some original intact features. It offers little in the way of historical significance or architectural value.
- It is not unique or rare in its location.
- It has no association with iwi.
- It does not form part of a precinct or area of heritage value although there are other similar buildings in the vicinity of this one.

233. In the report writer's opinion this building has been highly modified, has little merit or heritage significance, and is therefore on the border of inclusion in Appendix 13, Schedule 2 of

¹²⁴ Section 42A Report. Report on submissions and further submissions: Submissions Concerning Nominations of Buildings, Structures or Sites for inclusion in Appendix 13 of the Marlborough Environment Plan. Matter 2: Addition of the Wairau Public hospital Nurses Home.

the PMP. If this building was fully assessed today in accordance with the principles in J S Kerr's 'Conservation Plan' for a new listing, it would be unlikely to make the list.

Decision

234. It is the Panel's decision, based on all the evidence, that the request to include the building in Appendix 13, Schedule 2 list is rejected.

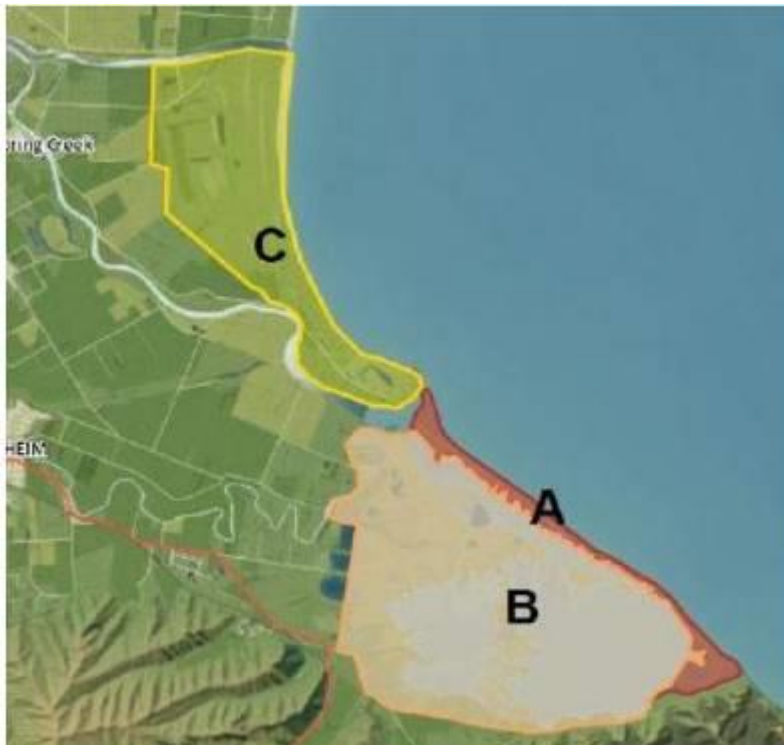
Wairau Wāhi Tapu – Schedule 3

The Wairau coastal area

235. The Wairau Bar and Lagoons form a distinctive landscape, with the area holding a special place in New Zealand's history due to its association with the earliest period of Māori occupation and for its association with a variety of iwi.
236. For early Polynesian migrants, the Wairau Bar and Lagoons was attractive for its abundant natural resources, including māhinga kai (still important for those living in the wider Wairau area) and access to argillite deposits. The name Wairau is derived from the phrase 'ngā wairau o Ruatere' (the hundred waters of Ruatere). This means the confluence of streams, rivers, wetlands, lakes and estuaries across the Marlborough region. These waters provided an important food resource, and as shown by archaeological remains, moa were also abundant in the area. Tangata whenua occupied the area until the mid-19th century when European settlers began displacing them.
237. The merits of recognising the significance of Te Pokohiwi in Schedule 3 (Area A) (Sites of Significance Appendix 13) were discussed by the Panel and some Rangitāne submitters during the hearing on Chapter 3 Marlborough's Tangata Whenua Iwi.
238. At the heritage topic hearing HNZPT supported the original submission of Rangitāne in the earlier hearing, and considers a wider area of the Wairau coast should be incorporated into the new Schedule 3 to address Rangitāne's concerns expressed in its original submission. Maps were provided which set out the (coloured) status of Areas A, B, C and the need for equal protection of the coast.¹²⁵ Detailed information relating to Area A was provided by HNZPT, Rangitāne providing supplementary evidence relating to Areas A and B. The iwi's representative undertook to consult further with landowners in Area C which adjoins vineyards. A number of those with long associations with the area asked to be heard, and written evidence was also provided.

