IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2023] NZEnvC 230

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)
	… (set out in Appendix 1)
	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: 31 October 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; and

(2) the appeal points on the provisions set out in Table 3 of Appendix 1 are withdrawn.

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

REASONS

Introduction

[1] This proceeding concerns appeals on Topic 2: Water Allocation and Use, and Topic 16: Transportation, subtopics 16.3 and 16.6 against the proposed Marlborough Environment Plan.

[2] The court has now read and considered the consent memorandum of the parties dated 19 July 2023.

Other relevant matters

[3] Twelve parties appealed provisions relating to the water allocation and use topic. Eighteen parties gave notice of an intention to become a party under s274 of the Resource Management Act 1991 ('RMA'). On 21 March 2023, Villa Maria Estate Limited withdrew its appeal. The 11 remaining appellants and 18 s274 parties are set out in Table 1 of Appendix 1.

[4] Two parties appealed provisions relating to subtopics 16.3 and 16.6 of Topic 16: Transportation. Six parties gave notice of an intention to become a party under s274 of the RMA. The parties are set out in Table 2 of Appendix 1.

[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. In accordance with the direction made by Minute dated 23 August 2023, if a party fails to participate in mediation or communicates 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.

[6] 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

Appendix 1

Table 1: Parties to Topic 2: Water Allocation and Use

ENV	Party
	Appellants
ENV-2020-CHC-75	Delegat Limited
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-76	Minister of Defence
ENV-2020-CHC-35	Nelson-Marlborough Fish and Game Council
ENV-2020-CHC-64	Royal Forest and Bird Protection Society of New Zealand Incorporated
ENV-2020-CHC-66	Springs Water User Group Incorporated
ENV-2020-CHC-46	Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu
ENV-2020-CHC-56	Waka Kotahi New Zealand Limited
Section 274 parties	
Awatere Water Users Group Incorporated	
Dalton Downs Limited	
Delegat Limited	
Duntroon Holdings 2014 Limited	
Environmental Defence Society Incorporated	
Federated Farmers of New Zealand	
Horticulture New Zealand	

Manawa Energy Limited
Minister of Conservation
Nelson-Marlborough Fish and Game Council
Ngāti Apa ki te Rā Tō Trust
Ngāti Koata Trust
Port Marlborough New Zealand Limited
Te Rūnanga o Ngāti Kuia Trust
Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu
Te Rūnanga a Rangitāne o Wairau
Royal Forest and Bird Protection Society of New Zealand Incorporated
Wine Marlborough Limited

Table 2: Parties to Topic 16: Transportation, subtopic 16.3 and 16.6

ENV	**Party**
	Appellants
ENV-2020-CHC-57	KiwiRail Holdings Limited
ENV-2020-CHC-56	Waka Kotahi New Zealand Limited
Section 274 parties	
KiwiRail Holdings Limited	
Manawa Energy Limited	
Minister of Conservation	
Minister of Defence	
Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu	
Waka Kotahi New Zealand Limited	

Table 3: Withdrawn appeal points

Appellants	Provision
Environmental Defence Society Incorporated	Policy 5.2.8, Policy 5.2.16, Policy 5.3.4, Policy 5.3.5, Policy 5.1.3, Policy 5.5.5, Objective 5.6
Federated Farmers of New Zealand	Rule 2.2.1, Standard 2.3.16.1
Horticulture New Zealand	Policy 5.2.4, Policy 5.2.11, Policy 5.2.13, Appendix 5, Policy 5.3.1, Policy 5.5.5
Minister of Defence	Rule 2.7.3
Nelson-Marlborough Fish and Game Council	Policy 5.2.13, Policy 5.2.25, Policy 5.2.22(a), Policy 5.2.26, Method 5.M.1, Method 5.M.2, Rule 2.6.4, Rule 2.6.5, Policy 5.2.3, Policy 5.3.9, Policy 5.3.10, Issue 5E, Objective 5.5, Policy 5.5.2, Policy 5.5.3, Policy 5.5.4, Objective 5.7
Royal Forest and Bird Protection Society of New Zealand Incorporated	Policy 5.2.14
Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu	Policy 5.2.4, Method 5.M.1

Volume 1

5. Allocation of Freshwater Resources

1. Amend the Introduction to Chapter 5, as follows:

Introduction

Much of the Council's resource management work involves managing resources that are in the public domain. Marlborough has a considerable coastline, large areas of land in Crown ownership and extensive freshwater resources. Water is a taonga and is essential to all as a life-source. Water is also essential for mahinga kai, and holds particular significance to Marlborough's tangata whenua iwi. The Council frequently allocates or authorises the use of these natural resources for private benefit, especially resources in the coastal marine area, rivers, riverbeds and aquifers.

Sustainable management of the taking, using, damming or diverting of water means recognising and upholding Te Mana o te Wai, phasing out existing over-allocation and avoiding any further over-allocation, ~~and~~ safeguarding the life-supporting capacity of freshwater resources, and ensuring there are sufficient flows and/or levels to retain the ~~natural and human use~~freshwater values supported by waterbodies.

Allocating rights to use public resources has become a fundamental part of the overall fabric of Marlborough's social and economic wellbeing. For example, our viticulture industry, which contributes significantly to Marlborough's economy, relies on access to freshwater resources from rivers and aquifers. Other examples include the many moorings, boatsheds and jetties throughout the Sounds, all of which contribute to the social wellbeing of residents and holidaymakers. The allocation of freshwater is also integral to the health and safety of people and communities, for example, the allocation of water for human consumption.

The importance of the community and visitors being able to continue to use and develop these natural resources within the constraints of the Resource Management Act 1991 (RMA) cannot be underestimated. Any significant reduction or change in approach to resource use could have significant implications for Marlborough's economic, cultural and social wellbeing. However, a healthy economy which relies on the environment, must be premised on a healthy environment. The two main areas where allocation of public resources is considered to be an issue are rights to occupy space in the coastal marine area, and rights to take and use freshwater.

Freshwater management units are the management areas used for the allocation of Marlborough's freshwater resource through provisions of Chapter 5. These are named and spatially identified in Freshwater Management Maps 1 and 2, with environmental flows and levels set for these units in Appendix 6 which apply to water takes and diversions. Three groundwater aquifers within the Wairau and Rarangi Shallow freshwater management units have been further divided and are identified in Freshwater Management Maps 3 and 4 and Appendix 6, Schedules 2 and 5.

The environmental flows and levels set in accordance with the provisions of Chapter 5 are based on hydrological records collated up to the notification of the PMEP and are informed by freshwater values. Sufficient flows and/or levels are an integral part of ensuring that freshwater values of Marlborough's waterbodies are safeguarded. Water Resource Units are a catchment-based approach to freshwater values based on areas with similar environmental characteristics. The Water Resource Units and the associated values are listed in Appendix 5 and the Water Resource Units are spatially identified in the Water Resource Units Map in Volume 4. The Water Resource Units are often smaller or sub-catchments of the freshwater management units. Not all freshwater values 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.

If data collected over the life of the Plan demonstrates that catchment/aquifer yield has changed as a result of climate change, then there may be the need to review the environmental flows and levels contained in Appendix 6. Reviews of the environmental flows and levels contained in Appendix 6 may also be required to ensure that indigenous vegetation and/or the habitat of indigenous species is protected. Any change to the operative environmental flows and levels deemed necessary as a result of the review will be made via plan changes.

Provisions are included in Chapter 19 that address the potential implications of climate change in the context of water allocation and use.

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 allocation and use provisions of the PMEP. These changes may need to address information, issues, or changes in statutory requirements and/or national direction, such as the effects of climate change, that have emerged or become better understood over the life of this Plan. Any 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 the explanation to Issue 5A, as follows:

Issue 5A – The diversity of water resources makes it difficult to achieve uniformity in water allocation and water use management regimes across the District.

Marlborough's geology, topography, land cover and climate vary dramatically across the district. This results in a diverse array of rivers and aquifers, evident in the size of catchments/aquifers, the length of rivers through the catchment, the spatial extent and depth of aquifers, the flow of water through the river/aquifer, water availability (and variation in water availability) and the ~~natural and human use~~freshwater values that the waterbodies support. Although the objectives of the Marlborough Environment Plan (MEP) establish consistent objectives across all water resources, the means to achieve these outcomes will necessarily differ due to the above variation. It is therefore difficult to achieve consistent approaches to managing water resources across Marlborough. The lack of consistency can create frustration, especially for water users who access water from more than one water resource.

3. Amend the explanation to Objective 5.1, as follows:

[RPS]

Objective 5.1 – Water allocation and water use management regimes reflect hydrological and environmental conditions within each water resource.

