IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2023] NZEnvC 239

IN THE MATTER	of the Resource Management Act 1991
AND	appeals under clause 14 of the First Schedule of the Act
BETWEEN	NELSON-MARLBOROUGH FISH AND GAME COUNCIL
	(ENV-2020-CHC-35)
	… (continued on separate page)
	Appellants
AND	MARLBOROUGH DISTRICT COUNCIL
	Respondent

Environment Judge J J M Hassan – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 2 November 2023

CONSENT ORDER

A: Under s279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

(1) the appeals are allowed. The Marlborough District Council is directed to amend the proposed Marlborough Environment Plan by making

the changes set out in Appendix 2 attached to and forming part of this order;

(2) the appeal points on the provisions set out in Appendix 1, Table 2 are withdrawn; and

(3) the balance of the appeals remain extant.

B: Under s285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns appeals on the Water Quality topic of the proposed Marlborough Environment Plan.

[2] The court has now read and considered the consent memorandum of the parties dated 11 July 2023.

Other relevant matters

[3] Seven parties appealed provisions in the Water Quality Topic. Thirty-one parties gave notice of an intention to become a party under s274 of the Resource Management Act 1991 ('the RMA' or 'the Act'). The parties are set out in Appendix 1, Table 1.

[4] The majority of parties attended mediation of this topic. Te Rūnanga o Ngāti Kuia Trust, Ngāti Apa ki te Rā Tō Trust and Top of the South Wood Council were excused from attending mediation and agreed to abide by the outcome of the mediation.

[5] Ngāti Koata Trust and Te Rūnanga a Rangitāne o Wairau are both recorded as having an interest in this topic. They did not participate in mediation and have

not signed the consent memorandum. Yachting New Zealand is recorded as having an interest in this topic but have not signed the consent memorandum. Yachting New Zealand did however sign the mediation agreement. The court has been advised that the Council initially circulated draft consent documents to the parties on 30 May 2023, and then finalised versions on 13 and 14 June 2023. Follow up emails were then sent to parties that had not signed. The Council did not hear back.

[6] In accordance with the direction made by Minute dated 23 August 2023, if a party fails to participate in mediation or communicate with other parties and the court concerning their interests in it, the court will treat the relevant interest as abandoned or able to be struck out without further notice. To avoid delay I am satisfied that all relevant parties with an interest that extends to the matters resolved by this order have signed the memorandum setting out the relief sought.

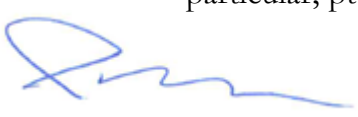
[7] There are no issues of scope or jurisdiction.

Orders

[8] The court makes this order under s279(1) RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that:

(a) all relevant parties to the proceedings have executed the memorandum requesting this order; and

(b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the relevant requirements and objectives of the RMA including, in particular, pt 2.



J J M Hassan
Environment Judge

List of Appellants

ENV-2020-CHC-046	Te Rūnanga o Kaikoura & Te Rūnanga o Ngai Tahu
ENV-2020-CHC-050	Manawa Energy Ltd (formerly Trustpower Limited)
ENV-2020-CHC-058	Federated Farmers of New Zealand
ENV-2020-CHC-067	Environmental Defence Society Incorporated
ENV-2020-CHC-071	Horticulture New Zealand

Appendix 1

Table 1: Parties

ENV	Party
	Appellants
ENV-2020-CHC-67	Environmental Defence Society Incorporated
ENV-2020-CHC-58	Federated Farmers of New Zealand
ENV-2020-CHC-71	Horticulture New Zealand
ENV-2020-CHC-50	Manawa Energy Limited
ENV-2020-CHC-35	Nelson-Marlborough Fish and Game Council
ENV-2020-CHC-46	Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu
ENV-2020-CHC-70	Te Rūnanga o Ngāti Kuia Trust
Section 274 parties	
AJ King Family Trust & SA King Family Trust	
Apex Marine Farm Ltd	
Aroma (N.Z.) Limited and Aroma Aquaculture Limited	
Clearwater Mussels Limited and Talley's Group Limited	
Delegat Limited	
Environmental Defence Society Incorporated	
Federated Farmers of New Zealand	
Goulding Trustees Limited and Shellfish Marine Farms Limited	
Horticulture New Zealand	
Just Mussels Limited, Tawhitinui Greenshell Limited and Waimana Marine Limited	
KPF Investments Limited and United Fisheries Limited	

Manawa Energy Limited
Marine Farming Association Incorporated and Aquaculture New Zealand
Minister of Conservation
Minister of Defence
Nelson-Marlborough Fish and Game Council
Ngāti Apa ki te Rā Tō Trust
Ngāti Koata Trust
OneFortyOne New Zealand Limited
Port Marlborough New Zealand Limited
Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu
Te Rūnanga o Ngāti Kuia Trust
Te Rūnanga a Rangitāne o Wairau
The New Zealand King Salmon Co. Limited
Top of the South Wood Council
Transpower New Zealand Limited
Ravensdown Limited
Royal Forest and Bird Protection Society of New Zealand Incorporated
Waka Kotahi NZ Transport Agency
Wine Marlborough Limited
Yachting New Zealand Incorporated

Table 2: Withdrawn appeal points

Appellants	Provision
Environmental Defence Society Incorporated	Issue 15C, Objective 15.1X, Policy 15.1.8, Policy 15.1.10, Policy 15.1.11(a) and Rule 2.X.X.
Federated Farmers of New Zealand	Objective 15.1b, Objective 15.1c, Policy 15.1.1 and Policy 15.1.28
Horticulture New Zealand	New Policy 15.1.1(e) and Method 15.M.1.
Nelson-Marlborough Fish and Game Council	Policy 15.1.2, Method 15.M.1, Method 15.M.2, Method 15.M.3, Method 15.M.4, and new Method 15.M.X. Policy 15.1.4, Policy 15.1.5, Policy 15.1.6, Policy 15.1.7, new Policy 15.X.X, and Method 15.M.25.
Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu	Policy 15.1.1(c).
Te Rūnanga o Ngāti Kuia Trust	"Restricted Areas for Discharges from Ships" overlay.