¹²⁵ HNZPT, James Jacobs Evidence, paragraphs 4.1-4.23; Sylvia Allan Evidence, in particular Figure 1, paragraph 7.18, page 13.

239. In this respect, the areas of note are briefly addressed – see map below.



Area A: Wairau Bar (Te Pokohiwi o Kupe)

240. The extent covered by Area A is that covered by the Wairau wāhi tapu, entered on the HNZPT List in 2012 (List No 9561), and Lot 1 DP440199. It covers the gravel bar, known as Te Pokohiwi o Kupe ('Te Pokohiwi'), formed where the Wairau River meets the sea at Cloudy Bay. The southern terminus of Te Pokohiwi is the cliff-face of Te Parinui o Whiti (White Bluff). From there, Te Pokohiwi extends approximately 7 kilometres northwest, where it terminates at the Wairau River.

241. Area A also overlaps with the Moa Hunter Site, a Category B historic place entered on the List (List No 5979), which is an approximately 15 acre archaeological site at the northern end of Te Pokohiwi.

242. In addition to the Moa Hunter Site, there are other important recorded archaeological sites associated along Te Pokohiwi. The site has significant archaeological significance due to the potential for archaeological methods of investigation to provide important insight into the earliest period of human occupation in New Zealand. The registration report for the Wairau wāhi tapu states that it has cultural value in the traditional, spiritual, ritual and mythological senses. The tapu nature of the site relates to the presence of urupā, battle sites, taniwha, and the traditions, rituals and mythology associated with these sites.

243. There is also considerable potential for important unrecorded sites related to both tangata whenua and later European settlement.¹²⁶

Area B: Wairau Lagoons

244. The extent of Area B is that portion of the Wairau Lagoons covered by the Wairau Bar and Lagoons Outstanding Natural Landscape, as identified in the PMEP. The extent includes the technologically, archaeologically and culturally significant waterways and canals which run for approximately 19 kilometres. It also covers the rest of the wetland system due to its importance as a māhinga kai and potential for archaeology.

245. The Lagoons are archaeologically significant as a testament to the engineering skills and environmental knowledge of the Wairau people. Through further investigations, the canals have the potential to provide important information on their creation and the people who made them.

246. There are already a number of recorded archaeological sites within the Lagoon extent itself and it is reasonable to suspect other archaeological sites may be found in the future. It is also important to note that the wetlands of these lagoons are particularly good sources of archaeological deposits.

247. The Wairau Lagoons were and still are an important location for māhinga kai for those living in the wider Wairau area. According to Rangitāne tradition, Te Huataki, leader of the Rangitāne people who settled in the area in the 17th century, was drawn to the Wairau by the rich resources of the Lagoons. They were known as Wahanga-a-Tangaroa and Mataora (the Long Lagoon and the Big Lagoon respectively). The Lagoons provided eels, flounder, whitebait, other fish species, swans and ducks as food sources. The banks of the Wairau River also provided flax and the river a communications avenue.

248. The cultural value of the Lagoons as a māhinga kai area was increased by the development of the canals. Rangitāne chiefs Patiti and Te Wahatakoiro began their development, and Te Whatakoiro's son, Nganga, guided their completion during the 18th century. The Lagoons also have technological heritage value due to Rangitāne's design of the canals and the techniques used in their construction.¹²⁷

249. Ms Allan identifies that the heritage significance of the full Boulder Bank, Te Pokohiwi area and lagoons comprising (HNZPT scheduled A and B areas) are not at issue given the growing

¹²⁶ HNZPT, James Jacobs Evidence, paragraphs 3.6-4.15.

