



SUBMISSION

1 September 2016

TO:
Marlborough District Council

ON:
The proposed Marlborough Environment Plan

BY:
Beef + Lamb New Zealand

Contact for service

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Submission

A. Introduction

1. Beef + Lamb New Zealand Ltd (B+LNZ) thanks the Marlborough District Council for the opportunity to submit on the proposed Marlborough Environment Plan (MEP).
2. B+LNZ cannot gain an advantage in trade competition through this submission.
3. B+LNZ wishes to be heard in support of this submission.
4. B+LNZ is an industry-good body funded under the Commodity Levies Act through a levy on all cattle and sheep slaughtered in New Zealand. Our mission is to deliver innovative tools and services to support informed decision making and continuous improvement in market access, product positioning, and farming systems.
5. B+LNZ is actively engaged in environmental issues that affect the pastoral production sector. We are committed to supporting farmers by providing tools and services that help farmers adopt sustainable business practice. In addition we are working to build leadership and environmental management capability of farmers within the sheep and beef sector.
6. The details of our submission are separated into three parts:
 - Part A – Introduces B+LNZ;
 - Part B – outlines B+LNZ's high level submissions on the Plan; and
 - Part C – outlines B+LNZ's specific submissions. We have underlined text that we submit is added into the Plan, and have ~~struck through text~~ we are seeking to remove.
7. Some of B+LNZ's proposed alternatives may require further collaboration. We welcome any opportunity to work with Marlborough District Council to discuss our recommendations.
8. The relief sought and the wording used is a suggestion only, where a suggestion is proposed, it is with the intention of 'or words to that effect'. The relief sought may require consequential restructuring or amendments to the Plan and other provisions such as the definitions, objectives and policies, or parts thereof, arising from the material amendments sought.

B. Submissions applying to the whole plan

9. B+LNZ supports Marlborough District Council's intent behind developing an integrated Marlborough Environment Plan (MEP). That is to:
 - simplify the resource management framework; and
 - provide clear and concise direction on the resource management issues facing Marlborough.
10. B+LNZ recognises the challenge in finding the regulatory balance between:
 - Sending clear and enforceable signals to ensure farmers are managing environmental effects to an acceptable level; and
 - Encouraging good management practice through a balance of regulatory and non-regulatory methods.
11. B+LNZ submits that Marlborough District Council has not yet found this balance with the notified MEP. Council must find mechanisms that will result in farmers identifying their environmental risk; taking appropriate actions to minimise that risk; and acting because it is the right thing to do, not simply to tick a regulatory box.

Submission: Focus on effects, not activities

12. B+LNZ submits that the proposed Marlborough Environment Plan (MEP) does not meet the 'effects based' aims of the *Resource Management Act 1991* (RMA). The MEP focuses on regulating activities rather than managing the effects of those activities.

Reasons for this submission are

13. The majority of rules and standards within the MEP outline very specific actions that can be taken on ground. For example, Standard 3.3.12.9 limits the amount of topsoil that can be removed to no more than 20mm over more than 15% of any vegetation clearance site.
14. This sort of condition is not suitable as a permitted activity. The case of *Carter Holt Harvey v Waikato Regional Council* (A 123/08), found that :
 - A permitted activity rule must be comprehensible to a reasonably informed, but not necessarily expert, person;
 - A permitted activity rule must not reserve to the Council the discretion to decide by subjective formulation whether the activity is a permitted activity or not; and
 - A permitted activity rule must be sufficiently certain to be capable of objective ascertainment;

In addition to this case law, a permitted activity rule must meet the requirements of s70 RMA. Furthermore, under a permitted activity rule the cost of compliance and monitoring of the rule would be borne by the Regional Council. The rules as notified cannot be said to attain certainty or comprehensibility or reduce the need for expert judgment, and therefore must be redrafted to be clearer and less prescriptive.

15. However, writing rules does not – of itself – result in positive environmental outcomes. It is the resulting actions that deliver practice change. The RMA is designed to facilitate an effects based approach. Marlborough District Council's Section 32 report states that "*the objectives, policies and methods the Council decides to include in the new resource management framework have been well tested against the sustainable management purpose of the RMA.*" However, B+LNZ queries this statement, as the

MEP appears to primarily focus on managing inputs, rather than the effects of activities.

16. Good regulation should drive behaviour change, not prescribe what specific methods farmers use to manage the effects of their activities, nor attempt to regulate every aspect of good management practice. Furthermore, land use flexibility must be maintained through regulation so land owners can respond to changes and maintain a profitable and sustainable farming enterprise.
17. Voluntary Farm Environment Plans are a key way for Council to deliver positive environmental outcomes without prescribing strict input controls. Farm Environment Plans would help Council to find the balance between regulatory controls and encouragement for good management practice.

Relief sought

- **Ensure all rules within the MEP are effects based, rather than regulating actual farming activities.**
- **Consequential restructuring or amendments to the Plan and other provisions such as the definitions, objectives and policies, or parts thereof, arising from the material amendments sought.**

Submission: Use Farm Environment Plans to facilitate flexibility

18. B+LNZ submits that voluntary Farm Environment Plans provide a practical way to identify, manage, and record positive environmental effects from farm management activities.
19. Council should introduce a method to provide for and recognise the value of adopting Farm Environment Plans as an alternative to prescriptive activity based rules.