Volume 1:

Chapter 15 - Resource Quality

1. Amend the Introduction to Chapter 15, as follows:

~~Introduction~~Water Quality

We are fortunate in Marlborough to generally enjoy good water quality[1] in our coastal waters, rivers, lakes, wetlands and aquifers. Monitoring has shown that the quality of water in these waterbodies is sufficient to support a wide range of ~~natural and human use~~freshwater values. These include healthy freshwater and marine ecosystems, comprising native fish, plants, algae and invertebrates, trout and salmon; stock and domestic water supplies; commercial uses of water in industry, agriculture, viticulture, marine farming and commercial fishing; and recreational uses such as swimming, shellfish gathering and fishing, scenic and tourism purposes. Water is of considerable cultural and spiritual importance to Marlborough's tangata whenua iwi.

The contribution that these uses and values make to the community's social and economic wellbeing and to public health means that maintaining the quality of water in Marlborough's coastal waters, rivers, lakes, wetlands and aquifers is essential. Any reduction in water quality is therefore a significant issue in Marlborough.

Water quality can be adversely affected by discharges of contaminants resulting from human activities on land or water. Contaminants are those things that have the ability to change the physical, chemical or biological condition of the water. There are two types of contaminant discharge that can affect water quality: "point source" discharges (those that enter water at a definable point, often through a pipe or drain) and "non-point source" discharges (those that enter water from a diffuse source, such as land run-off or infiltration through soils).

The generally good state of water quality in Marlborough reflects the low number of point source discharges into waterbodies and coastal waters, good land management practices and lack of intensive land uses that can impact on water quality (e.g. dairying). It should also be acknowledged that over time, resource users have also taken action to reduce the impact of discharges on water quality. However, there is always the potential that point source and/or non-point source discharges will occur and adversely affect the life supporting capacity and community use of Marlborough's rivers, lakes, wetlands, aquifers and coastal waters.

Unfortunately, water quality in some rivers has been degraded as a result of point source and non-point source discharges, impacting upon the uses and values that were once supported by the rivers and coastal waters.

The management of water quality has a strong regulatory focus. This is because the Resource Management Act 1991 (RMA) stipulates that the discharge of contaminants into water, or into or onto land in circumstances where it may enter water, is prohibited unless allowed by resource consent or a rule in a regional plan or a regulation.

In addition, the National Policy Statement for Freshwater Management 2014 (NPSFM) sets out objectives and policies that direct the steps that must be taken to manage water in a sustainable manner. In particular, there is a requirement to set objectives for water resources and subsequently

[1] Water quality refers to the physical, chemical and biological characteristics of water that affect its ability to sustain natural and human use values

to set water quantity and quality limits to achieve those objectives. The NPSFM sets as an objective that the overall state of water quality within any region must be maintained or improved.

A key component of the NPSFM is the National Objectives Framework (NOF). The NOF is designed to assist the process of establishing appropriate freshwater quality objectives in a nationally consistent manner. It is based on the identification of values supported by waterbodies and the setting of objectives to protect those values. The NOF contains two compulsory national values: ecosystem health and human health for recreation. Attributes, or measurable physical, chemical and biological characteristics are identified with respect to these values.

The PMEP was prepared under the NPSFM 2014 and the corresponding 2017 amendment. The PMEP does not give full effect to the NPSFM 2020 and has not followed the processes set out in that NPSFM. A separate work programme is currently being implemented to give effect to the NPSFM 2020. This process will result in proposed changes to the water quality provisions of the PMEP. These changes will be proposed by way of plan variation or plan change (depending on the status of the Plan). The plan variation or plan change will be publicly notified by December 2024.

In the interim, resource consent applications must include an assessment against the NPSFM 2020 and decision makers must have regard to the NPSFM 2020.

2. Amend Issue 15B, as follows:

Issue 15B – Water quality in some of Marlborough's rivers has already been degraded, to the extent that their ability to support aquatic ecosystems and/or contact recreation (primary and secondary) has been compromised.

Monitoring of water quality as part of the Council's State of the Environment monitoring programme has established that water quality has become degraded in some rivers, relative to the ~~natural and human use~~ freshwater values that these rivers support or have supported in the past. Of particular note are changes in nutrient (nitrate and phosphorus), sediment and bacteria levels. Increasing levels of these contaminants is indicative of the impact of point source and non-point source discharge to rivers. These discharges have reduced the ability of the rivers to safely support primary contact recreation (i.e. swimming), secondary contact recreation and aquatic ecosystems. This is a significant concern given the contribution that water-based recreation makes to community wellbeing and the intrinsic values of aquatic ecosystems.