¹²⁷ HNZPT, James Jacobs Evidence, paragraphs 4.11-4.15.

number of locations of known archaeological areas on Te Pokohiwi and within the margins of the lagoons that are already identified.¹²⁸

Area C: North of Te Pokohiwi

250. Area C covers those areas north of the mouth of the Wairau up to the Wairau Diversion identified as having significant cultural archaeology relating to the wider Wairau Bar archaeological and cultural landscape.
251. In recent years, as described in Mr Jacobs’s evidence, two archaeological investigations have demonstrated equally significant archaeological presence of cultural activity (including early European activity) on the northern bank, including adjacent to the Chaytor and Mountford lands in Area C.¹²⁹
252. The area is historically significant due to the early European development that took place there in the mid-18th century. The treacherous Wairau Bar at the convergence of the Opawa and Wairau River mouths was charted and crossed by European ships in 1848. There the Port of Wairau subsequently provided for the burgeoning shipping trade (the port only disestablished early in 1968) with the remaining original Pilot’s House (lived in from 1868-1886) a rare reminder of New Zealand’s maritime history when pilots were stationed at many harbours.¹³⁰
253. Area C has a readily identifiable geographical northern boundary consisting of the Wairau River Diversion but the wider cultural, archaeological and historical significance of the area is known to likely extend beyond its western and northern boundaries.
254. While the full Area C has protection directly under the Heritage New Zealand Pouhere Taonga Act 2014, it is the strong opinion of HNZPT that including it in the PMEP as a Schedule 3 item is appropriate as it informs the wider community of its values and establishes what activities permitted and what are not.¹³¹ In Ms Allan’s opinion the wider area sought to be identified should become a scheduled heritage resource as it can be suitably identified and described as an archaeological landscape.¹³²
255. In her opinion, the limitations sought (beyond those in relation to Areas A and B), should be included as prohibited activities generally applying to changes in land use activities. This would

¹²⁸ HNZPT, Sylvia Allan Evidence, paragraph 7.20.

¹²⁹ Jeremy Habberfield-Short, Strata Heritage, *Archaeological Assessment: Wairau Bar, North Bank, Montford Corporation Ltd*, 2017; Jeremy Habberfield-Short, Strata Heritage, *Desktop Assessment of Archaeological Potential of the Chaytor lands, Lower Wairau, Marlborough*, 2018.

¹³⁰ HNZPT, James Jacobs Evidence, paragraph 4.2.

¹³¹ HNZPT, James Jacobs Evidence, paragraphs 4.14-4.18.

¹³² HNZPT, Sylvia Allan Evidence, paragraph 7.19.

reflect concerns about the loss to cultural landscape and prevent land disturbance beyond that otherwise permitted in Rule 2.24.3 (which relates to vineyard, subdivision and coastal development that has occurred further to the north on the Chaytor and Mountford lands).

Consideration

256. In respect of Area C, the Panel considered that a number of uncertainties remain, which it explored with witnesses, to be resolved in further consultation with landowners – on boundary identification, fencing, access. If these were also to be resolved, a new plan change/variation and scheduling would be necessary.

Decisions

257. From the extensive evidence provided by Rangitāne and HNZPT, the Panel accepts the heritage and cultural value of Wairau Bar/Te Pokohiwi should be recognised. We accept that Area A and Area B from the HNZPT evidence should be identified in Appendix 13, Maps 160, 161, 173 but exclude that area of land in Designation B75 which relates to MDC’s sewage ponds.
258. The Panel decision is to amend Appendix 13, new Schedule 3 to include the following:

Reference	HNZPT List No (if applicable)	Heritage Resource	Address	Value applies to
131	5979 9561	Moā hunter site <u>Wāhi tapu, archaeological and cultural heritage area –</u> <u>A. Wairau Bar/Te Pokohiwi</u> <u>B. Wairau Lagoons</u>	29 hectare gravel bar <u>Locality where Wairau River meets sea at Cloudy Bay</u>	<u>All cultural and archaeological and historic heritage values within A and B</u>

259. Area C requires further consultation with iwi, HNZPT and landowners before it can be scheduled, and the submission relating to that area only is declined.