If the management applied to the taking and use of water does not reflect the hydrological and environmental conditions that exist in each water resource, one of two things may happen: water users could be unnecessarily restricted in taking or using that water, or taking and use of water may result in adverse effects on the ~~natural and human use~~freshwater values supported by the freshwater resource. These are inappropriate outcomes given the value of water in terms of its contribution to social, economic and cultural wellbeing and its life-supporting capacity. It is therefore essential that the management applied to any water resource is fit for purpose in order to achieve sustainable outcomes. In some circumstances, the presence of physical structures influences the hydrological and/or environmental conditions.

4. Amend the explanation to Policy 5.1.1, as follows:

[RPS, R]

Policy 5.1.1 – Define and use freshwater management units to apply appropriate management to the taking and use of water within each water resource.

To ensure that the management applied to the taking and use of water is appropriate to the hydrological and environmental circumstances, it is necessary to distinguish between the different catchments and aquifers that exist in Marlborough. The Council will achieve this by identifying Freshwater Management Units (FMUs), which will be based on the hydrological characteristics of each water resource and the ~~natural and human use~~freshwater values supported by the waterbody/bodies. These freshwater management units are identified in the MEP. ~~This approach also gives effect to the National Objectives Framework of the National Policy Statement Freshwater Management 2014 (NPSFM), which requires the Council to identify freshwater management units.~~

5. Amend the explanation to Policy 5.1.2, as follows:

[RPS, R]

Policy 5.1.2 – Recognise that the taking of water and the use of water are two distinct activities and where resource consent application is to be granted, separate water permits for each activity will be granted.

Most water taken from rivers or aquifers involves a subsequent consumptive use of that water, predominantly for irrigation of crops. Section 14 of the RMA treats the subsequent use of water as a distinct activity to the taking of the water in the first place. This is because the two activities have different potential adverse effects on the surrounding environment. The adverse effects of taking water tend to relate to the direct or indirect effects on the ~~natural and human use~~freshwater values supported by the waterbody from which the water has been taken and on other people taking water from that resource. The efficiency of water use is a relevant consideration for the use of water, especially as the resource from which the water has been taken approaches full allocation. In these circumstances, inefficient water use could potentially deprive other users from accessing the water resource. This policy records that the Council will require applications for water permits to authorise the taking of water and the use of water separately. The distinct adverse effects of each of the activities will be managed through the separate applications.

6. Add a new policy, Policy 5.1.3, to the Chapter, as follows:

[R]

Policy 5.1.3 - Notwithstanding Policy 5.1.2, ensure integrated management of water allocation and water use by generally requiring:

(a) Except for applications to take Class C water, applications to take water to be accompanied by any required applications to use water;

(b) Applications to use water to be accompanied by any required applications to take water;

(c) Applications to change the use of water to be accompanied by an application to surrender any surplus water or to take additional water; and

(d) The applications are determined together.

As set out in Policy 5.1.2, the effects of taking water and the effects of using water are different and are managed through separate resource consents. However, there is also a strong relationship between the taking of water and the use of water. Water abstracted from a river, lake, aquifer or wetland is typically taken for a subsequent use or uses. The uses are identified in Policy 5.7.1. If applications to take and use water were processed separately it creates the risk that:

(a) Allocations would be made that did not reflect actual demand given the intended use of water; or

(b) Changes in demand, such as changes in irrigated crop type, could occur without adjusting the allocation to reflect the new demand. Rotational cropping including pasture would not be a long term change in irrigated crop type, whereas changes in cropping from pasture or arable cropping to viticulture would be considered a long term change.

Considering and determining applications to take and use water collectively recognises the connection between taking and using water and ensures integrated management of water resources. This is important in a context where water resources are fully allocated, as outlined in Issue 5D.

Water taken for storage does not require a use consent as the abstracted water is stored for use at a future date. The subsequent use must be authorised by a resource consent to use water.

7. Amend the explanation to Issue 5B, as follows:

Issue 5B – The taking, damming or diversion of water can compromise the life-supporting capacity of rivers, lakes, aquifers and wetlands.

Marlborough's freshwater bodies sustain a diverse range of ~~natural and human use~~freshwater values. These values include the cultural and spiritual values of Marlborough's tangata whenua iwi; opportunities for passive and active recreation; the provision of habitat for indigenous flora and fauna, trout and salmon; a contribution to Marlborough's distinctive landscape and natural character; and the provision of a source of drinking water. In summary, the water that flows in rivers or that is contained in aquifers, lakes and wetlands sustains Marlborough's community and environment.

Marlborough's freshwater bodies are also utilised as an important source of water for a range of uses, including irrigation, industrial, commercial and frost fighting. This water use relies on the taking, damming and/or diversion of water. These activities all have the potential to change the characteristics of the flow or level of water in the waterbody. The taking of water removes water from the river, aquifer, lake or wetland, reducing flow or level. The diversion of water out of a river, and associated riverbed modifications, changes the natural flow pattern and can also reduce flow or level. The damming of water retains water behind the dam structure potentially changing the character of the waterbody upstream and downstream of the dam structure.

Although ~~natural and human use~~freshwater values have some resilience to natural changes in water flow and/or level, the taking, damming and diversion of water have the potential to significantly change the flow or level characteristics of waterbodies. Such changes can adversely affect the freshwater~~natural and human use~~ values that rely on the water in the waterbody. Those effects could be as a result of one person's activity or the cumulative effect of multiple water users. The effects could be experienced in the short-term but also have the potential to become permanent, for example where there is a loss of habitat.

Any loss of freshwater~~natural and human use~~ values, either short-term or long-term, will have an impact on the community and the intrinsic values of the environment.

8. Amend Objective 5.2 and the explanation to the Objective, as follows:

[RPS, R]

Objective 5.2 – Recognise Te Mana o te Wai and safeguard the life-supporting capacity of freshwater resources by recognising the connection between water and the broader environment and retaining flows and/or levels required for the health of the waterbody as a first priority, followed by the freshwater~~natural and human use~~ values supported by waterbodies.

The freshwater~~natural and human use~~ values supported by Marlborough's freshwater bodies are important to retain given their contribution to the social, economic and cultural wellbeing of the community. In addition, the values can also have significance as a matter of national importance under Section 6 of the RMA, which must be recognised and provided for. Objectives AA1 and B1 of the NPSFM require Council to recognise and consider Te Mana o te Wai in the management of fresh water, and to safeguard the life-supporting capacity, ecosystem processes and indigenous species of freshwater resources. Objective 5.2 reflects the need to recognise Te Mana o te Wai and safeguard the life-supporting capacity of Marlborough's freshwater bodies when managing the taking, damming or diversion of water.

9. Amend the heading prior to Policies 5.2.1 to 5.2.3, as follows:

Freshwater~~Natural and human use~~ values

10. Amend Policy 5.2.1 and the explanation to the Policy, as follows:

[RPS, R]

Policy 5.2.1 – Maintain or enhance the freshwater~~natural and human use~~ values supported by freshwater bodies.

The freshwater~~natural and human use~~ values supported by freshwater bodies in Marlborough are varied, reflecting the diversity of water resources highlighted in Policy 5.1.1. The freshwater~~natural and human use~~ values supported by different waterbodies are identified in Appendix 5. Given their intrinsic value and their significance to the community, the policy seeks to retain the freshwater~~natural and human use~~ values. Objective A2 of the NPSFM 2017 specifies that the overall quality of freshwater is to be 'maintained or improved' and the alternative of 'maintain or enhance' in this policy aims to achieve that Objective. With that alternative wording high quality water bodies can be maintained, but water bodies of lesser quality can and should be enhanced if possible. The potential effects of increased flood induced risks as a result of climate change to water quality through effects such as increased sedimentation from natural or human induced sources also requires an approach that allows for management through consent conditions of enhancement of water quality.

The development of allocation frameworks contained in the provisions of this chapter has taken into account Objective 5.2 and this policy. The setting of environmental limits established through subsequent policies, are intended to retain sufficient flow and/or level to maintain, restore or enhance the freshwater~~natural and human use~~ values of specific freshwater bodies. Maintaining or enhancing freshwater~~natural and human use~~ values were also a relevant consideration in determining the circumstances under which the taking of water could occur without resource consent.

The NPSFM 2017 provides guidance as to the compulsory national values that must be included in Appendix 5 and enables various optional national values to be considered for inclusion. Any changes to be considered to those values will follow a process of community engagement utilising Method 5.M.X.