Reasons for this submission are

20. What defines good management practice is different for every farm. There are common elements across all properties, but what works for one farmer may not work as effectively for another. Attempting to provide for that difference is difficult in developing activity based rules.
21. B+LNZ has invested heavily into developing Farm Environment Plans, a tool to help farmers identify and manage environmental risk, using a whole farm system approach. The integrity of this farmer driven and farmer owned plan is incredibly important to achieving positive environmental outcomes.
22. Farm Environment Plans are specific to each property, account for all goals on a farm, and help to prioritise actions over a timeframe that works for that farm. For example, a hill country farmer could use their Farm Environment Plan to identify where stock exclusion from waterways on their property will provide the greatest environmental gains, and then prioritise these areas for implementation.
23. Most regional councils across the country have adopted some aspect of Farm Environment Planning, either as a regulatory or non-regulatory tool. Some councils rely on industry driven plans, others require comprehensive plans before providing funding for fencing and erosion control. Under section 66(d) of the RMA, Marlborough District Council is required to have regard to the approach used by its neighbouring Regional Councils.

24. Marlborough District Council should introduce voluntary Farm Environment Planning into the MEP. B+LNZ recommends doing this by introducing a permitted activity rule that exempts farmers from complying with other permitted activity rules, if a Farm Environment Plan is developed and implemented to a council approved standard. This approach would help encourage farmer driven environmental gains, and would increase land management flexibility for farmers who are effective stewards of their land.
25. B+LNZ has worked with a number of regional councils to develop regionally specific Farm Environment Plan templates, and would welcome the opportunity to work with Marlborough District Council to do the same. An example of the Canterbury Farm Environment Plan template is available on the [B+LNZ website](#).

Relief sought

- **Include an alternative pathway in the MEP to encourage proactive on-farm behaviour through the adoption of Farm Environment Plans.**
- **The alternative pathway could be to the effect of:**

Farming (except intensive farming) undertaken in accordance with a council approved Farm Environment Plan template is a permitted activity, provided the Farm Environment Plan is prepared and implemented in accordance with (schedule X or to like effect), and provided to Marlborough District Council on request.

OR

- **introduce a method that allows farmers to develop a farm environment plan that enables them to demonstrate compliance with permitted activity rules**
- **Schedule X could be to the effect of:**
 - **A map or aerial photograph showing:**
 - **The boundaries of the property or within the farm enterprise;**
 - **The boundaries of land management units on the property or within the farm enterprise**
 - **The location of permanent and intermittent rivers, streams, lakes, drains or ponds;**
 - **The location of riparian vegetation and fences adjacent to water bodies;**
 - **The location of any areas within the property that are identified in a District Plan as “significant indigenous biodiversity;” and**
 - **The location of any known and recorded heritage sites.**
 - **A description of the Good Management Practices that will be implemented to target the following management areas, where relevant:**
 - **Nutrient Management;**
 - **Irrigation Management;**
 - **Soils Management;**
 - **Waterbody Management; and/or**
 - **Point sources (e.g. offal pits).**

Submission: Homogenise how pest management is dealt with throughout the MEP

26. B+LNZ submits that references to pest management appears varied across the MEP, which has potential to cause confusion and implementation issues.

Reasons for this submission are

27. Some rules in the Proposed MEP refer to Appendix 25, pest plants. Some rules specify pests additional to the pest plants listed in Appendix 25, such as Old Man's Beard and Broom. Some rules restrict a number of conifer species, of which many are not typically considered pest species, such as Douglas fir. None of the rules appear to reference Marlborough's Regional Pest Management Strategy.
28. Marlborough's Regional Pest Management Strategy was created to "provide a framework for the efficient and effective management or eradication of pests and unwanted organisms in Marlborough." B+LNZ queries why the Regional Pest Management Strategy does not appear to interface with the MEP.
29. Having pest management rules in at least three different places across at least two different planning documents is likely to cause confusion within the community, and accidental non-compliance issues.

Relief sought

- **Delete reference to specific species within the rules, standards, and appendices;**
- **Amend rules relating to pest species so that they refer back to the Marlborough Regional Pest Management Strategy for direction on management/ control actions.**

Submission: Downgrade some of the prohibited activity controls within the MEP

30. B+LNZ submits that some of prohibited activities used within the MEP appear unnecessarily restrictive.

Reasons for this submission are

31. The MEP states that "the MEP uses all activity classifications, except for non-complying activities." B+LNZ queries why the non-complying activity class has not been used, as number of activities appear to be unjustifiably classified as prohibited.
32. The prohibited activity class is the most restrictive of any activity class and should be used with care. The decision to use the prohibited activity class should be backed with strong evidence of its necessity, such as high risk of significant adverse effects and irreversibility, including justification through objectives and policies. Council must be determined that the prohibited activities outlined in the MEP, should not be occurring within the region, and are indeed activities that Council has a function or duty to administer and manage under s30 of the RMA. Council must also be sure that all prohibited activities are a significant issue for the region (as outlined in s65(3)), with objectives and policies to provide clear direction to support and justify the prohibited status.
33. B+LNZ queries whether Council can provide clear and robust justification for all activities listed as prohibited in the MEP. For example, Rule 3.7.3 prohibits harvesting permanent carbon sequestration forestry. However, there are times when clearing permanent forestry may be appropriate, such as after a natural disturbance or for

public works, as provided for and recognised in s8 of the *Forests (Permanent Forest Sink) Regulations 2007*. Rule 3.7.3 is an example where a prohibited activity status is inappropriate, and should be downgraded to non-complying.