Water quality degradation is measured relative to the attribute values provided by the National Objectives Framework included in the NPSFM and~~/or~~ the Council's water quality index. The water quality index, based on the Canadian Water Quality Index, summarises monthly measurements of nine chemical and physical parameters to produce an aggregate score for the state of water quality in Marlborough's rivers. The score allows the overall state of water quality to be categorised as excellent, good, fair, marginal and poor, relative to the natural or desirable level. The Canadian Water Quality Index uses NPSFM attribute state thresholds and also uses additional parameters, including temperature and pH.

The rivers determined to be degraded (poor or marginal in the index) or at risk of degradation (close to marginal in the index) on the basis of the Council's 2014/15 State of the Environment Report are identified in Tables 15.1 and 15.2 below.

Table 15.1: Waterbodies identified through monitoring as being degraded.*

~~Rivers~~Water bodies
Are Are Creek

Doctors Creek
Duncan (Linkwater) Stream
Flaxbourne River
Mill Creek
Murphys Creek
Omaka River
Ōpaoa River
Ronga River
Taylor River
Tuamarina River (including Para Swamp)
Wairau Diversion

Table 15.2: Waterbodies identified through monitoring as being at risk of degradation.*

~~Rivers~~Water bodies
Cullens Creek
Kaituna River
Kenepuru River
Lower Pelorus River (downstream of the Rai River)
Lower Wairau River from SH1 bridge to the sea
Mill Stream
Opouri River
Rai River
Spring Creek
Waitohi River

*The tables identify water bodies in the interim pending full implementation of the NPSFM 2020. Other water bodies may be added to Tables 15.1 and 15.2 as a result of that implementation.

3. Change the heading before Objective 15.1a, as follows:

~~Natural and human use~~ Freshwater values

4. Amend Objective 15.1a, as follows:

[RPS, R, C]

Objective 15.1a – Maintain and, where necessary, enhance water quality in Marlborough's rivers, lakes, wetlands, aquifers and coastal waters, so that:

(a) the mauri of wai is protected;

(b) water quality at beaches and in rivers is suitable for contact recreation (primary and secondary);

(c) people can use the coast, rivers, lakes and wetlands for food gathering, cultural, commercial and other purposes;

(d) groundwater quality is suitable for drinking;

(e) the quality of surface water utilised for community drinking water supply remains suitable for drinking after existing treatment; and

(f) coastal waters, rivers, ~~and~~ lakes and wetlands support healthy ecosystems.

Marlborough's coastal waters, rivers, lakes, wetlands and aquifers contain a diverse range of freshwater~~natural and human use~~ values and are used extensively by the community. The freshwater values are identified in Appendix 5. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. However, in relation to cultural values of Marlborough's tangata whenua iwi, Appendix 5 is an interim record and not all cultural values have been recorded. The existing water quality in the majority of our waterbodies is sufficient to support these values, but it is important that no degradation of water quality is allowed to occur. In addition to the national values addressed through Objectives 15.1b to 15.1e, the uses and values identified in (a) to (f) of the Objective 15.1a are the most susceptible to water quality degradation and are therefore appropriate water quality outcomes. Providing for these uses and values will, by default, also provide for other uses and values.

Where water quality is no longer sufficient to sustain the values in (a) to (f), the objective identifies that water quality should be enhanced with the ultimate aim of restoring the uses and values that were once supported by these waterbodies. Positive trends have already been shown since the MRPS became operative, with a reduction in the number of point source discharges to water and remaining point source discharges operating with an improved level of treatment. The anticipated environmental results indicate that any enhancement should occur during the life of the MEP.

It is acknowledged that there are 'natural' sources of water contamination and that little can be done to mitigate the subsequent adverse effects of this contamination. However, it is important to ensure that our activities do not worsen this situation.

This objective ensures that the Council's responsibilities are fulfilled in terms of maintaining and enhancing the quality of the environment and safeguarding the life-supporting capacity of water.

5. Amend Objective 15.1b, as follows:

[RPS, R]

Objective 15.1b – Maintain or enhance freshwater water quality ~~in each Freshwater Management Unit~~ so that the annual median nitrate concentration is ≤1 milligram nitrate-nitrogen per litre and the annual 95th percentile concentration is ≤1.5 milligrams nitrate-nitrogen per litre, as measured by the Council's State of the Environment monitoring programme.

The NPSFM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. Under the NPSFM for rivers, nitrate concentrations are determined to be an attribute of ecosystem health. The majority of Marlborough's rivers that are monitored have an attribute state of "A" for nitrate and the community has a strong desire to maintain or enhance Marlborough's existing water quality. This is also the aim of Objective A2 of the NPSFM. For this reason, and having considered the matters set out in (f) of Policy CA2 of the NPSFM, the objective is to maintain an attribute state of A for nitrate ~~in each FMU~~. Where water quality ~~in the FMU~~ does not currently meet an attribute state of A, the objective is to enhance water quality to meet this state. The numeric attribute states for A are specified in Objective 15.1b. The freshwater units relevant to this objective are Water Resource Units detailed

in Schedule 1 of Appendix 5.~~The FMUs relevant to this objective are in Freshwater Management Unit - Map 5.~~

The process set in Policy CA2 of the NPSFW has been used to formulate this objective.

6. Amend Objective 15.1c, as follows:

[RPS, R]

Objective 15.1c – Maintain freshwater water quality ~~in each Freshwater Management Unit~~ so that the annual median ammonia concentration is ≤0.03 milligrams ammoniacal nitrogen per litre and the annual maximum concentration is ≤0.05 milligrams ammoniacal nitrogen per litre, as measured by the Council's State of the Environment monitoring programme.