Some proposals to take, dam or divert water can involve site specific adverse effects on freshwater~~natural and human use~~ values. These effects may be irreversible and significant and therefore a precautionary approach needs to be taken in determining resource consent applications in these circumstances. This policy allows those potential adverse effects to be considered in the determination of any application for resource consent to take, dam or divert water.

11. Amend Policy 5.2.2, as follows:

[RPS, R]

Policy 5.2.2 – Consistent with ~~Recognising~~ Te Mana o Te Wai, give~~s~~ priority to the integrated and holistic well-being ~~-~~of freshwater and protect the mauri of the waterbody.

…

12. Amend Policy 5.2.3 and the explanation to the Policy, as follows:

[R]

Policy 5.2.3 – Protect the significant values of specifically identified freshwater bodies by classifying the taking, permanent damming, or diversion of water in these waterbodies as a prohibited activity. Taking, permanent damming, or diversion of water lawfully established prior to 19 July 2023 is excluded from this prohibition.

There are freshwater bodies in Marlborough that are in an unmodified state or a state close to unmodified. These water bodies retain high or very high natural character. In these circumstances,

it is considered appropriate to preserve the natural character by preventing the taking, permanent damming, or diversion of water. This is reflected in regional rules 2.6.4 and 2.6.5 that prohibit specific activities in ~~these~~ identified waterbodies that have significant values.

~~Taking, damming or diversion of water lawfully established prior to 9 June 2016 is also excluded from this prohibition.~~

13. Amend Policy 5.2.4 and the explanation to the Policy, as follows:

[R]

Policy 5.2.4 – Set specific environmental flows and/or levels for Freshwater Management Units dominated by rivers, lakes and wetlands to:

(a) protect the mauri of the waterbody;

(b) protect instream habitat and ecology;

(c) maintain or improve fish passage and fish spawning grounds;

(d) preserve the natural character of the river;

(e) maintain or enhance water quality;

(f) provide for adequate groundwater recharge where the river is physically connected to an aquifer or groundwater;

(g) maintain amenity values; and

(h) enable natural flushes in rivers to occur.

Policy B1 of the NPSFM requires the Council to set environmental flows and/or levels for all FMUs. An environmental flow or level includes an allocation limit and a minimum flow or level. This is a complex task given the diversity in the freshwater~~natural and human use~~ values supported by rivers, lakes and wetlands and the variation in the flow/level required to maintain those values. This policy sets out the matters that have been considered in the process of setting the environmental flows/levels established in ~~the MEP~~Appendix 6. These environmental flows/levels are intended to provide sufficient water to sustain the matters identified in (a) to (h), but are subject to change in order to give effect to the requirements of the NPSFM 2020.

14. Amend Policy 5.2.6, as follows:

[R]

Policy 5.2.6 – Where there is insufficient environmental data to establish the flow requirements of freshwater~~natural and human use~~ values, use a default minimum flow of 80% of the seven day mean annual low flow for rivers with a mean flow greater than 5m³/s and 90% of the seven day mean annual low flow for rivers with a mean flow less than 5m³/s.

…

15. Amend Policy 5.2.7 and the explanation to the Policy, as follows:

[R]

Policy 5.2.7 – Consider proposals to set a minimum flow for a river that varies from the default minimum flow established by Policy 5.2.6 ~~on a case-by-case basis~~, including through the resource consent process. Policies 5.2.1 to 5.2.4 and the NPSFM 2020 will be utilised to assist the determination of any such proposal.

The default minimum flow set for rivers in accordance with Policy 5.2.6 may not provide adequate protection to the freshwater~~natural and human use~~ values supported by a river or may unnecessarily constrain the taking of water from the river. This policy provides an opportunity for any person to provide the Council with specific information that may justify a higher or lower minimum flow. In these circumstances it is appropriate that Policies 5.2.1 to 5.2.4 and the NPSFM 2020 are utilised to make this judgement.

16. Amend Policy 5.2.8 and the explanation to the Policy, as follows:

[R]

Policy 5.2.8 – Have regard to the adverse effects of the proposed instantaneous rate of take from any perennially or intermittently flowing river~~, except an ephemerally flowing river,~~ if that rate of take exceeds or is likely to exceed 5% of river flow at any time.

The minimum flows set for rivers manage the cumulative effects of taking water on freshwater~~natural and human use~~ values. However, it remains possible for a take at a discrete location to have a significant adverse effect on flow immediately downstream of the point of abstraction. The risk is probably greatest in the upper part of a catchment due to lower flow that tends to occur in those reaches. This policy allows decision makers to have regard to the adverse effects of an individual take in certain circumstances irrespective of the minimum flows established in the MEP, where the proposed rate of abstraction is calculated to exceed 5% of the river flow at the point of abstraction. Flows in excess of this threshold are considered to have the potential to adversely affect freshwater~~natural and human use~~ values. The policy only applies if the river is perennially or intermittently flowing. The policy does not apply to ephemeral rivers.

[R]

17. Amend Policy 5.2.9 and the explanation to the Policy, as follows:

Policy 5.2.9 – Have regard to the importance of flow connection to maintaining freshwater~~natural and human use~~ values when considering resource consent applications to take water from intermittently flowing rivers, including:

(a) the timing and duration of that flow connection;

(b) any effects on mahinga kai;

(c~~b~~) the physical extent of any disconnection in flow; and

(d~~c~~) any adverse effects on connected aquifers.

Even though some rivers do not have surface flow at all times, there may still be circumstances where the flow connection is important in maintaining freshwater~~natural and human use~~ values. For example, flow at a critical time of year may be important to facilitate the migration of indigenous fish, trout or salmon upstream or downstream. The policy allows the importance of flow connection to be considered when determining a resource consent application to take water from an intermittently flowing water body. The matters set out in (a) to (d~~c~~) are those that are relevant to this consideration. Matters (a) and (c~~b~~) relate to changes in the temporal and spatial extent of any disconnection, while matter (d~~c~~) recognises that the intermittent flow may recharge connected aquifers. Matter (b) recognises the potential effects of flow disconnection on mahinga kai. The changes created by the taking of water in this regard must be considered in light of any adverse effect on freshwater~~natural and human use~~ values.

18. Amend Policy 5.2.10, as follows:

[R]

Policy 5.2.10 – Set specific minimum levels for Freshwater Management Units dominated by aquifers to:

(a) prevent physical damage to the structure of the aquifer;

(b) prevent headwater recession of spring flows;

(c) prevent a landward shift in the seawater/freshwater interface and the potential for saltwater contamination of the aquifer;

(d) maintain freshwater~~natural and human use~~ values of rivers and wetlands where groundwater is physically connected and contributes significantly to flow in the surface waterbody;

(e) maintain groundwater quality; and

(f) prevent long-term decline in aquifer levels that compromises the matters set out in (a) to (e).

19. Amend Policy 5.2.11, as follows:

[R]

Policy 5.2.11 - To implement a programme of investigation in order to establish ~~minimum~~ environmental flows and/or levels for the Wairau Aquifer FMU in accordance with Policy 5.2.4 and Policy 5.2.10 by 2024, including a review of the minimum levels already established for Wairau Aquifer Urban Springs FMU, Wairau Aquifer Central Springs FMU and Wairau Aquifer North Springs FMU.

…

20. Amend Policy 5.2.14 and the explanation to the Policy, as follows:

[R]

Policy 5.2.14 – Limit the total amount of water available to be taken from any freshwater management unit and avoid allocating water ~~(through the resource consent process)~~ beyond the limit set.

Policy B1 NPSFM requires the Council to set environmental flows and/or levels for all FMUs. These levels include an allocation limit, a limit on the total amount of water that can be allocated within any FMU. Policy 5.2.14 ~~gives effect to Policy B1 of the NPSFM by~~ establishes~~ing~~ allocation limits for each FMU through regional rules. For those water resources that have multiple allocation classes, an allocation limit is set for each class.

Policy B5 of the NPSFM specifies that the Council must not make decisions that will likely result in future over-allocation. This means that the Council cannot continue to allocate water once the cumulative level of allocation from a FMU reaches the allocation limit set in rules. ~~For this reason, any further allocation of water from the FMU should be avoided (unless explicitly provided for in another allocation class).~~

Environmental flows and/or levels include allocation limits and minimum flows/levels, and both are set to provide for and/or achieve the matters expressed in Policies 5.2.4 and 5.2.10.

The environmental flows and levels in Appendix 6 are being reviewed to give effect to the requirements of the NPSFM 2020 and are subject to change. Resource consent applications must include an assessment against the NPSFM 2020 and decision makers must have regard to the NPSFM 2020.