Relief sought

- **Amend the MEP so that activities that Council has classified as prohibited (rules 2.11.4, 3.7.4; 4.7.4; 3.7.1; 4.7.1.;7.5.1;8.5.1) are downgraded to non-complying or discretionary activities.**

Submission: Some rules are impractical to implement

34. B+LNZ submits that some of the rules and standards are very difficult for the average person to understand and comply with from a practical sense. These rules fail to meet requirements of permitted activity rules.

Reasons for this submission are

35. As previously mentioned, a permitted activity rule must:
- be comprehensible to a reasonably informed, but not necessarily expert, person;
 - not reserve Council with the discretion to decide by subjective formulation whether the activity is a permitted activity or not;
 - be sufficiently certain to be capable of objective ascertainment¹; and
 - meet the requirements of s70 of the RMA;

Furthermore, under a permitted activity rule the cost of compliance and monitoring of the rule would be borne by the Regional Council. Many rules as notified cannot be said to attain certainty or comprehensibility or reduce the need for expert judgment.

36. For example, a number of the rules and standards used within the MEP are not typical measures used by the average person. The average farmer is unlikely to understand what a colour change of more than 5 Munsell units looks like, and therefore is unlikely to know when they have breached this rule. Likewise with rules around percent changes in water reflectance, and daily average carbonaceous BOD₅.
37. Farmers cannot be expected to comply with rules that they cannot interpret, understand, or measure.

Relief sought

- **Amend the MEP rules so that any measurements used are practical, part of the everyday vernacular, and can be interpreted by the community.**

¹ *Carter Holt Harvey v Waikato Regional Council* (A 123/08)

C. Specific Submissions

This submission has been set out in an attempt to be user friendly. The outcomes sought and the wording used is as a suggestion only, where a suggestion is proposed it is with the intention of 'or words to that effect'. The outcomes sought may require consequential amendments to other provisions within the plan such as definitions, objectives, and policies, or/and restructuring of the Plan, or parts thereof, arising from the material amendments sought.

Volume 1 – Issues, Objectives, Policies, and Methods

| Provision | The submission is that | | Relief sought |
|--|----------------------------|--|--|
| Section | Support/ Oppose | Reason | |
| <p>Policy 4.1.1</p> <p>Recognise the rights of resource users by only intervening in the use of land to protect the environment and wider public interests in the environment.</p> | Support – seek to amend | <p>Policy 4.1.1 states <i>“The Council can intervene in the exercise of private property rights to protect the environment and wider public interests in the environment. Even in these situations, the Council will seek to minimise the extent of regulation placed upon resource users.”</i></p> <p>B+LNZ submits that the detailed nature of many of the rules in Volume 2 contradict this policy. Rules with a strong focus on inputs, rather than effects, cannot be considered as Council ‘minimising the extent of regulation,’ For example “... Woody material greater than 100mm in diameter and soil debris must...”</p> <p>Council should introduce a method into the MEP that provides for and recognises the value of adopting Farm Environment Plans as an alternate to prescriptive activity based rules.</p> <p>This would provide a better balance between ‘protecting the environment’, and minimising the extent of regulation, and would help Council to better meet the aspirations of Policy 4.1.1.</p> | <p>Include a provision in Policy 4.1.1 that recognises Farm Environment Planning as a valid tool to deliver on positive environmental outcomes while maintaining land use flexibility.</p> <p>Re-write activity focused rules in Volume 2 to allow Farm Environment Planning as an alternate pathway so that the MEP better achieves the intent outlined in Policy 4.1.1. In particular rewrite rules associated with:</p> <ul style="list-style-type: none"> • Livestock entering onto, or passing across, the bed of a river (2.9.9; 3.3.21; 4.3.20; 21.3.16.3); • Vegetation clearance (3.3.11; 3.3.12); • Cultivation (3.3.13; 4.3.12); and • Application of fertiliser or lime into or onto land (3.3.23; 4.3.22; 17.3.8; 18.3.9; 19.3.17; 23.3.5). |
| <p>Objective 14.1</p> <p>Rural</p> | Support – seek to amend | <p>This objective states <i>“At the same time as providing an enabling approach, it is important that primary production activities are undertaken in a sustainable manner to achieve the purpose of the Resource Management Act 1991 (RMA).”</i></p> | <p>Include a provision in Objective 14.1 that recognises Farm Environment Planning as a valid tool to deliver on positive environmental outcomes while maintaining land use flexibility.</p> |