Waikawa West - Addition of Lot 1 DP4615

260. Phillip James Sim of Te Ātiawa opposes the omission of Waikawa West PV Sec B1 Māori Block Site for proposed scheduling in Appendix 13.¹³³ He requests that the land be given heritage resource status. Mr Sim considers that the Lot is a local landmark containing at least two wāhi tapu sites, water spring and urupā. Its importance to Te Ātiawa iwi is that it includes some flat

¹³³ PJ Sim (1299.1).

land used to grow fruit, vegetables and berries in the past. The land use dates back to iwi members who occupied Picton but in 1850 moved to Waikawa.

261. The relevant land is property number 527547, Lot 1 DP 4615.

Section 42A Report

262. The Section 42A Report assesses the site against the criteria in proposed Policy 10.1.7 and found that:

- Inspection did not reveal any historic structures or significant physical features such as a water spring or urupā. The site did not appear on the report writer's investigation to be a registered archaeological site.
- No evidence was provided relating to authorised persons of historical note despite its strong association with Mr Sim's whanau.
- In terms of (c) in Policy 10.1.7 while flax drying is relevant and pertinent, there does not appear to be any documented association of this activity with this site.
- There was no evidence presented to indicate that the site is unique or rare.
- Mr Sim asserts the site holds strong association with his whanau. The site does not form part of a historic precinct or other registered area of historic value.¹³⁴

263. The Panel went to the locality of the site identified by Mr Sim. It is now covered in a mix of bush and trees. Subsequent to the hearing the Panel was informed that MDC had in fact purchased the site to protect its cultural and ecological associations and it is now a reserve.

Recommendation

264. The report writer's recommendation on the request to include Lot 1 DP 4615 in Appendix 13 of the PMEP is that it should be declined.

Decision

265. The submission is rejected as the reserve status makes it unnecessary.

¹³⁴ Section 42A Report. Report on submissions and further submissions: Submissions Concerning Nominations of Buildings, Structures or Sites for inclusion in Appendix 13 of the Marlborough Environment Plan. Matter 5: Addition of Lot 1 DP4615.

Schedule 3: Notable Trees

266. K and M Daly support the retention of PMEP Reference 2 hinau tree.¹³⁵ This is located at the head of West Bay, Lochmara Bay and is identified as 500 years old. It is considered an ‘iconic asset’ in the bay. In the Cadwallader Tree Consultancy report, attached to the Section 42A Report, its STEM score, of 153, meets the criteria in Policy 10.2.1(b) and (e) of the PMEP.¹³⁶
267. A Bissel and P Rattray request that four significant trees at Upper Wairau Cemetery – at the corner of State Highway 63 and Waihopai Valley – are added to the schedule.¹³⁷ One tree was planted as a marker for the Dillon family graves, another is a clear reference (landmark) point. The Cadwallader Tree Consultancy report recommends that only three trees are included as they meet the threshold for significance given the scores of 162, 153 and 186 respectively under the STEM system. (The STEM (Standard Tree Evaluation Method) score system requires an assessment of each tree or group against the criteria listed in three categories being Condition Evaluation, Amenity Evaluation and Notable Evaluation.)
268. Waihopai/Avon Residents Association requests that the 3.3 km length of *Eucalyptus saligna* (466 trees), originally planted in the 1880s by Philip Lee Dillon along the Waihopai Valley Road, is added to the schedule.¹³⁸ The report from Cadwallader Tree Consultancy (arborists) recommends that the trees are included as they together meet a high score of 231 under the STEM system. This group meets the criteria set out in Policy 10.2.1(b), (c), (e) of the PMEP.
269. KCSRA requests the 90-plus year old grove of four historic Norfolk pines in the Portage public carpark are added to the schedule.¹³⁹ They provide considerable amenity. The Cadwallader Tree Consultancy report recommends that the trees are included as they meet the score of 153 under the STEM system and meet the criteria set out in Policy 10.2.1(b) and (e).
270. Another submitter requests that the Tasmanian blue gum eucalyptus tree at Blue Gum Corner (where Rarangi Road turns into Rarangi Beach Road) is added to the schedule.¹⁴⁰ The report from Cadwallader Tree Consultancy recommends that the tree is included as it meets the criteria set out in Policy 10.2.1(b) as a local landmark. While it has sustained damage at its base, it shows a wound-wood response and is healthy. It meets the STEM score of 129 points.