21. Amend the explanation to Policy 5.2.16, as follows:

[R]

Policy 5.2.16 – Protect flow variability of rivers by using, where identified as necessary, a system of flow sharing that splits allocation of available water between instream and out-of-stream uses.

Objective AA1 of the NPSFM requires Council to recognise and consider Te Mana o te Wai in the management of fresh water. The establishment of environmental flows for rivers affords protection to freshwater~~natural and human use~~ values by establishing the minimum flow requirements for those uses and values. In some circumstances, flow variability above the minimum flow may also be important to sustain the freshwater~~natural and human use~~ values supported by the river, including Te Mana o te Wai values identified by the community. Where this is the case, a system of flow sharing is used to proportionally allocate the water above the minimum flow to both abstractive users and freshwater~~natural and human use~~ values. In other words, a proportion of the water available within the allocation class can be abstracted, while a proportion must be left in the river. The water left in the river will ensure that the taking of water does not reduce river flow to the minimum for an extended period of time. Flow sharing will leave one unit of water for instream use for every two units abstracted within a class (referred to as 2:1 flow sharing).

The detail of the flow sharing is river specific and is reflected in the allocation limits and thresholds for taking water in each of the allocation classes.

Note:

That there is no provision for flow sharing within any Class A allocation, as flows below the minimum flow are effectively part of the flow share for Class A.

22. Amend Policy 5.2.17 and the explanation to the Policy, as follows:

[R]

Policy 5.2.17 – For ~~resource consent~~ takes that require resource consent from the Waihopai River, Awatere River and other rivers that utilise an upstream flow monitoring site, allocations for the taking of water will be reduced proportionally as flows fall in order to avoid any breach of an environmental flow. This Policy does not apply to existing non-consumptive takes related to regionally significant infrastructure.

When monitoring of river flow occurs downstream of abstraction of water from the river, the effect of abstraction on river flow can be measured. In the Waihopai FMU and Awatere FMU, the monitoring of river flow occurs predominantly upstream of abstraction due to the absence of suitable flow monitoring sites further downstream. The management flow that applies in each FMU is the flow measured at the monitoring site, corresponding to an equivalent minimum flow that gives effect to Policy 5.2.4 downstream of abstraction. (Monitoring of flow in the Waihopai and Awatere Rivers over many years has allowed the establishment of a robust relationship between flows at the flow monitoring sites and gauged flows at other locations.)

Taking into account the allocation limits, abstraction downstream of the flow monitoring site can result in the non-attainment of the minimum flow that is sought to be achieved downstream. For this reason, the policy requires a proportional reduction in the allocations made by resource consent and consequent rationing of abstraction.

The abstractions will be limited based on flows recorded at the monitoring site to achieve the minimum flow for management purposes as specified in Volume 3, Appendix 6, Schedule 3, plus any environmental flow share within the class. As flow at the monitoring site falls from the rationing point in Schedule 3, towards the final cut off point, abstractions will be rationed progressively, with available allocation expressed as a percentage of the consented rate of take as required to protect the minimum flow.

The policy will be implemented by way of a condition(s) of resource consent.

23. Amend the explanation to Policy 5.2.18, as follows:

[R]

Policy 5.2.18 – Implement water restrictions for water users serviced by municipal water supplies when the management flows/levels for the resource from which the water is taken are reached.

At times of water restriction it is important that all of the community respond to the vulnerability of water resources. The potential impacts on the freshwater~~natural and human use~~ values of waterbodies can be heightened at times of low flow and/or water levels. While restrictions are imposed through conditions of consents on non-urban water users, it is also appropriate that urban water users accessing municipal water supplies take measures to reduce water usage during times of low flows and/or levels. This policy will be implemented by the Council's Assets and Services Department as managers of the District's municipal water supplies.

24. Amend the explanation to Policy 5.2.19, as follows:

[R]

Policy 5.2.19 – Require resource consent for the diversion of water to enable the potential adverse effects of the diversion to be considered.

The diversion of water from its natural course has the potential to adversely affect the freshwaternatural and human use values supported by the waterbody and existing water users downstream of the diversion. At its worst, there may not be sufficient water downstream to sustain the values and uses. The nature, severity and significance of the potential adverse effects will be circumstantial and will depend on the nature of the waterbody and the type of diversion, as well as the freshwaternatural and human use values and other uses currently supported downstream of the proposed diversion. To ensure that the potential adverse effects can be accurately identified and assessed, diversions of water will generally require resource consent. The specific circumstances of the proposed diversion can then be considered in the determination of any application for water permit.

25. Amend Policy 5.2.20 and the explanation to the Policy, as follows:

[R]

Policy 5.2.20 – Have regard to the following matters in determining any resource consent application to divert water:

(a) any adverse effects on Marlborough's tangata whenua iwi values associated with the waterbody, including mahinga kai and adverse effects caused by the mixing of waters.

(b) the purpose of the diversion and any positive effects;

(c) the volume or proportion of flow remaining in-channel and the duration of the diversion;

(d) the effect of the diversion on environmental flows set for the waterbody;

(e) the scale and method of diversion;

(f) any adverse effects on freshwaternatural and human use values identified in the Marlborough Environment Plan in the reach of the waterbody to be diverted;

(g) any adverse effects on permitted or authorised uses of water; and

(h) any adverse effects on the natural character of the waterbody, including but not restricted to flow patterns and channel shape, form and appearance.

The matters listed in (f) to (h) are the potential adverse effects created by the diversion of water. The nature, severity and significance of the potential adverse effects are influenced by the matters listed in (a) to (e). The consideration of the matters listed in the policy will allow a determination to be made as to whether the proposed diversion of water is sustainable.

The artificial mixing of water between water bodies can have adverse effects on the cultural values of Marlborough's tangata whenua iwi associated with those waterbodies.

26. Amend Policy 5.2.21 and the explanation to the Policy, as follows:

[R]

Policy 5.2.21 – Where water is to be dammed to enable the storage of water, encourage the construction and use of "out-of-river" dams in preferenceas opposed to the construction and use of dams within the beds of perennially, or intermittently or ephemeral flowing rivers.

The damming of water to store water is a key response to temporary and seasonal shortages of water for irrigation purposes. Stored water provides a reservoir that can be accessed when other supplies are constrained or restricted. The policies and methods under Objective 5.8 focus on the positive effects of storing water.

Storage can involve the interception of run-off by damming ephemeral water bodies, the damming of intermittently or permanently flowing water bodies or the placement of abstracted water in purpose-built reservoirs on land. Dams constructed on riverbeds create the potential for a range of adverse effects (see Policies 5.2.22 and 5.2.23 for more detail) that may not be created when water is placed in reservoirs on land. For this reason, the construction of reservoirs on land is preferred to dams within the bed of rivers. However, the policy does not prohibit the construction of dams within the bed of rivers and a permitted activity pathway is provided for ephemeral rivers. Unless prohibited, this policy enables ~~:~~ applications for resource consent to~~can~~ still be made and will be considered having regard to Policies 5.2.22 and 5.2.23. However, district rules will create an incentive to utilise "out-of-river" dams for any water storage proposal.

A decision maker may also utilise this policy to consider alternatives to the use of dams within the bed of rivers. The extent to which this consideration is necessary will also rely on the significance of the potential adverse effects of the damming of water as assessed under Policies 5.2.22 and 5.2.23.

27. Amend Policy 5.2.22 and the explanation to the Policy, as follows:

[R]

Policy 5.2.22 – Ensure any new proposal to dam water within the bed of a river provides for:

(a) effective passage of fish where the migration of indigenous fish species, trout and/or salmon already occurs past the proposed dam site. ~~provided that i~~If the purpose of the dam is for the restoration and/or establishment of only native species habitat then fish passage for trout and salmon is not required;

(b) sufficient flow and flow variability downstream of the dam structure to maintain:

(i) existing indigenous fish habitats and the habitats of trout and salmon; and

(ii) indigenous braided river bird habitat;

(iii) permitted or authorised uses of water;

(iv) the plan environmental flows and limits;

(v~~ii~~) flushing flows below ~~the~~ a permanent dam; and

(vi) mauri o te wai;

(c) the natural character of any waterbody downstream of the dam structure; and have regard to the matters in (a) to (c) when considering any resource consent application to continue damming water.

Where a dam is proposed to be constructed in the bed of a river in spite of Policy 5.2.21, the policy identifies three matters to be provided for as part of the proposal. It recognises that a dam structure can act as a barrier to fish passage, modify the flow pattern downstream of the dam structure, alter the natural character and mauri of the river of the river (or other downstream waterbodies) as a result of flow modification. The nature and significance of the adverse effects created by the dam structure will vary depending on the proposed structure, and the nature of the river and the freshwater~~natural and human use~~ values it supports. This policy allows these proposal and site specific factors to be taken into account.