| Provision | | The submission is that | Relief sought |
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| Section | Support/ Oppose | Reason | |
| environments are maintained as a resource for primary production activities, enabling these activities to continue contributing to economic wellbeing whilst ensuring the adverse effects of these activities are appropriately managed. | | <p>B+LNZ supports the intent outlined in Objective 14.1, but submits that the notified MEP does not achieve the desired balance between an 'enabling approach' and 'delivering on the purpose of the RMA'.</p> <p>Council should introduce a method into the MEP that provides for and recognises the value of adopting Farm Environment Plans as an alternate to prescriptive activity based rules.</p> <p>B+LNZ submits that an introduction of voluntary Farm Environment Plans would help Council to better satisfy Objective 14.1.</p> | |
| Policy 14.1.1 Enable the efficient use and development of rural environments for primary production. | Support – seek to amend | <p>B+LNZ supports the intent of Policy 14.1.1. However, the notified MEP does not provide adequate flexibility to achieve it, for example, a rule such as ...</p> <p><i>“On all slopes greater than 20° cultivation must be parallel to the contour of the land; except that up to 15% of the cultivated area may be cultivated at an angle to the contour. On all slopes greater than 10° cultivation must not be within 8m of a river (except an ephemeral river, or intermittently flowing river when not flowing), lake or coastal marine area. On all slopes less than or equal to 10° cultivation must not be within 3m of a river (except an ephemeral river, or intermittently flowing river when not flowing), lake or coastal marine area. Cultivation must not be in, or within 8m of, a Significant</i></p> | Include a provision in Policy 14.1.1 that recognises Farm Environment Planning as a valid tool to deliver on positive environmental outcomes while maintaining land use flexibility. |

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| Section | Support/ Oppose | Reason | |
| | | <p><i>Wetland, except where the wetland is fenced in accordance with the wetland boundaries mapped in the Plan, in which case cultivation may occur up to the fenced boundary. On completion of the cultivation, a suitable vegetative cover that will mitigate soil loss, must be restored on the site so that, within 24 months the amount of bare ground is to be no more than 20% greater than prior to the cultivation taking place. Cultivation must not cause any conspicuous change in the colour or visual clarity of a flowing river after reasonable mixing, or a Significant Wetland, lake or the coastal marine area, measured as follows: (a) hue must not be changed by more than 10 points on the Munsell scale; (b) the natural clarity must not be conspicuously changed due to sediment or sediment laden discharge originating from the cultivation site; (c) the change in reflectance must be <50%."</i></p> <p>Will not achieve the aspirations of Policy 14.1.1, such as "At times there may be a change in land use or management practices for primary production to enhance the efficient use of land resources and the MEP does not intend to unduly curtail any opportunity for this to occur."</p> <p>Council must add a provision into this policy that recognises Farm Environment Plans as a tool to enable land use flexibility, and deliver of the purpose of the RMA.</p> <p>Farmers who develop and implement a Farm Environment Plan to a council/ industry agreed standard can demonstrate that they are operating at Good Management Practice, and are delivering positive environmental outcomes that align with the RMA. These people should be exempted from a number of the permitted activity rules, such as the cultivation, and stock exclusion rules.</p> <p>This approach would help encourage farmer driven environmental gains, and increase land management flexibility for farmers who are effective stewards of their land.</p> | |

Volume 2 - Rules

| Provision | | The submission is that | Relief sought |
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| Section | Support/ Oppose | Reason | |
| <p>Farming</p> <ul style="list-style-type: none"> • 3.3.1. • 4.3.1. • 8.3.6. • 19.3.8. | <p>Oppose</p> <p>Seek to amend</p> | <p>B+LNZ seeks to either replace these rules with a FEP Permitted activity rule or alternatively include a clause to these standards. This clause would allow farmers to choose between:</p> <ul style="list-style-type: none"> a) Adhering to the permitted activity rules and standards outlined in the MEP; OR b) Developing and implementing a Farm Environment Plan that would negate the need to comply with other permitted activity rules and standards. <p>This will encourage farmer driven environmental gains, and increase land management flexibility for farmers who are effective stewards of their land.</p> <p>B+LNZ has worked with a number of regional councils to develop regionally specific Farm Environment Plan templates, and would welcome the opportunity to work with Marlborough District Council to do the same.</p> <p>Most regional councils across the country have adopted some aspect of Farm Environment Planning, either as a regulatory or non-regulatory tool. Under section 66(d) of the RMA, Marlborough District Council is required to give regard to the approach used by neighbouring Regional Councils.</p> | <p>Include an alternative pathway in the MEP to encourage proactive on-farm behaviour that front foots environmental issues; and/or</p> <p>Establish a new farming rule as a permitted activity which requires the development and implementation of a council approved Farm Environment Plan that would provide an alternative method of complying with the rules associated with:</p> <ul style="list-style-type: none"> • Livestock entering onto, or passing across, the bed of a river (2.9.9; 3.3.21; 4.3.20; 21.3.16.3); • Vegetation clearance (3.3.11; 3.3.12); • Cultivation (3.3.13; 4.3.12); and • Application of fertiliser or lime into or onto land (3.3.23; 4.3.22; 17.3.8; 18.3.9; 19.3.17; 23.3.5). <p>The alternative pathway would be to the effect (or to similar effect) of:</p> <p>3.3.1.2. Despite rules (2.9.9; 3.3.21; 4.3.20; 21.3.16.3; 3.3.11; 3.3.12; 3.3.13; 4.3.12; 3.3.23; 4.3.22; 17.3.8; 18.3.9; 19.3.17; 23.3.5;) farming (except intensive farming) undertaken in accordance with a council approved Farm Environment Plan template is a permitted activity, provided the Farm Environment Plan is prepared and implemented in accordance with (schedule X or to like effect), and provided to Marlborough District Council on request.</p> <p>Schedule X could be to the effect of:</p> <ul style="list-style-type: none"> • A map or aerial photograph showing: <ul style="list-style-type: none"> • The boundaries of the property or within the farm |