¹³⁵ K and M Daly (432.4).

¹³⁶ The STEM criteria by which the significance of trees is identified relates to the Standard Tree Evaluation Method criteria (condition, amenity, notable evaluations).

¹³⁷ A Bissel and P Rattray (516.1).

¹³⁸ Waihopai/Avon Residents Association (517.1).

¹³⁹ KCSRA (869.48).

¹⁴⁰ Rarangi Residents Association (1089.33).

Section 42A Report

271. The report writer observes that the trees which are the subject of the submissions of Waihopai/Avon Residents Association and A Bissel and P Rattray are located on private land and the landowners have been offered an opportunity to comment on their inclusion. At the time of writing this report no response had been received. The other trees are located on Council managed land and there is no opposition to their inclusion.
272. On the basis of the Cadwallader Tree Consultancy report the report writer recommends the trees referred to above are all included in Schedule 3.

Consideration

273. The Panel sought responses through MDC of the landowners affected in respect of the line of trees on Waihopai Valley Road. Marisco Vineyard Holdings Limited, one of the affected landowners responded that the trees were already the subject of a QEII Covenant but also expressed concern at the impact of the PMEP rules in relation to ongoing maintenance of the trees, particularly having regard to the need to comply with the Electricity (Hazards from Trees) Regulations 2003. The Panel accepted that it was appropriate to allow for the maintenance of trees in a safe condition, and in a manner that enables compliance with statutory obligations, that the relevant rules should be amended to recognise those needs. The Panel considered a wording suggested by the landowner¹⁴¹ to cover the situation and was generally satisfied with that suggestion except that the suggested standard was not acceptable. The suggested standard went beyond what was required to comply with the regulations and left areas of uncertainty.
274. No response was received from the other landowner but that does not affect the ability of the PMEP to provide recognition and protection of trees of significance.
275. In respect of the Upper Wairau Valley Cemetery trees, the Panel requested Council staff to communicate with the Trust which controls the cemetery as the submission seeking protection of the trees was made by private individuals. The Trust raised some issues as to potential restrictions on the ability to develop further plots or ash internment but the Panel came to the conclusion that the issues raised by the Trust did not outweigh the significance of protection of the trees.
276. On the recommendation of the Cadwallader Tree Consultancy (arborists) report (Appendix 3 to the Section 42A Report) and its findings under the STEM endorsed in the Section 42A Report, we find as follows:

¹⁴¹ Letter from Hardy-Jones Clark, dated 12 December 2018

- The three trees at Upper Wairau Cemetery be included in Schedule 4 Notable Trees, Appendix 13, Map 158.
- The 3.3 km length of 466 *Manna gum (Eucalyptus viminalis)* along Waihopai Road (planted in the 1880s by Philip Dillon) is included in Schedule 4 Notable Trees, Appendix 13, Map 169. It is protected by a QEII 'Life of Trees' covenant.
- The Hinau (*Elaeocarpus dentatus*) tree at West Bay - Lochmara Bay, is deserving of recognition as a landmark feature and it has a STEM score of 153 so should be included in Schedule 4 Notable Trees, Appendix 13, Map 126.
- The Tasmanian blue gum, at Rarangi is recognised as being a local landmark feature so should be included in Schedule 4 Notable Trees, Appendix 13, Maps 82 and 150.

Decision

- Include the four Norfolk pines in the Portage carpark for their significance in Schedule 4, Appendix 13, Map 76, 126.
- Include the Tasmanian blue gum tree at Blue Gum Corner for its significance at Rarangi in Schedule 4 Notable Trees, Appendix 13, Map 82, 150.
- Retain the Hinau (MEP reference 2) for its significance in West Bay, Lochmara Bay in Schedule 4 Notable Trees, Appendix 13, Map 126.
- Include the line of Manna gum trees along Waihopai Valley Road as identified in the Cadwallader Report.
- Include a new rule as follows:

2.28.5: Trimming, pruning and other works to ensure that a Notable Tree complies with the Electricity (Hazard from Trees) Regulations 2003.
- Include the three trees identified in the Cadwallader Report at the Upper Wairau Cemetery.