The NPSFM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. Ammonia concentrations are determined to be an attribute of ecosystem health under the NPSFM for rivers. All of Marlborough's rivers that are monitored have an attribute state of "A" for ammonia. The community has a strong desire to maintain or enhance Marlborough's existing water quality and Objective A2 of the NPSFM requires this to occur. For this reason, and having considered the matters set out in (f) of Policy CA2 of the NPSFM, the objective is to maintain an attribute state of A for ammonia ~~in each FMU~~. The numeric attribute states for A are specified in Objective 15.1c. The freshwater units relevant to this objective are Water Resource Units detailed in Schedule 1 of Appendix 5.~~The FMUs relevant to this objective are in Freshwater Management Unit - Map 5.~~

The process set in Policy CA2 of the NPSFM has been used to formulate this objective.

This objective is interim pending full NPSFM 2020 implementation.

7. Amend Objective 15.1d, as follows:

[RPS, R]

Objective 15.1d – Maintain or enhance freshwater water quality ~~in each Freshwater Management Unit~~ so that the annual median *E. coli* level is ≤260 per 100 ml, as measured by the Council's State of the Environment monitoring programme.

The NPSFM identifies human heath for recreation as a national value of freshwater and secondary contact recreation as a compulsory national value of freshwater. Secondary contact recreation is activity that involves occasional immersion and some ingestion of water, such as boating or wading. The NPSFM has determined that *Escheria coli* (*E. coli*) bacteria are to be an attribute of the suitability of the water for contact recreation. The majority of Marlborough's rivers that are monitored have an attribute state of "A" for secondary contact recreation. The community has a strong desire to maintain or enhance Marlborough's existing water quality and Objective A2 of the NPSFM requires this to occur. For this reason, and having considered the matters set out in (f) of Policy CA2 of the NPSFM, the aim is to maintain an attribute state of A for secondary contact recreation ~~in each FMU~~. Where water quality ~~in the FMU~~ does not currently meet an attribute state of A, the aim is to enhance water quality to meet this state. The numeric attribute states for A are specified in Objective 15.1d. The freshwater units relevant to this objective are Water Resource Units detailed in Schedule 1 of Appendix 5. ~~The FMUs relevant to this objective are in Freshwater Management Unit - Map 5.~~

The process set in Policy CA2 of the NPSFM has been used to formulate this objective.

This objective is interim pending full NPSFM 2020 implementation.

8. Amend the explanation to Objective 15.1e, as follows:

[RPS, R]

Objective 15.1e – Maintain or enhance freshwater water quality in waterbodies valued for primary contact recreation so that the 95th percentile *E. coli* level is <540 per 100 ml, as measured by the Council's State of the Environment monitoring programme.

The NPSFM identifies human heath for recreation as a national value of freshwater. *E. coli* bacteria are determined to be an attribute of the suitability of the water for contact recreation under the NPSFM. Some of Marlborough's rivers, or specific sites in those rivers, are valued by the community for swimming. (These values of Marlborough's rivers are identified in Appendix 5 of the MEP.) The majority of these rivers/sites have an attribute state of "B" for primary contact recreation. The community has a strong desire to maintain or enhance Marlborough's existing water quality and Objective A2 of the NPSFM requires this to occur. For this reason, and having considered the matters set out in (f) of Policy CA2 of the NPSFM, the aim is to maintain an attribute state of B for these rivers. Where water quality in the river does not currently meet an attribute state of B and it is reasonable to expect swimming to occur in the river, the aim is to enhance water quality to meet this state. The numeric attribute states for B are specified in Objective 15.1e.

The process set in Policy CA2 of the NPSFM has been used to formulate this objective.

This objective is interim pending full NPSFM 2020 implementation.

9. Amend Policy 15.1.1, as follows:

[RPS, R, C]

Policy 15.1.1 – As a minimum, the quality of freshwater and coastal waters will be managed so that they are suitable for the following purposes:

(a) Coastal waters: protection of marine ecosystems; contact recreation (primary and secondary) and food gathering/marine farming~~;~~ where identified as having these values; and for cultural and aesthetic purposes;

(b) Rivers and lakes: protection of aquatic ecosystems; contact recreation (primary and secondary)~~;~~ where identified as having these values; community water supply (where water is already taken for this purpose); and for cultural and aesthetic purposes;

(c) Groundwater: drinking water supply and processing of food for human consumption; and

(d) ~~Significant~~ Natural wetlands: protection of ~~significant~~ wetland ecosystems and the potential for food gathering.

And in all cases further decline in water quality is prevented so that the health and wellbeing of waterbodies and freshwater ecosystems is maintained.

This policy establishes a minimum expectation of water quality in Marlborough's rivers, lakes, wetlands, aquifers and coastal waters. The policy will be primarily implemented through the application of water quality classifications, against which the impact of point source discharges on water quality can be assessed in the preparation of permitted activity rules and the consideration of resource consent applications. Natural wetlands has the same meaning as "natural inland wetlands" in the NPSFM 2020, except that it also includes natural wetlands in the coastal marine area. This policy assists to give effect to Policy A1, CA2 and D1 of the NPSFM and Policy 8 of the New Zealand Coastal Policy Statement 2010 (NZCPS).