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| Section | Support/ Oppose | Reason | |
| | | | <p>enterprise;</p> <ul style="list-style-type: none"> • The boundaries of land management units on the property or within the farm enterprise • The location of permanent and intermittent rivers, streams, lakes, drains or ponds; • The location of riparian vegetation and fences adjacent to water bodies; • The location of any areas within the property that are identified in a District Plan as “significant indigenous biodiversity;” and • The location of any known and recorded heritage sites. <ul style="list-style-type: none"> • A description of the Good Management Practices that will be implemented to target the following management areas, where relevant: <ul style="list-style-type: none"> • Nutrient Management; • Irrigation Management; • Soils Management; • Waterbody Management; and/or • Point sources (e.g. offal pits). |
| <p>Livestock entering onto, or passing across, the bed of a river</p> <ul style="list-style-type: none"> • 2.9.9. • 3.3.21 • 4.3.20. | Oppose | <p>The following comments relate to all permitted activity standards relating to livestock entering into or passing across the bed of a river.</p> <p>‘Passing across’ rivers</p> <p>The notified standards state that intensively farmed livestock must not ‘pass across’ a riverbed. There are a number of issues with this restriction on ‘passing across’.</p> <p>Firstly, as the restriction for ‘passing across’ is applied only to intensively farmed stock, B+LNZ queries how this will be</p> | <p>Amend all standards relating to livestock accessing waterways so they focus on the effects of the activity, not prescribing the activity itself.</p> <p>Simplify standards so they are easy to interpret and understand.</p> <p>These standards could be worded to the effect of:</p> <p>Livestock entering onto, or passing across, the bed of a river.</p> <p>1. Except as provided by rule 3.3.1.2., the entering onto or passing across the bed of a river of stock must not involve</p> |

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| Section | Support/ Oppose | Reason | |
| <ul style="list-style-type: none"> • 21.3.16.3 | | <p>interpreted into on-ground practice. Are beef cattle only restricted to cross rivers if they are being shifted from a break-fed paddock? If so, there is a very simple rort that farmers could apply to get around this rule. Council must re-examine how this aspect of the standards will be implemented.</p> <p>Secondly, chapter 15 of the S32 report justifies this element of the rule, by noting that the success of eliminating dairy crossings means that Council has “<i>decided to include rules in the MEP that effectively prohibit the continued use of the remaining stock crossings in an effort to continue to improve water quality in the affected catchments. A delay in the introduction of the rule has been included to allow farmers to eliminate the remaining crossings</i>”</p> <p>B+LNZ submits that the policy intent is being incorrectly carried across into these standards. The success of restricting dairy crossings cannot be extended to beef cattle and deer without evidence that the same cost vs environmental gains will be realised. Beef cattle are not shifted as regularly as dairy cattle and the cost/ benefit analysis of building bridges and culverts will be different.</p> <p>Council must recognize the difference between dairy and beef cattle farming systems and cannot expect the same results when extrapolating actions from one industry directly across to the other.</p> <p>Thirdly, the New Zealand government is currently developing a proposed national stock exclusion regulation. The draft version of this document outlines occasions when it is appropriate to permit livestock to occasionally cross through waterways. Currently, the notified MEP is at variance to the draft national stock exclusion regulation. Council must ensure that the permitted activity rules are in line with New Zealand government thinking.</p> | <p>intensively farmed livestock if there is water flowing in the river.</p> <p>2. After reasonable mixing, the entering onto or passing across the bed of a river by the livestock must not cause any conspicuous change in the colour or visual clarity of any flowing river, measured as follows:</p> <p>a) hue must not be changed by more than 10 points on the Munsell scale;</p> <p>b) the natural clarity must not be conspicuously changed due to sediment or sediment laden discharge originating from the activity site;</p> <p>c) the change in reflectance must be <50%.</p> <p>3. After reasonable mixing, the entering onto or passing across the bed of a river by the livestock must not result in a change in concentration of following:</p> <p>(a) daily average carbonaceous BOD5 due to dissolved organic compounds (i.e. those passing a GF/C filter);</p> <p>(b) dissolved reactive phosphorus;</p> <p>(c) dissolved inorganic nitrogen;</p> <p>(d) Escherichia coli (E. coli).</p> <p><u>2. Livestock are able to enter water bodies for the purpose of crossing from one side to the other if they are being supervised and actively driven across the water body in one continuous movement.</u></p> <p><u>3. If the farm/ farming enterprise is operating under a council approved Farm Environment Plan, then the Farm Environment Plan takes precedence over conditions 1 and 2.</u></p> <p><u>4. The disturbance of the bed of a river and associated discharge through stock access that does not comply with conditions 1 and 2, or alternatively condition 3, is a discretionary activity.</u></p> |