Appendix 13 – Clause 16, First Schedule amendments

277. In the course of consideration of the Appendix 13 submissions and evidence a number of matters requiring amendment in the PMEP were noted by the Panel which can be addressed pursuant to cl 16 of the First Schedule. They are as follows:
278. In considering Appendix 13, the Panel noted there were no values listed under the 'values applies to' column for either reference 49 or 50. This is an omission that can be amended using powers under Clause 16 of the First Schedule.
279. In the new Schedule 3 to Appendix 13, the fourth column should have a title of location rather than address as many sites and places of significance to Marlborough's tangata whenua iwi will be unlikely to have a street address.

Decision

280. In order to rectify this minor omission, "Urupa" will be added as the value for Schedule 2 reference 49 and 50.
281. The fourth column of the new Schedule 3, Appendix 13 will refer to 'Location' rather than 'Address'.

A&P Show Grounds – Grandstand

282. As part of a suite of heritage resources at the A&P Show Grounds, the Grandstand is listed as a Category II [sic] heritage resource. See Site #126 on Volume 3, Appendix 13, Schedule 2 and Map 20 of Volume 4. The Marlborough District Council applied for and was granted a resource consent to demolish the grandstand (U180517). The decision was made on 8 April 2020. The physical demolition occurred very recently. For this reason, it is appropriate to remove the Site #126 from Appendix 13 and Map 20. This change is made as a Clause 16 change.

Woodbourne Farm heritage listing issue

283. In the course of deliberations it came to the Panel's attention that Woodbourne Farm on New Renwick Road Fairhall is mapped at Map 158 Volume 4 in a manner which includes only the homestead of the farm as being a Category A heritage resource, whereas in Schedule 1 to Appendix Thirteen in Volume 3 the whole farm is included.

284. The relevant portion of Map 158 shows as below:



285. The relevant wording from Schedule 1 Appendix 13 is:

11	1539	Woodbourne Homestead and farm	720 New Renwick Rd, Blenheim	Whole property including buildings and structures
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286. Unfortunately the Panel had no submission before it which would have provided scope to correct this inconsistency. It did consider the possible use of clause 16 First Schedule RMA to either amend the Map or the Appendix description to remove the inconsistency. The map amendment seemed the most likely candidate as the Heritage New Zealand listing of this property as a Category I site also refers to the homestead and the historic farm.

287. However, the problem for the PMEP is an inconsistency between a word description and a map.

288. The general approach of courts in most types of cases, particularly building cases, where ambiguity exists between a description in a document and a map or plan, is that it is the drawing, plan or map which prevails over a wording description – on the basis that it is the most definitive thing to the eye, and most definitive to understand.
289. And in an RMA sense, as here, if the landowner had checked Map 158 to see how the property was mapped, he/she would have seen only the homestead mapped.
290. For the Panel to now change Map 158 without the landowner having opportunity to submit against that extension – which would be huge in physical extent, and also in effect terms as to what can be done on the farm – is well beyond the intent of clause 16. That clause states:
- (2) A local authority may make an amendment, without using the process in this schedule, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.*
291. The Panel does not consider a change to a map to extend the boundaries so far as to include the whole farm property can be described as ‘minor’, and the effect of doing it would also not be of ‘minor effect’.
292. The lesser option in terms of practical effects and extent would be to actually remove the wording reference in the Schedule to the ‘farm’, but that would be inconsistent with the wording in the Heritage NZ listing, and could only be done if a submission sought that deletion.
293. There being no such submission the only thing the Panel can do is to draw the inconsistency to the Council’s attention. However, the Panel suggests to Council that the whole issue of the heritage status of this property should re-assessed in conjunction with the landowner and Heritage NZ, with a view to a Plan Change being made after that has occurred to remove the inconsistency as to the farm’s inclusion one way or the other.
294. That course will not prejudice heritage aspects which may exist on the farm while the RMA reassessment process occurs, because of the fact that the Heritage NZ listing includes the farm. That fact provides the level of protection needed for heritage resources under the provisions of the Heritage New Zealand Pouhere Taonga Act 2014. The RMA process provides the appropriate information process at a localised RMA plan level.