This policy can also be applied to applications for resource consent to continue damming water (i.e. existing dams). Given the existing dam structure, there may be limits to the extent to which the matters in (a) to (c) can be provided for. For this reason, the policy direction is to have regard to the matters, rather than provide for them. However, opportunities to remedy or mitigate the existing adverse effects may exist and can be addressed via conditions imposed on the grant of the resource consent.

28. Amend Policy 5.2.23 and the explanation to the Policy, as follows:

[R]

Policy 5.2.23 – In the determination of any resource consent application, have regard to the following effects of damming of water:

(a) the retention of sediment and gravel flows and any consequent adverse effect upstream or downstream of the dam structure, including the coastal environment;

(b) changes in river bed levels and the effects of those changes;

(c) any downstream effects of a breach in the dam wall;

(d) interception of groundwater or groundwater recharge;

(e) interception of surface water run-off;

(f) loss of indigenous biodiversity;

(g) loss of habitat of trout and salmon, insofar as any protection of that habitat is consistent with the protection of habitats of indigenous freshwater species;

(hg) the purpose of the damming and ~~the~~ any positive effects of the damming; ~~and~~

(ih) the degradation of mauri o te wai;

(j) the values of Marlborough's tangata whenua iwi associated with the water body and its catchment;

(k) any hydrological connection to other water bodies and any adverse effects as a result of changes to the catchment hydrology; and

(l) for in-river dams, any adverse effects as a result of inundation and the resulting reservoir.

In addition to the matters identified in Policy 5.2.22, there are a range of other potential adverse effects of damming water in the bed of a river or on land. These effects are identified in (a) to (~~h~~l) of this policy. Regard will be had to these effects in determining a resource consent application to dam water.

29. Amend Policy 5.2.24, as follows:

[R]

Policy 5.2.24 – Where necessary, utilise water shortage directions to manage the adverse effects of serious temporary shortages of water on freshwater~~natural and human use~~ values supported by the waterbody.

…

30. Delete Policy 5.3.1, as follows:

~~[R]~~

~~**Policy 5.3.1 – To allocate water in the following order of priority:**~~

~~**(a) Te Mana o te Wai; then**~~

~~**(b) natural and human use values; then**~~

~~**(c) aquifer recharge; then**~~

~~**(d) domestic and stock water supply; then**~~

~~**(e) municipal water supply; and then**~~

~~**(f) all other takes of water.**~~

~~This policy establishes a hierarchy of water uses. The hierarchy reflects the relative value or significance of the uses listed. The term "uses" is broad and extends beyond consumptive use to include Te Mana o te Wai, intrinsic values, ecosystem services and hydrological functions. The relative priority between the different uses listed in (a) to (f) have been used as the basis for allocating Marlborough's freshwater resources. This does not mean that consumptive use is not valuable or significant, but the application of the policy ensures that critical uses are provided for as a priority. Once those uses are provided for, water can then be made available for the consumptive uses listed in (d) to (f). The application of the policy does influence the reliability of water abstraction for consumptive use. Limits to protect the matters in (a) to (c) will be applied to consumptive water uses. However, those restrictions will be applied progressively, reflecting the relative priority of domestic and stock water supply, municipal water supply and other consumptive takes of water.~~

~~The only way any other form of prioritisation of access to water could be achieved would be by way of plan change as a result of the development of a proposal resulting from broad community engagement including Marlborough tangata whenua iwi, utilising the assistance of council facilitation. A method or model for such a community engagement process on any different prioritisation or rationing proposal is contained in Method 5.M.2.~~

~~Given the NPSFM 2017 directives to protect Te Mana o te Wai and the compulsory national values, such a community engagement process would have to be very broad and on an inclusive basis, particularly involving a water user group or groups to achieve different water access through a range of mechanisms. The process would have to address considerations such as - alternative land use; improved efficiency in water application; assessment of soil saturation & field capacity of soils; larger-scale or small-scale storage possibilities; and/or some form of rationing with a higher level cut-off for general irrigation leaving a small pocket of water allocated for agreed survival crops.~~

31. Amend the explanation to Policy 5.3.3, as follows:

[R]

Policy 5.3.3 – Confirm and, where they have not previously been set, establish allocation volumes that reflect the safe yield from any Freshwater Management Unit over and above the minimum flows and/or levels set through the implementation of Policies 5.2.4 and 5.2.10.

The NPSFM requires the Council to set limits on the allocation of water. Previous planning instruments had established allocation limits for particular rivers and aquifers to ensure the sustainability of the water resource, protect the freshwater~~natural and human use~~ values that the water resource sustains and maintain the reliability of supply for existing water users. These limits have been reviewed and, where appropriate, reconfirmed. Other water resources have not previously had allocation limits and these have now been set. Rules prevent the allocation of water beyond these limits.

For some rivers, two allocation classes are provided for, referred to as Class A and Class B. In many cases, the two classes are carried over from previous planning instruments. Class A water permits have a greater inherent reliability, due to their lower restrictions, than Class B permits. In some cases, a Class B allocation has been provided for the first time in order to provide for growth in demand (within the constraints of the water resource). These allocation classes provide for run-of-the-river irrigation and other instantaneous uses. Allocation moves sequentially through the two allocation classes.

Note that Policy 5.8.2 also provides for a Class C allocation for some water resources, specifically for storage purposes. Class C water can be applied for at any stage.

32. Amend the explanation to Policy 5.3.5, as follows:

[R]

Policy 5.3.5 – Enable the take and use of water where it will have little or no adverse effect on water resources.

The policy records a principle that users should be entitled to access water with relative ease if the provisions of the MEP determine the abstraction from the water resource to be sustainable. This policy could be applied in two circumstances. The first is through the application of permitted activity rules for the taking of water. Under Section 14 of the RMA, water use can only occur if provided for in a rule or through a resource consent. One of the key functions of the Council is therefore to enable sustainable abstraction of water via the use of permitted activity rules.

Access to water allocated through the provisions of the MEP should also be relatively straight forward. However, one of the potential effects of the taking of water is to adversely affect the reliability of existing water takes accessing the same resource, so called "interference effects." There may also be site specific effects of the taking of water on freshwater~~natural and human use~~ values. For this reason, the rules still require a water permit for takes beyond the low volume uses enabled by permitted activity rules. The resource consent process will enable the adverse effects of any proposed take on another user or on freshwater~~natural and human use~~ values to be taken into account. However, the issue of sustainable levels of abstraction have been determined through the application of Policies 5.2.4 to 5.2.17.

There may be circumstances in which it is appropriate for the Council to consider reducing the amount of water able to be taken under the permitted activity rules to assist it to manage extreme shortages of water. This would be achieved by a Water Shortage Direction issued under Section 329 of the RMA. Any such direction would be issued to address the potential for abstraction authorised by permitted activity rule to adversely affect the resource, the freshwater~~natural and human use~~ resources supported by the resource and/or the ability of people to continue taking essential water from the resource (albeit at a lower rate).

33. Amend the explanation to Policy 5.3.10, as follows:

[R]

Policy 5.3.10 – The instantaneous rate of take from a surface waterbody may exceed the instantaneous equivalent of the maximum daily allocation:

(a) by 20% at any point in time; or

(b) for 20% of the time;

but in both cases the cumulative take over 24 hours (midnight to midnight) must not exceed the daily maximum.

The infrastructure installed for irrigation from surface water resources is not necessarily set up to operate on a 24 hour basis. In some cases, the authorised allocation is applied over a shorter period (i.e. at an instantaneous rate in litres per second that exceeds the instantaneous equivalent of the maximum daily allocation). This policy provides consent holders with the flexibility to apply the allocated water effectively at this higher rate, provided that the volume of water used over the day does not exceed the daily maximum established through Policy 5.3.9. The higher instantaneous rate of take may occur either at any point over the day or for a proportion of the day. In either case, an exceedance of 20% is considered fair and reasonable in this regard. The limit of 20% also assists to manage interference effects between users and adverse effects on the freshwater~~natural and human use~~ values supported by the river. The irrigation day is set from midnight to midnight.