10. Amend the explanation to Policy 15.1.2, as follows:

[RPS, R, C]

Policy 15.1.2 – Apply water quality classifications (and water quality standards) to all surface water, groundwater and coastal water resources, which reflect:

(a) the management purposes specified in Policy 15.1.1; and

(b) other uses and values, including the values of Marlborough's tangata whenua iwi, supported by the waterbody or coastal waters; or

(c) where water quality has already been degraded, the uses and values that are to be restored.

Water quality classifications will be applied through the MEP to all water and coastal waters. The classifications will, as a minimum, reflect the management purposes set out in Policy 15.1.1. However, particular waterbodies and coastal waters may support other freshwater ~~natural and human use~~ values and it is appropriate for these values to be reflected in any classification. This means that many waterbodies and coastal waters will have multiple classifications. For those waterbodies or coastal water experiencing degraded water quality, the classifications will reflect the freshwater ~~natural and human use~~ values that are to be restored.

Schedule 1 of Appendix 5 provides a list of Water Resource Units which cover the entire Marlborough region. The Water Resource Units are also detailed in the Water Resource Units Map in Volume 4. For each Water Resource Unit, specific values have been attributed, and water quality classifications have been applied, that reflect the purposes in Policy 15.1.1.

Water quality standards ~~will~~ apply to each classification. ~~See Appendix 5 for waterbody and coastal water specific values, classifications and water quality standards.~~

The classifications and corresponding standards listed in Schedule 2 of Appendix 5 ~~will be~~ are described in a manner consistent with the Third Schedule of the RMA, although the standards may exceed those in the Third Schedule. Classifications may include NS (natural state), AE (aquatic ecosystem), F (fisheries), FS (fish spawning), CR (contact recreation), SG (shellfish gathering), A (aesthetic), WS (water supply), I (irrigation), IA (industrial abstraction) and C (cultural).

Not all freshwater values and water quality classifications associated with Water Resource Units within Marlborough have been identified, particularly cultural values. The values and classifications listed in Appendix 5 are an interim list pending full NPS FM 2020 implementation.

This policy assists to give effect to Policy A1 and D1 of the NPSFM.

11. Delete Policy 15.1.3, as follows:

~~[RPS, R]~~

~~**Policy 15.1.3 – To investigate the capacity of fresh waterbodies to receive contaminants from all sources, having regard to the management purposes established by Policy 15.1.1 in order to establish cumulative contaminant limits by 2024.**~~

~~Policy A1 of the NPSFM requires the Council to set water quality limits for all waterbodies. "Limit" is defined in the NPSFM as "*…the maximum amount of resource use available, which allows a freshwater objective to be met*" and includes cumulative limits for contaminants. Although the provisions of the MEP establish water quality standards that are to be complied with in the event of the point source discharge of contaminants, these are not cumulative limits.~~

~~The establishment of cumulative contaminant limits is a complex task. It requires a good understanding of the relationship between land use and water quality. That relationship is influenced by the nature of the contaminants produced by different land uses, the way in which those contaminants pass through the environment and the susceptibility of natural and human use values supported by waterbodies to total contaminant loads.~~

~~At the time of notification of the MEP, the Council did not hold the resource use and environmental data required to set the cumulative contaminant limits. For this reason, the Council adopted a programme of progressive implementation that was publicly notified on 8 November 2012. That programme sets a date of 2024 as a target for implementing cumulative contaminant limits.~~

~~This policy establishes a commitment to commence collecting and analysing resource use and environmental data required to establish cumulative contaminant limits. The collection and analysis will include identifying the significance of taonga to Marlborough's tangata whenua iwi and use of water by landowners and the remainder of the community. The use of limits could constrain the land uses that could occur in a catchment (existing and potential) or at least the way in which those land uses are managed. For these reasons, care needs to be exercised in establishing cumulative contaminant limits in respect of water quality. It is also important that the limits reflect the management purposes established by Policy 15.1.1, otherwise Objectives 15.1a to 15.1e will not be achieved. The cumulative limits will be added to the MEP by plan change or upon review.~~

~~This policy assists to give effect to Policy A1 of the NPSFM and the Council's Programme of Staged Implementation adopted under the NPSFM.~~

12. Delete Method 15.M.3, as follows:

~~[RPS, R]~~

~~**15.M.3 Investigations**~~

~~*To undertake catchment-specific research to establish the capacity of fresh waterbodies to assimilate total contaminant loads from within each catchment. The objectives and management purpose established for the waterbody and the uses and values supported by the waterbody will both assist to determine the sensitivity of the waterbody to increases in contaminant loads. Given their association with rural land uses and Marlborough's history of primary production, research into nutrients is a priority. It may also be necessary to prioritise heavy metals in urban catchments, given the prevalence of such metals in urban stormwater, as well as sediment loads in rivers flowing into sensitive receiving environments, such as the enclosed coastal waters of the Marlborough Sounds.*~~

13. Amend Policy 15.1.7, as follows:

[RPS, R]

Policy 15.1.7 – Take action to enhance water quality in the ~~rivers~~ water bodies identified in Tables 15.1 and 15.2 so that water quality is suitable for the purposes specified in Policy 15.1.1 within ten years of the Marlborough Environment Plan becoming operative.

The ~~rivers~~ water bodies with water quality known not to meet the management purposes established by Policy 15.1.1 are identified in Table 15.1. Point source and non-point source discharges have degraded water quality to the extent that it is no longer sufficient to support freshwater ~~natural and human use~~ values. Another group of water bodies~~rivers~~, identified in Table 15.2, has fair water quality, but there is a risk that it may become insufficient to meet the management purposes established by Policy 15.1.1 if the water quality is further degraded. Water quality in these water bodies~~rivers~~ can be enhanced, although it could take a considerable period of time before a significant improvement is achieved.