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| Section | Support/ Oppose | Reason | |
| | | <p>Difficult to interpret and implement on-ground</p> <p>Council has advised on page 1-3 of Volume 2 of the MEP that <i>"lists should be regarded as cumulative, except where indicated otherwise by the use of 'and' or 'or'."</i> This means that farmers are required to comply with seven different conditions each time their stock enters a waterway.</p> <p>Firstly, B+LNZ queries whether the average farmer understands what some of the prescribed requirements actually look like – for example can a typical farmer accurately articulate what a change of 10 points on the Munsell scale looks like. Moreover, measure and comply with such a requirement.</p> <p>As previously noted, case law dictates that that permitted activities must be comprehensible to a reasonably informed, but not necessarily expert, person. Farmers cannot be expected to comply with rules that they cannot interpret, understand or measure.</p> <p>Secondly, being required to comply with seven different requirements is a draconian way to manage environmental effects. These standards must manage the <u>effects of actions</u>, rather than attempting to control every action that may (or may not) cause environmental degradation.</p> <p>Thirdly, cost of compliance and monitoring this permitted activity would be borne by Marlborough District Council. B+LNZ queries whether Council has the resources to effectively deliver on these monitoring and compliance responsibilities. If not, then Council must reduce the rule requirements to a level that it can realistically monitor and enforce within its available resources.</p> <p>Encourage good management practice without regulation</p> | |

| Provision | | The submission is that | Relief sought |
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| Section | Support/ Oppose | Reason | |
| | | <p>These stock exclusion rules provide an opportunity for Council to encourage good management practice without relying on strict input requirements.</p> <p>Council should provide an alternative pathway to exempt farmers from these stock exclusion rules if they identify, and mitigate environmental risks on their farms through a council approved Farm Environment Plan.</p> <p>This approach will encourage farmers to proactively assess their practices, and operate at good management practice or better - because they choose to.</p> | |
| <p>Livestock entering onto the bed of a river</p> <ul style="list-style-type: none"> • 2.11.4. • 3.7.4. • 4.7.4. | Oppose | <p><i>The following comments relate to all prohibited activity rules relating to livestock <u>entering</u> the bed of a flowing river</i></p> <p>These rules prohibit intensively farmed livestock from entering a flowing river from 9 June 2022.</p> <p>The prohibited status is too severe for this activity. A discretionary status would provide the same environmental benefits, while allowing for exceptions if they were required.</p> | Amend rules 2.11.4, 3.7.4., and 4.7.4 from prohibited status to discretionary status. |
| <p>Livestock passing across the bed of a river</p> <ul style="list-style-type: none"> • 2.11.5. • 3.7.5. | Oppose | <p><i>The following comments relate to all prohibited activity rules relating to livestock <u>crossing</u> a flowing river</i></p> <p>These rules prohibit intensively farmed livestock from crossing a flowing river of from 9 June 2022.</p> <p>B+LNZ agrees that any effects of stock crossing through waterways should be minimised, but it is unrealistic to totally prohibit this activity for beef cattle. Beef cattle are moved less</p> | Delete rules 2.11.5., 3.7.5., and 4.7.5. |

| Provision | | The submission is that | Relief sought |
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| Section | Support/ Oppose | Reason | |
| <ul style="list-style-type: none"> 4.7.5. | | <p>frequently when compared with dairy cattle, making the risk profile vs the cost of establishing bridges and culverts different.</p> <p>There are issues with interpreting this rule. What determines the difference between intensively farmed beef cattle and non-intensively farmed beef cattle while they are being shifted between paddocks? These rules would be easy to rort and provide no environmental benefit.</p> | |
| <p>Woodlot forestry planting</p> <ul style="list-style-type: none"> 3.3.8. 4.3.7. 8.3.7. | Oppose | <p><i>Use the right legislative tools for the job</i></p> <p>Elements of these standards appear to be at variance with the region's pest management regulation, i.e. the Marlborough Regional Pest Management Strategy (RPMS). For example, B+LNZ queries why some softwood species have been listed as not permitted under this standard, but are not restricted under the RPMS, or the pest management section of the MEP, Appendix 25. The conifer species listed in these standards are not recognized as pests within the region's RPMS.</p> <p>B+LNZ submits that Council should use its RMPS, not the MEP to control species establishment. A poor interface between different and strategies and plans is confusing for the community, and makes regulation difficult to comply with. A farmer trying to do the right thing, is likely to refer to the RMPS, and not realise that there are other plans that must also be referred to.</p> <p><i>Manage effects, not activities</i></p> <p>As with other submissions, these standards regulate activities rather than effects. The standards must be amended to manage any negative environmental effects of forest establishment, and not the actual actions.</p> | <p>Delete tree species names, and amend rules so species establishment restrictions are managed through the Regional Pest Management Strategy, not the MEP.</p> <p>Amend rules so that the focus is shifted away from activity and onto managing environmental effects of woodlot establishment.</p> <p>Re-evaluate the environmental risk of these standards. Where environmental risk is low, amend so the standards default to a controlled or restricted discretionary activity status, not discretionary.</p> |