34. Amend Policy 5.3.14 and the explanation to the Policy, as follows:

[R]

Policy 5.3.14 – The duration of water permits to take or divert water for consumptive purposes will reflect the circumstances of the take or the diversion and the actual and potential adverse effects, but should generally:

(a) not ~~be less~~ more than 20 years when the take or diversion for consumptive purposes is from a Freshwater Management Unit:

(i) that has a water allocation limit specified in Schedule 1 of Appendix 6; and

(ii) that has a minimum flow or level specified in Schedule 3 of Appendix 6; and

(iii) that is not over-allocated; or

(b) not be more than ten years when the take or diversion of water for consumptive purposes is from an over-allocated Freshwater Management Unit as specified in Policy 5.5.1; or

(c) not be more than ten years when the take or diversion of water for consumptive purposes is from a Freshwater Management Unit that has a default environmental flow established in accordance with Policies 5.2.6 and 5.2.15; or

(d) not be less than 30 years for renewable electricity generation, municipal water supplies or RNZAF Base Woodbourne and tenants.

This policy assists decision makers to determine the appropriate duration of water permits. The circumstance in (a) reflects a desire by water users for longer water permit terms in order to provide the certainty required to make long-term investment decisions. It also recognises that there is certainty regarding the sustainability of water abstraction from a FMU when limits are set by rules in the MEP. In this circumstance, durations of 20 years or less are generally considered appropriate.

The circumstances in (b) and (c) reflect situations where there is uncertainty regarding the sustainability of abstraction, either because the resource is over-allocated or because there is a lack of knowledge to set specific environmental flows/levels. A shorter term is an effective means of managing this uncertainty as it allows the sustainability of the existing abstraction to be reassessed against the provisions of a reviewed MEP after its current ten year life.

(d) identifies circumstances where longer terms than that specified in (a) are generally appropriate and takes into account the contribution that the specified regionally significant infrastructure contributes to the social and economic wellbeing of the Marlborough community.

The policy also recognises that there may be other factors involved with a specific proposal that influence the determination of appropriate duration.

The duration of diversions for consumptive purposes has the same potential effect on the total allocation of water as the duration of takes, so the policy treats them equally.

35. Amend Policy 5.3.15 and the explanation to the Policy, as follows:

[R]

Policy 5.3.15 – Require land use consent for the planting of new plantation forestry and carbon sequestration forestry in flow sensitive areas.

Afforestation of land currently in pasture has the potential to reduce water yield in the relevant catchment with consequential effects on the surface water hydrology. Water permits have been granted through the provisions of the MEP and through previous planning documents, with reliabilities based on historical surface water hydrology. If water yield is reduced by afforestation in the long-term, it creates the potential to reduce the flow reliability that water users have come to depend upon. This could mean that water users become subject to restrictions more frequently than they have been to date.

The water resources most at risk are south of the Wairau River and specific Afforestation Flow Sensitive Sites are identified. The identified land receives low rainfall (in comparison to north of the Wairau River) and contributes run-off to smaller catchments. These factors make the water resource supplied by run-off from the land more vulnerable to changes in water yield.

The policy does not apply to existing plantation forestry or carbon sequestration forestry or the replanting of that forest following harvest, as the effects of this forestry on water yield are part of the existing environment.

36. Amend Policy 5.3.16 and the explanation to the Policy, as follows:

[R]

Policy 5.3.16 – When considering any application for land use consent required as a result of Policy 5.3.15, have regard to the effect of the proposed forestry on river flow (including combined effects with existing plantation forestry and carbon sequestration forestry established after 9 June 2016) and seek to avoid any cumulative reduction in the seven day mean annual low flow of more than 5%.

The policy provides guidance to determine land use consent applications required as a result of Policy 5.3.15. The threshold protects the reliability of supply for existing water permit holders by limiting the extent of flow modification. The effects of reductions in water yield on reliability are greatest at times of low flow and for this reason the seven day mean annual low flow is used in the policy. It is also important that any assessment of environmental effects considers the cumulative effects of afforestation within a catchment and any opportunities for adverse effects on water yield to be remedied or mitigated.

The establishment of plantation forestry and carbon sequestration forestry prior to the notification of the MEP was permitted in most situations under the provisions of the previous Wairau/Awatere Resource Management Plan. Any reduction in flow shall be measured against the seven day mean annual low flow at 9 June 2016, being the date of notification of the MEP, and any assessment of cumulative effects should only consider plantation forestry and carbon sequestration forestry established after 9 June 2016.

37. Amend the explanation to Policy 5.4.1, as follows:

[R]

Policy 5.4.1 – Unless special circumstances exist that justify a longer period the lapse period for water permits to take water shall be no more than two years.

The statutory lapse period to commence the exercise of a resource consent is five years. This is a considerable period of time to have water allocated but potentially not used. With increasing scarcity of freshwater resources, it is appropriate to have a shorter lapse period. This policy records that the appropriate lapse period is two years, as this period represents a reasonable balance between providing sufficient time for a water permit holder to arrange necessary infrastructure and avoiding a situation of other potential users being denied access to reliable water supplies through the consent holder's inaction. There may be special circumstances which may warrant an extension to this period, and it will be for consent applicants to describe those appropriately for a decision-maker as part of a consent application. For example, a longer lapse period may be justified for regionally significant infrastructure or due to the scale or complexity of the activity for which the water permit is required, or the unavailability of root stock in the context of horticulture and viticulture. The allocation status of the water resource and the extent of investment will be taken into account in terms of considering any applications to extend a lapse period under Section 125(1A) of the RMA.

38. Amend the explanation to Policy 5.4.2, as follows:

[R]

Policy 5.4.2 – The lapse period for water permits to use water shall be no more than 5 years.

A user must, as a minimum, hold a water permit to use water (a water permit to take water may not be necessary depending on the method of water distribution). ~~To improve the utilisation of scarce water resources the streamlined transfer process for use of water may enable an opportunity to use otherwise unutilised water for limited periods of time. It would therefore be inappropriate to lapse the water permit to use water on the basis that no such opportunity arose in the lapse period. For this reason, a long lapse period of no more than 5 years is signalled for water permits to use water by this policy. This will ensure that a system of enhanced transfer has the greatest opportunity to function effectively over time.~~

39. Replace Policy 5.4.4, as follows:

[R]

Policy 5.4.4 – Consider approving applications to transfer water permits to take water from one point of take to another point of take where:

(a) the respective takes are from the same Freshwater Management Unit and from the same catchment;

(b) the Freshwater Management Unit has a specific water allocation limit specified in Schedule 1 of Appendix 6;

(c) the take is not from the Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit, Omaka Aquifer Freshwater Management Unit or the Riverlands Freshwater Management Unit;

(d) the same or a lesser amount of water is being taken;

(e) the transferee's water take is reasonable for their proposed use as determined in accordance with Policy 5.7.2 and 5.7.3 for Class A or Class B water permits, or Policy 5.8.4 for Class C water permits; and

(f) the potential adverse effects of the proposed rate of take at or downstream of the point of take are no more than minor, including adverse effects on other water permit holders, after discounting the adverse effects of the exercise of the water permit at the existing location;

Except where the transfer involves a water permit from downstream of the existing Waihopai Dam or Branch Weir to upstream of those structures.

This policy seeks to enable the movement of water between users within a catchment in a freshwater management unit, so that more efficient utilisation of the available water can occur. This applies to Class A, B and C water permits.

Section 136(2)(b) of the RMA enables the site-to-site transfer of water permits to take water provided that the transfer is provided for within the plan. Policy 3B of the NPSFM 2017/3.28 of the NPSFM 2020 requires the plan to provide criteria for the approval of applications to transfer water permits. This policy provides circumstances in (a) to (f) which the transfer of water permits to take water is generally considered appropriate.