A catchment-specific plan for enhancing water quality will be developed for each river catchment included in Tables 15.1 and 15.2. The methods to be used to enhance water quality will be determined following an assessment of the cause and effect of degraded water quality and will be clearly identified within the plan. The methods contained in this chapter may be appropriate to use. Where this is the case, priority for the implementation of the methods will be given to those rivers identified in Tables 15.1 and 15.2.

The quality of water in some water bodies~~rivers~~ and coastal waters is unknown as they have not been monitored. If the results of future monitoring establish that there are other waterbodies with degraded water quality, then these can be added to Table 15.1 through a change to the MEP.

This policy gives effect to Policy A2 of the NPSFM.

14. Amend Policy 15.1.9, as follows:

[R, C]

Policy 15.1.9 – Enable point source discharge of contaminants or water to water where the discharge will not result:

(a) in the degradation of ecosystem health in combination with all other discharges;

(~~a~~b) in any of the following adverse effects beyond the zone of reasonable mixing:

(i) the production of conspicuous oil or grease films, scums, foams or floatable or suspended materials;

(ii) any conspicuous change in the colour or significant decrease in the clarity of the receiving waters;

(iii) the rendering of freshwater unsuitable for consumption by farm animals;

(iv) any significant adverse effect on the growth, reproduction or movement of aquatic life; or

(b) in the flooding of or damage to another person's property.

…

15. Amend Policy 15.1.10, as follows:

[RPS, R, C]

Policy 15.1.10 – Require any applicant applying for a discharge permit that proposes the discharge of contaminants to water to consider all potential land and water receiving environments and adopt the best practicable option, having regard to:

(a) the nature of the contaminants;

(b) the relative sensitivity of the receiving environments;

(c) the ~~financial implications and~~ effects on the environment of each option when compared with the other options; ~~and~~

(d) the financial implications of each option when compared with the other options; and

(e) the current state of technical knowledge and the likelihood that each option can be successfully applied.

16. Amend Policy 15.1.11, as follows:

[RPS, R, C]

Policy 15.1.11 – When considering any discharge permit application for the discharge of contaminants to water, regard will be had to:

(a) the potential adverse effects of the discharge on spiritual and cultural values of Marlborough's tangata whenua iwi;

(b) the extent to which contaminants present in the discharge have been removed or reduced through treatment; ~~and~~

(c) whether the discharge is of a temporary or short term nature and/or whether the discharge is associated with necessary maintenance or replacement work for any regionally significant infrastructure; and

(d) The potential for adverse effects on ecosystem health including in combination with other consented discharges.

…

17. Amend Policy 15.1.12, as follows:

[RPS, R, C]

Policy 15.1.12 – After considering Policies 15.1.10 and 15.1.11, approve discharge permit applications to discharge contaminants into water where:

(a) the discharge complies with the water quality classification standards and the objectives in 15.1(b)-(e) set for the waterbody, after reasonable mixing; or

(b) in the case of non-compliance with the water quality classification standards set for the waterbody or the objectives in 15.1(b)-(e):

(i) the applicant is a consent holder for an existing discharge and can demonstrate a reduction in the concentration of contaminants and a commitment to a staged approach for achieving the water quality classification standards and the objectives in 15.1(b)-(e) within a period of no longer than five years from the date the consent is granted; and

(ii) the degree of non-compliance will not give rise to significant adverse effects.

If discharge to water is the best practicable option, compliance with the specified water quality classification standards will ensure that the quality of water is sufficient to sustain the natural and human values currently supported by the waterbody or coastal waters. Any point source discharge requiring a discharge permit will generally only be approved if the applicant has demonstrated that the effects of the discharge will comply with the specified water quality classification standards beyond a zone of reasonable mixing. There are limited circumstances where non-compliance with water quality classification standards will result in the approval of the discharge permit application; these circumstances are identified in (b) of the policy.

In some circumstances, it will be necessary to take into account other influences on water quality upstream of the discharge point in applying this policy. For example, the receiving waters may already be in a state in which means the water quality standards are not being met. This is reflected in the ability to take into account the degree of additional adverse effect created by the discharge in (b)(ii).

There is an expectation that the effects of the discharge on the quality of the receiving waters will be monitored to establish compliance with the water quality classifications standards over the life of the discharge permit. Compliance will be established by sampling/measuring relevant water quality parameters beyond the zone of reasonable mixing. In rivers, the parameters should also be measured upstream of the zone of reasonable mixing to establish background water quality.

Compliance with water quality standards in the context of wetlands applies to natural wetlands only. Natural wetlands has the same meaning as “natural inland wetlands” in the NPSFM 2020, except that it also includes natural wetlands in the coastal marine area

This policy assists to give effect to Policy A3 of the NPSFM and Policy 23 of the NZCPS. Policies 15.1.14 and 15.1.15 provide guidance on determining the size of an appropriate mixing zone.

18. Amend Policy 15.1.16, as follows:

[R, C]

Policy 15.1.16 – The duration of any new discharge permit will be either:

(a) Up to a maximum of 15 years for discharges into waterbodies or coastal waters where the discharge will comply with water quality classification standards for the waterbody or coastal waters; or

(b) up to ten years for discharges into rivers identified in Policies 15.1.4, 15.1.5, 15.1.6 or 15.1.7 (where the water quality is to be enhanced) and the discharge will comply with water quality classification standards for the waterbody or coastal waters; or

(c) no more than five years where the existing discharge will not comply with water quality classification standards for the waterbody or coastal waters;

No discharge permit will be granted subsequent to the one granted under (c), if the discharge still does not meet the water quality classification standards for the waterbody or coastal waters.