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| | | <p><i>Use appropriate activity classes</i></p> <p>These rules default to a discretionary activity, which appears to be overly cautious in some situations. For example, the environmental risk of woodlot establishment within 90 metres of a rural living zone should not require a discretionary activity class.</p> | |
| <p>Conservation planting and carbon sequestration forestry planting (permanent)</p> <ul style="list-style-type: none"> • 3.3.10. | Oppose | <p>As above, this standard appears to be at variance with the region's pest management regulation, i.e. the Marlborough Regional Pest Management Strategy (RPMS).</p> <p>B+LNZ submits that Council should use the RPMS, not the MEP to manage species establishment. A poor interface between different strategies and Plans is confusing for the community, and can make regulation difficult to comply with.</p> | Delete tree species names, and amend rules so species establishment restrictions are managed through the Regional Pest Management Strategy, not the MEP. |
| <p>Woodlot forestry planting</p> <ul style="list-style-type: none"> • 3.7.1 • 4.7.1. • 7.5.1. • 8.5.1. | Oppose | <p>This rule dictates that woodlot establishment on steep erosion prone land is a prohibited activity.</p> <p>The prohibited status is too severe for this activity. There are times when woodlot establishment may be appropriate on steep erosion prone land, especially given that this rule is in regards to forest establishment, not harvest.</p> <p>A discretionary or non-complying activity status would be more appropriate for this activity, as it would allow for exceptions, while ensuring the environmental effects are managed.</p> | Revise activity status from prohibited to discretionary. |
| <p>Woodlot forestry</p> | Oppose | <p>These standards must manage the <u>effects of actions</u>. Currently, the standards attempt to control actions that may (or may not)</p> | Amend all standards relating to woodlot harvest so they focus on the effects of the activity, not the inputs. |

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| harvesting 3.3.9. 4.3.8. 8.3.8. | | cause environmental degradation. This approach is impractical and will not necessarily result in the best environmental outcomes. | |
| Indigenous vegetation clearance <ul style="list-style-type: none"> 3.3.11. | Oppose | <p>The following comments assume a drafting error in line 3.3.11.1, where the MEP states that "<i>indigenous vegetation clearance must comply with Standards 3.3.12.1 to 3.12.11 (inclusive)</i>". B+LNZ assumes that this should read "<i>Standards 3.3.12.1 to 3.12.11.</i>"</p> <p>These standards attempt to control the different aspects of vegetation clearance rather than focusing on the environmental effects of the activity. This approach creates unworkable rules for potentially limited environmental gain.</p> <p>For example, Standard 3.3.12.9 limits the amount of topsoil that can be removed to no more than 20mm over more than 15% of any vegetation clearance site. This level of specificity within a permitted activity rule is very difficult for farmers to comply with, and may not necessarily result in the best environmental outcomes for some sites. Furthermore, this specificity does not meet requirement to be comprehensible to a reasonably informed, but not necessarily expert, person.</p> <p>The permitted activity rules must be simplified, so indigenous vegetation clearing is a permitted activity when it is:</p> <ul style="list-style-type: none"> • within areas of low biodiversity value; • below a minimum area threshold; • Will not cause any conspicuous change in the colour or | <p>Amend standard 3.3.11.1. to read:</p> <p>Indigenous vegetation clearance must comply with Standards 3.3.12.1 to 3.12.11 (inclusive).</p> <p>Note and action relief sought for non-indigenous vegetation clearance.</p> |

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| | | <p>visual clarity of a flowing river after reasonable mixing, or the water in a Significant Wetland, lake or the coastal marine area; and</p> <ul style="list-style-type: none"> undertaken for certain activities such as track and fence line maintenance, building platforms establishment etc. | |
| <p>Non-indigenous vegetation clearance</p> <ul style="list-style-type: none"> 3.3.12. | Oppose | <p>These standards attempt to control the different aspects of vegetation clearance rather than focusing on the environmental effects of the activity. This approach creates unworkable rules for potentially limited environmental gain.</p> <p>For example, Standard 3.3.12.9 limits the amount of topsoil that can be removed to no more than 20mm over more than 15% of any vegetation clearance site. This level of specificity within a permitted activity rule is very difficult for farmers to comply with, and may not necessarily result in the best environmental outcomes for some sites. Furthermore, this specificity does not meet requirement to be comprehensible to a reasonably informed, but not necessarily expert, person.</p> | <p>Redraft permitted activity rule to the effect of:</p> <ol style="list-style-type: none"> <u>Except as provided by rule 3.3.1.2, non-indigenous vegetation clearance is a permitted activity, as long as the activity complies with the following conditions:</u> <ol style="list-style-type: none"> <u>Any earthworks, the formation of any new track and any planting or replanting of forestry trees must not occur on land that is in, or within 8m of:</u> <ol style="list-style-type: none"> <u>the bed of a river that is permanently flowing; or</u> <u>the bed of a lake; or</u> <u>within 30m of a river within a Water Resource Unit with a Natural State classification; or</u> <u>within 200m of the coastal marine area; unless the new track or earthworks in (a)(i) to (iv) is:</u> <ol style="list-style-type: none"> <u>necessary to connect to and from a formed river crossing point that is a consented or permitted activity, and/or</u> <u>for the purpose of the maintenance or upgrade of an existing track or earthwork.</u> |