~~[R]~~

~~**Policy 5.4.4 – Enable access to water that has been allocated but is not currently being utilised by individual water permit holders through the transfer of water permits.**~~

~~This policy seeks to enable the movement of water between users within a freshwater management unit so that more efficient utilisation of the available water can occur. Through the monitoring of water use authorised by resource consent, it is evident that the actual demand for water is usually less (sometimes considerably so) than the volume of water allocated via the water permit. This is water that could be utilised by other existing users or by potential users that are unable to access water due to a state of full allocation.~~

40. Delete Policy 5.4.5, as follows:

~~[R]~~

~~**Policy 5.4.5 – When a streamlined transfer system is included in the Marlborough Environment Plan to enable the full or partial transfer of individual water allocations between the holders of water permits to take and use water, this will be provided for as a permitted activity where:**~~

- ~~**(a) the respective takes are from the same Freshwater Management Unit;**~~
- ~~**(b) the Freshwater Management Unit has a water allocation limit specified in Schedule 1 of Appendix 6;**~~
- ~~**(c) the take is not from the Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit, Omaka Aquifer Freshwater Management Unit or the Riverlands Freshwater Management Unit;**~~
- ~~**(d) metered take and use data is transferred to the Council by both the transferor and the transferee in real time using telemetry;**~~
- ~~**(e) the allocation is authorised via a water permit(s) applied for and granted after 9 June 2016;**~~
- ~~**(f) the transferee holds a water permit to take water if their abstraction point differs from the that of the transferor; and**~~
- ~~**(g) the transferee holds a water permit to use water.**~~

~~**The duration of the transfer is at the discretion of the transferor and transferee and can be on a temporary basis or for the remaining duration of the water permit.**~~

~~A streamlined transfer system was not included in the MEP when it was publically notified on 9 June 2016. However, the Council intends to introduce such a system to the MEP through the plan change provisions under First Schedule of the RMA at a later date. Under a system of streamlined transfer of water permits, water users would have the flexibility to develop their own transfer arrangements. In these circumstances, there is a need for appropriate protections to be put in place to make a system of streamlined transfer work efficiently and effectively for water users, as well as to protect the reliability of the water resource for existing users. The matters (a) to (g) effectively establish ground rules under which streamlined transfer can occur. In doing so, this policy gives effect to Policy B3 of the NPSFM. The matters listed above will form the basis of permitted activity standards for the transfer of water permits.~~

41. Amend the explanation to Policy 5.4.6, as follows:

[R]

Policy 5.4.6 – Provide water users and the community with daily water use information for fully allocated water resources.

This policy commits the Council to providing daily water use information for uses authorised by way of resource consent occurring in fully allocated water resources. ~~The provision of such information will be particularly important when the streamlined transfer system identified in Policy 5.4.5 is introduced to the MEP as this will enable opportunities for the transfer of water between users to be identified by those users.~~

42. Amend Issue 5E, as follows:

Issue 5E – The over-allocation of water resources creates a risk that the cumulative abstraction of water from the resource will exceed the safe yield, creating significant adverse effects on

freshwaternatural and human use values and threatening the reliability of existing water uses.

...

43. Amend the explanation to Policy 5.5.1, as follows:

[R]

Policy 5.5.1 – Recognise that the following Freshwater Management Units are over-allocated with respect to limits established in the Marlborough Environment Plan:

(a) Wairau Aquifer;

(b) Benmorven, Brancott and Omaka Aquifer; and

(c) Riverlands.

The water resources set out in the policy have been over-allocated with respect to limits set out in the MEP. The policy provides certainty with respect to the scope of the application of subsequent policies to address over-allocation. If other FMUs were identified as being over-allocated, then the FMU would be proposed to be added to the policy by plan change.

44. Amend the explanation Objective 5.6, as follows:

[R]

Objective 5.6 – Ensure that the taking of groundwater does not cause significant adverse effects on river flow.

FreshwaterNatural and human use values supported by rivers are flow dependent. Any reductions in river flow caused by groundwater abstraction at times of low flow have the ability to adversely affect the freshwaternatural and human use values supported by the river. As for direct takes of surface water, the objective with respect to groundwater takes that have stream depletion effects is to maintain the freshwaternatural and human use values supported by flow in the river.

45. Amend Policy 5.6.2, as follows:

[R]

Policy 5.6.2 – Manage the potential for groundwater takes in proximity to spring-fed streams on the Wairau Plain to cause a recession of the position of headwaters of the streams by establishing aquifer minimums below which the taking of groundwater must cease , unless the applicant is able to demonstrate, on a case-by-case basis, that a different minimum level or cut-off regime will provide equivalent protection to the spring flow and headwater position.

...

46. Amend Policy 5.7.11 and the explanation to the Policy, as follows:

[R]

Policy 5.7.11 – Where water is to be stored for the purpose of frost fighting, require a minimum storage volume equivalent to three days of frost fighting demand. In addition, where water is proposed to be taken to replenish stored water used during a frost event, have regard to effect of the rate of refill on other water permit holders and the freshwaternatural and human use values supported by the source waterbody.

Stored water is often used to supply water for frost protection given the high water demand. It is reasonable for people to replace the water utilised from the reservoir/dam for frost protection, particularly if subsequent frosts are predicted. The rate of abstraction of water to refill the reservoir/dam can be high and may lead to adverse effects on the freshwaternatural and human use values supported by the waterbody and on other users of water. For this reason, there should

be sufficient water stored to protect against three consecutive days of frost. This will minimise the need to take water at a significant rate to refill the reservoir for frost fighting on the subsequent day. If a person undertaking frost fighting proposes to refill the reservoir within the three days, then it is appropriate to also consider the effects of the rate of refill.

47. Amend Objective 5.8, as follows:

[R]

Objective 5.8 – Maximise the availability of water within ~~the~~ environmental limits ~~of the resource~~.

...

48. Amend the explanation to Policy 5.8.1, as follows:

[R]

Policy 5.8.1 – Encourage the storage of water as an effective response to seasonal water availability issues while safeguarding ecosystem health.

Given Marlborough's dry climate, especially over the summer months, storage of water has been utilised as a common strategy to offset temporary shortages of water for irrigation purposes. Storage has involved the interception of run-off by damming ephemeral water bodies, the damming of intermittently or permanently flowing water bodies and the placement of abstracted water in purpose-built reservoirs. There may also be the potential to augment river flow from the stored water. All of these approaches provide a back-up supply of water that increases water user resilience. For this reason the storage of water is strongly supported.

In some cases, activity status will assist to encourage the storage of water by providing for activities involved in storing water as a permitted activity or controlled activity.

Damming of intermittently or permanently flowing waterbodies can create the potential for adverse effects. These effects, including effects on ecosystem health, will be considered through Policies 5.2.22 and 5.2.23.

49. Amend the third method of 5.M.3, as follows:

5.M.3 Regional rules

...

Apply regional rules to regulate the taking, use, damming or diversion of water in accordance with the policies in this chapter. This includes the use of permitted activity rules to enable the taking, use, damming or diversion of water where the activity will not give rise to adverse effects on freshwater~~natural and human use~~ values supported by the waterbody.

...

50. Amend 5.AER.1, as follows:

Anticipated environmental result	Monitoring effectiveness
5.AER.1 Sufficient flow in rivers and adequate groundwater level to sustain freshwater~~natural and human use~~ values supported by these water bodies.	Attainment of environmental flows and levels, as recorded at representative monitoring sites. The record of compliance with environmental flows and levels, as recorded by water meter and published via E-planning.

Volume 2

Chapter 2

51. Add a new permitted activity rule to 2.2, as follows:

[R]

2.2.29. Take and use of water for domestic needs for worker accommodation up to 5m³ per day per worker accommodation facility.

And add a new standard for Rule 2.2.29, as follows:

2.3.26. Take and use of water for domestic needs for worker accommodation up to 5m³ per day per worker accommodation facility.

2.3.26.1 Where the take is from a river, except an ephemerally flowing river, the instantaneous take rate must not exceed 5% of river flow at the point of take at any time.

2.3.26.2. The take must not be from a Water Resource Unit with a Natural State water quality classification.

2.3.26.3. There must not be a municipal water supply available to the property boundary.

2.3.26.4. The take must not be otherwise provided for by a resource consent.

2.3.26.5. When more than 20 workers are accommodated in the worker accommodation facility, the take must be measured by a meter that is able to provide data in a form suitable for electronic storage.

52. Topic 16 – Add a new permitted activity rule to 2.2 as follows:

2.2.30 Temporary damming and diversion of water associated with the alteration, repair or maintenance of an existing structure in, on or over the bed of a river.

And add a new standard for Rule 2.2.30, as follows:

2.3.27. Temporary damming and diversion of water associated with the alteration, repair and maintenance of existing structures in, on or over the bed of a river.

2.3.27.1 The temporary damming or diversion must be undertaken by an operator of Regionally Significant Infrastructure.

2.3.27.2 The temporary damming or diversion must only be for the purposes of the alteration, repair and/or maintenance works required at the location of the works.

2.3.27.3 The temporary damming or diversion must not cause flooding or erosion of private land.

2.3.27.4 The temporary damming or diversion must cease no later than 14 days after the start of the maintenance activity.

53. Topic 16 Add to the note after Standard 2.3.16, as follows:

2.3. Standards that apply to specific permitted activities

2.3.16. Damming water and the subsequent use of that water.

The damming and subsequent use of water does not authorise the construction of a dam, which is governed by provisions in the Zone rules or, where the dam is in the bed of a lake or river, the rules in 2.7.