In the case of regionally significant infrastructure, (a), (b) and (c) do not apply and a duration will take into account:

(d) the nature of the discharge;

(e) the potential effects of the discharge on water quality;

(f) the current state of water quality in the receiving waters and the risk of water quality degradation from the discharge;

(g) the contribution of contaminants to any waterbody or coastal waters that do not meet water quality classification standards for that contaminant; and

(h) the long term nature of the infrastructure.

~~**With the exception of regionally significant infrastructure, no discharge permit will be granted subsequent to the one granted under (c), if the discharge still does not meet the water quality classification standards for the waterbody or coastal waters.**~~

To provide greater certainty to resource users, the policy identifies the appropriate duration for discharge permit applications if they are to be granted. The duration varies depending on compliance with water quality classification standards and the state of water quality in the waterbody or coastal waters. Longer durations are warranted where compliance with water quality classification standards will be achieved and there is currently no water quality issue, while short term consents will occur where water quality classification standards cannot be met. In the latter case, Policy 15.1.12 identifies that consent holders only have five years to achieve compliance with water quality classification standards, hence the requirement in (c) above. The policy also recognises that many types of regionally significant infrastructure operate for many decades and can have contaminant profiles that do not contribute to the cause of a water body not meeting water quality classification standards.

This policy gives effect to Policy A3 of the NPSFM.

19. Amend Policy 15.1.18, as follows:

[R, C]

Policy 15.1.18 – Avoid the discharge of untreated human sewage ~~from land based activities~~ to waterbodies or from land based activities to coastal waters.

The discharge of untreated human sewage to water has the potential for significant adverse effects on the life supporting capacity of freshwater and marine ecosystems as well as the recreational and commercial use of the waters. Such discharges are also culturally offensive to Marlborough's tangata whenua iwi and the wider community. For these reasons, it is appropriate to avoid any discharge of untreated human sewage to waterbodies or from land based activities to coastal waters through prohibited activity rules.

This policy gives effect to Policy 23 of the NZCPS.

Note that the discharge of human sewage from ships into coastal waters is regulated by the Resource Management (Marine Pollution) Regulations 1998. Policy 15.1.20 provides further direction on the way in which Council is implementing the regulations to manage the risk to water quality posed by discharges of human sewage from ships.

20. Amend Policy 15.1.20, as follows:

[C]

Policy 15.1.20 – Except for Grade A or Grade B treated sewage, control the discharge of human sewage from ships ~~in the Marlborough Sounds~~.

~~The Marlborough Sounds are a popular destination for local and visiting boaties. Larger ships, especially those with live-on facilities, have holding tanks for human sewage.~~ The discharge of human sewage from ships is regulated by the Resource Management (Marine Pollution) Regulations 1998. The Council has utilised the ability in the regulations to increase the setbacks that apply to such discharges from MHWS and marine farms for non Grade A and Grade B treated sewage. This is particularly important in the Marlborough Sounds, a popular destination for local and visiting boaties. ~~However, t~~The combination of the enclosed nature of the Marlborough Sounds and the prevalence of marine farming throughout this area mean that there are limited opportunities to discharge sewage to coastal waters in a manner that complies with the Regulations. In addition, in many locations there is limited movement of water that would provide for mixing of the contaminants with the receiving waters.

The control implemented via this policy is an interim measure as part of a progressive response to eliminate the discharge of untreated human sewage into the coastal waters of the Marlborough Sounds. Other measures are likely to be proposed for discharges from ships to give effect to Policy 23(2)(a) of the NZCPS. The policy will inevitably be made more restrictive in time as collection facilities are developed throughout the Marlborough Sounds. The interim measure also provides recreational boat owners time to prepare for more stringent controls.

The continuation of discharging human sewage into such valued and significant enclosed waters has been questioned by the community. The Regulations do allow for more stringent rules than those prescribed in the Regulations to be included in a regional coastal plan in certain circumstances. The policy signals that the Council is to utilise this ability to manage the adverse effects potentially created by the discharge of untreated human sewage from ships.

This policy assists to give effect to Policy 23 of the NZCPS.

21. Amend Policy 15.1.23, as follows:

[R]

Policy 15.1.23 – Avoid the discharge of animal effluent from farming to fresh and coastal waterbodies to the extent necessary to meet the management purposes established by Policy 15.1.1 by preventing the direct discharge of collected animal effluent to water.

~~a~~Animal effluent from farming can be discharged directly into water bodies~~rivers and wetlands~~ through the point source discharge of collected animal effluent (e.g. farm dairy effluent)~~ to waterbodies~~. At the date of notification of the MEP, there were no authorised discharges of animal effluent into water. This policy seeks to avoid the significant risk posed to ~~surface~~ water quality by discharges of collected animal effluent. This will be implemented through a prohibited activity rule.

22. Amend the third method of 15.M.6, as follows:

[R, C]

15.M.6 Regional rules

…

Permitted activity rules will enable the discharge of contaminants or water to water where the discharge will not give rise to adverse effects on freshwater ~~natural and human use~~ values supported by the waterbody or coastal waters.

...