…

Add a new standard for Rule 2.4.1, as follows:

[R]

2.4.1. Take and damming C Class water for the purpose of retaining water in storage for subsequent use.

Standards and terms:

…

2.4.1.2. The annual volume of water taken for storage for irrigation purposes shall not exceed a volume equivalent to the authorised rate of take for irrigation purposes for two irrigation seasons for the property or properties to be served by the stored water.

And insert an advice note after the rule as follows:

Note: This rule only applies to the take and subsequent storage of Class C water. For clarity, the rule requires both the take of Class C water and subsequent storage of that water. The damming of water or the construction of a dam necessary to store the water may require other resource consents.

54. Add a new rule to 2.5, as follows:

2.5. Discretionary Activities

Application must be made for a Discretionary Activity for the following:

…

[R]

2.5.6 Any take of groundwater not provided for as a Permitted Activity or Controlled Activity from the Wairau Aquifer Urban Springs, Wairau Aquifer Central Springs or Wairau Aquifer North Springs FMUs.

55. Amend Rule 2.6.4, including Topic 16 amendment to (y), as follows:

[R]

2.6.4. Take, use, permanent damming, or diversion of water from the following waterbodies, including their tributaries:

(a) Acheron River;

(b) Branch River, upstream of a line measured 150 metres upstream from the hydro-electricity generation weir on the Branch River~~(including downstream of weir to the Wairau River confluence) provided that the rule does not apply to a take, use or diversion of water associated with the maintenance or upgrade of the State Highway 63 road bridge over the Branch River~~;

(c) Chaytor Significant Wetlands - W127, W128 and W129;
(d) Goulter River;
(e) Goulter Significant Wetland - W35;
(f) Kauauroa Bay Significant Wetland - W1026;
(g) Lake Alexander;
(h) Lake Chalice;
(i) Lake Elterwater (not including its tributaries);
(j) Lake McRae;
(k) Te Hoiere/Pelorus River upstream of confluence with the Scott Creek;
(l) Pipitea Significant Wetland - W55;
(m) Possum Swamp Stream Significant Wetland - W116;
(n) Rainbow River;
(o) Rarangi Wetland Complex – Significant Wetlands W128, W129, W130, W131 and W139;
(p) Tarndale Lakes including Bowscale Lake, Fish Lake, Lake Sedgemere and Island Lake;
(q) Upper Wairau Significant Wetland - W580;
(r) Wairau Lagoons Significant Wetland - W1076;
(s) Wairau River upstream of the Hamilton River confluence.

This rule does not apply to ~~a take, use, damming or diversion of water~~:

(t) the take, use, damming, or diversion of water lawfully established prior to 19 July 2023 ~~9 June 2016~~ including the taking, use, permanent damming, or diversion of water for the purpose of maintenance and repair of existing structures;
(u) the take and use of water for a person's reasonable domestic needs;
(v) the take and use of water for the reasonable drinking water needs of a person's animals;
(w) the take, use, damming or diversion of water for firefighting purposes and firefighting training by Fire and Emergency New Zealand and the New Zealand Defence Force permitted by Rule 2.2.8;
(x) the temporary damming and diversion of water permitted by Rule 2.42.2;
(y) the temporary damming and diversion of water permitted by Rule 2.2.30.

56. Amend Rule 2.6.5, as follows:

[R]

2.6.5. Permanent ~~D~~damming of water in the following waterbodies, including their tributaries:

(a) Awatere River ~~above Medway River (~~excluding ephemeral or intermittent tributaries~~, not specified in this rule~~ or the Black Birch Stream where the damming is undertaken by the Marlborough District Council for municipal water supply purposes);
(b) Waiau-toa/Clarence River;
~~(c) Grey River;~~
~~(d) Hodder River;~~
(c~~e~~) Waim~~e~~a River above Box Stream.~~;~~
~~(f) Winterborne River.~~

This rule does not apply to a damming of water lawfully established prior to 19 July 2023 ~~9 June 2016~~ including damming of water for the purpose of maintenance and repair of existing structures.

And insert an advisory note, as follows:

Note: Any application for resource consent for the damming of water in the Black Birch Stream for municipal water supply purposes will require public notice to Marlborough's tangata whenua iwi.

57. Topic 16 – Amend Rule 2.7.1, as follows:

[R]

2.7.1. Alteration, repair or maintenance of an existing structure, including any associated ~~temporary damming of water or~~ release of detritus, in, on or over the bed of a lake or river.

And amend Standard 2.9.1, as follows:

2.9. Standards that apply to specific permitted activities

2.9.1. Alteration, repair or maintenance of an existing structure, including any associated ~~temporary damming of water or~~ release of detritus, in, on or over the bed of a lake or river.

58. Topic 16 – Add a new permitted activity rule to 2.7, as follows:

[R]

2.7.15 Construction of a temporary dam for the purposes identified in Rule 2.7.1 and Rule 2.2.30.

And add a new standard for Rule 2.7.15, as follows:

2.9.14 Construction of a temporary dam for the purposes identified in Rule 2.7.1 and Rule 2.2.30

2.9.14.1. The construction of a temporary dam must be undertaken by an operator of Regionally Significant Infrastructure.

2.9.14.2. The temporary dam must be for diverting river flow around works in the bed of a river.

2.9.14.3. Provision must be made for river flows up to and including the 20-year average rain index (ARI) event to bypass the temporary dam with the bypass flow being returned to the bed of the river downstream of the dam.

2.9.14.4. The dam structure must be no greater than 4m high when measured vertically from the downstream toe of the dam embankment to the highest point of the dam crest.

2.9.14.5. The temporary dam must be constructed in accordance with best practice methods.

2.9.14.6. The temporary dam must be removed as soon as is practicable and no later than 14 days after the start of the maintenance activity.

2.9.14.7. The dam must not be located in, or within 8m of, a Significant Wetland.

59. Amend Rule 2.11.1, as follows:

[R]

2.11.1. Construction of a permanent dam on the following lakes and rivers, including their tributaries unless otherwise stipulated:

(a) Acheron River;
(b) Awatere River ~~above Medway River~~ (excluding ephemeral or intermittent tributaries, or the Black Birch Stream where the damming is undertaken by the Marlborough District Council for municipal water supply purposes ~~not specified in this rule~~);

(c) **Branch River, upstream of a line measured 150 metres upstream from the hydro-electricity generation weir on the Branch River ~~(including downstream of weir to the Wairau River confluence)~~;**
(d) **Waiau-toa/Clarence River;**
(e) **Goulter River;**
~~(f) Grey River;~~
~~(g) Hodder River;~~
(f~~h~~) **Lake Alexander;**
(g~~i~~) **Lake Chalice;**
(h~~j~~) **Lake McRae;**
(i~~k~~) **Te Hoiere/Pelorus River above the Rai River confluence;**
(j~~l~~) **Rainbow River;**
(k~~m~~) **Tarndale Lakes including Bowscale Lake, Fish Lake, Lake Sedgemere;**
(l~~n~~) **Waim~~e~~a River above Box Stream;**
(m~~o~~) **Wairau River upstream of the Hamilton River confluence.~~;~~**
~~(p) Winterborne River.~~

And insert an advisory note, as follows:

Note: Any application for resource consent for the construction of a dam in the Black Birch Stream for municipal water supply purposes will require public notice to Marlborough's tangata whenua iwi.

60. Add a standard to 3.3.11, as follows:

3.3.11. Conservation planting and carbon sequestration forestry planting.

…

3.3.11.6 Planting must not be within an Afforestation Flow Sensitive Site;

Chapter 25

61. Add a definition of “management flow and level”, as follows:

Management flow and level	means a flow or level at which the take or diversion of water must be rationed or fully restricted.

Volume 3

Appendix 5

62. Amend the values recorded for Lake Argyle in Appendix 5, Schedule 1, as follows:

~~Lake~~ Argyle Pond only	**Hydro Electric Generation** **Recreation** ~~Highly valued t~~Trout fishing~~ery~~ and waterskiing enabled by, and subject to, Hydro Electric Generation. ~~**Waterskiing** and model boating~~	CR, F

Appendix 6

63. Add an explanatory statement to the start of Appendix 6, as follows:

Environmental Flows and Levels

Note: The environmental flows and levels listed in Appendix 6 are primarily based on flows and levels in previous plans and are subject to change in order to conform to the requirements of the NPSFM 2020.

64. Amend the allocation expression for the Waihopai FMU in Appendix 6, Schedule 1, as follows:

Waihopai (including Gibsons Creek above SVIS Wairau diversion channel confluence)* Excluding Lake Alexander	A B C	34,560 97,632 271,000	n/a

*The existing consented take and use of water for hydro-electric power generation within the Waihopai River is considered a non-consumptive take and is therefore outside of this allocation framework.