23. Amend Policy 15.1.25, as follows:

[RPS, R, C]

Policy 15.1.25 – Recognise that~~, in many situations,~~ non-regulatory methods ~~will~~ may be an effective method of managing the adverse effects of non-point source discharges.

Non-point source discharges are diffuse in nature as they do not enter the environment at a discrete point. Most non-point source discharges are the result of run-off where rain water picks up contaminants such as sediment, nutrients, toxicants and pathogens from land. It is also possible for some of these contaminants to leach into underlying groundwater through infiltration. As such, any non-point source discharge (effectively contaminated run-off) is a consequence of particular land use activities.

The diffuse nature of non-point source discharges means that they are inherently more difficult to manage as there is no particular point such as an outfall to which treatment or management can be applied. For this reason, the main approach to addressing the adverse effects of non-point source discharges over the life of the MEP will be to work with landowners to improve land use practices to minimise the potential for run-off.

~~In time and as signalled in Policy 15.1.3, the Council will establish cumulative contaminant limits to assist with the effective management of the adverse effects of all discharges to freshwater within a catchment. These limits will be established as regional rules and will establish a maximum amount of resource use within a catchment for water quality outcomes.~~

24. Amend Policy 15.1.34, as follows:

[R]

Policy 15.1.34 – Approve land use consent applications for new dairy farms where the proposed farming would have no more than minor adverse effects on ground or surface water quality or on significant wetlands. A land use consent application must identify the risks of new dairy farming and provide measures to address those risks, including as a minimum:

(a) measures (including fences, bridges or culverts) to prevent stock entering onto or passing across the bed of any river or lake, significant wetland, or any drain or the Drainage Channel Network;

(b) provision of an appropriate, non-grazed buffer along the margins of any river, lake, significant wetland, drain or the Drainage Channel Network, to intercept the run-off of contaminants from grazed pasture, with reference to the values of fresh waterbodies as identified in Appendix 5;

(c) provision for storage of dairy effluent, with all storage ponds sufficiently sized to enable deferral of application to land until soil conditions are such that surface run-off and/or drainage do not occur;

(d) demonstration of appropriate separation distances between effluent storage ponds and any surface waterbodies to ensure contamination of water does not occur (including during flood events); and

(e) an industry approved nutrient management plan that includes nutrient inputs from dairy effluent, animal discharges, fertiliser and any other nutrient input and has regard to relevant Plan standards.

This policy defines the test for securing land use consent for a new dairy farm operation. It also describes the measures that the applicant can utilise to manage the adverse effects of the operation on ground or surface water quality, and significant wetlands. The measures set out in (a) to (e) are the minimum expected to be utilised by the applicant. The way in which these measures are to be implemented should be set out in the application.

A resource consent cannot be granted under Regulation 24 of the Resource Management (Freshwater) Regulations 2020 unless there is no increase in contaminant loads or concentrations in freshwater or other receiving environments (including the coastal marine area), compared with the concentrations as at the close of 2 September 2020.

25. Amend the explanation to Policy 15.1.35, as follows:

[R]

Policy 15.1.35 - Avoid stock disturbance of river beds, lakes and Significant Wetlands and the associated discharge of animal effluent to those water bodies to the extent necessary to meet the management purposes established by Policy 15.1.1 by avoiding the access of intensively farmed stock to rivers, lakes and Significant Wetlands.

Stock tend to access rivers, lakes and wetlands when grazing riparian margins. In such circumstances, it is likely that there will be a discharge of animal effluent to water and the river or lake bed or wetland will be physically disturbed. The resulting increase in bacteria and turbidity in the receiving waters have the potential to reduce water quality.

The adverse effects of casual access on water quality are dependent on a number of factors, including the type and density of stock. Intensively farmed stock create a significant risk of adverse effects on water quality. For this reason, the policy seeks to avoid stock access where stock is farmed intensively.

Due to the practical difficulties in some situations of fencing stock out of waterbodies, particularly where stock are grazed extensively, the Council has also adopted an approach of using permitted activity rules for managing the adverse effects of stock access not covered by this policy. The permitted activity rules will require compliance with any relevant water quality standard set for the affected waterbody.

The Resource Management (Stock Exclusion) Regulations 2020 require dairy cattle, pigs, dairy support cattle, intensively grazed beef cattle and deer, and beef cattle and deer on low slopes to be excluded from lakes and wide rivers, and also require stock to be excluded from any natural wetland that supports a population of threatened species or any natural wetland 0.05 hectares in area or greater.

26. Amend the eighth effectiveness indicator for 15.AER.1, as follows:

Anticipated environmental result	Monitoring effectiveness
15.AER.1 Water quality in Marlborough's rivers, lakes and wetlands is suitable to support and sustain swimming, fishing, aquatic ecosystems and customary harvesting.	… Water quality which was degraded is enhanced so that the waterbodies can support freshwater ~~natural and human use~~ values. Increase in the number of catchment enhancement plans developed and implemented for waterbodies deemed degraded. …

Volume 3:

Appendix 5

27. Add additional text to the introductory material in Appendix 5, as follows:

Water Resource Unit Values & Water Quality Classification Standards

Abbreviations

A	aesthetic	AE	aquatic ecosystem	C	cultural
CR	contact recreation	F	fisheries	FS	fish spawning
NS	natural state	SG	shellfish gathering	WS	water supply

Not all freshwater values and water quality classifications associated with Water Resource Units within Marlborough have been identified, particularly cultural values. The values and classifications listed in Appendix 5 are an interim list pending full NPS FM 2020 implementation.