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| | | | <p>(b) <u>Harvesting, or the maintenance of or establishment of new tracks must not be within such proximity to any abstraction point for a drinking water supply registered under section 69J of the Health Act 1956 as to cause contamination of that water supply</u></p> <p>(c) <u>Any new planting of forestry trees and associated formation of any new track or earthworks must not occur on land that is in, or within 10 m of wetlands (including lakes), unless the new track or earthworks is:</u></p> <p style="padding-left: 40px;"><u>(A) necessary to connect to and from a formed river crossing point that is a consented or permitted activity; and/or</u></p> <p style="padding-left: 40px;"><u>(B) for the purpose of the maintenance or upgrade of an existing track* or earthwork.</u></p> <p>(d) <u>Any area of forestry that is harvested (other than firebreaks, tracks, landing sites or areas in (a) and (b)) must be planted or replanted to protect from erosion as soon as practicable and no later than 18 months from the date of the harvesting, unless the area is left to re vegetate naturally.</u></p> <p>(e) <u>Water run-off controls must be installed and maintained for tracks and landing sites.</u></p> <p>(f) <u>Batters, cuts and side castings must be established by methods that prevent slumping.</u></p> <p>(g) <u>Vegetation must be felled away from and not be dragged through any water body other than where this is necessary to avoid endangering the health and safety of workers, or where it is unavoidable and is the best harvest method such as, but not limited to, hauling through corridors or butt</u></p> |

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| | | | <p><u>extraction, and (i) any discharge resulting from the activity must not, after reasonable mixing, cause a >20% change in visual water clarity</u></p> <p>(h) <u>Harvesting must be planned and carried out so as to minimise the amount of slash discharging into any area listed in (a)(i) and (ii).</u></p> <p>(i) <u>Slash must be removed from within areas listed in (a)(i) where it is blocking river flow, or is diverting river flow and causing bank erosion.</u></p> <p>(j) <u>Slash associated with landing sites and processing sites must be placed on stable ground and contained to prevent accumulated slash from causing erosion or land instability.</u></p> <p>(k) <u>Any discharge resulting from the activity must not, after reasonable mixing, cause a greater than 20% change in visual clarity for that waterbody, or/and shall not cause > 20% deposition of sediment on the bed of the waterbody</u></p> <p><u>2. If the farm/ farming enterprise is operating under a council approved Farm Environment Plan, then the Farm Environment Plan takes precedence over conditions 1 (a)- (k)</u></p> |
| <p>Cultivation</p> <ul style="list-style-type: none"> • 3.3.13. • 4.3.12. | Oppose | <p><i>The following comments relate to all standards that apply to permitted activities relating to cultivation</i></p> <p>These rules are:</p> <ul style="list-style-type: none"> • overly prescriptive; • attempt to regulate elements of some good management practices, irrespective of whether they will provide the best environmental outcomes on the site; and | <p>Amend standards 3.3.13 and 4.3.12 so that the focus is shifted away from managing the activity and onto managing the effects of the activity.</p> <p>Add an alternative pathway (as outlined in relief sought for vegetation clearance and stock exclusion) that provides farmers with an alternative way of meeting standards 3.3.13 and 4.3.12 if they have developed and are implementing a Farm Environment</p> |

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| | | <ul style="list-style-type: none"> focus on inputs rather than effects. <p>Council must encourage environmental gains on farm because farmers view it as the right thing to do. The cultivation rules present a perfect opportunity to do this.</p> <p>Farmers who are identifying, and mitigating environmental risks on their farms through Farm Environment Plans should be exempt from complying with the prescriptive cultivation standards outlined in the MEP.</p> <p>Farmers can use Farm Environment Plans to identify which property specific actions associated with cultivation will deliver the greatest positive environmental gains, and then implement and record progress. This approach will encourage farmers to proactively assess their cultivation practices, result in better environmental gains, and increase awareness and buy in to good management practices.</p> | Plan to a Council approved standard. |
| <p>Application of fertiliser or lime into or onto land.</p> <ul style="list-style-type: none"> 3.3.23. 4.3.22. 17.3.8. 18.3.9. 19.3.17. | Oppose | <p><i>The following comments relate to all standards that apply to permitted activities relating to fertiliser application.</i></p> <p><i>No standards or rules relating to lime</i></p> <p>Each of the listed standards are entitled 'application of fertiliser or <u>lime</u> into or onto land.' However, lime is not included in the actual text.</p> <p><i>Rules are input focused, not effects based</i></p> <p>These rules attempt to control inputs, rather than focusing on the effect of fertiliser application, for example rule 3.3.23.4.states that "total cumulative nitrogen (N) loading on the areal extent of land used for the application must not exceed 200 kg N/ha/year</p> | <p>Remove 'lime' from each of the rule titles.</p> <p>Amend rules associated with fertiliser application so that the focus is shifted away from managing the activity and onto managing the effects of the activity.</p> <p>Amend rules to reflect fertiliser industry codes of practice.</p> <p>Add an alternative pathway that exempts farmers from fertiliser application rules, if they have developed and are implementing a Farm Environment Plan to a Council approved standard.</p> |

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| <ul style="list-style-type: none"> • 23.3.5. | | <p>(excluding N from direct animal inputs).</p> <p>This input focus restricts land use flexibility but does not necessarily deliver the best environmental outcomes.</p> <p><i>Encourage good management practice without regulation</i></p> <p>As with previous submissions, these fertiliser rules provide a great opportunity for Council to encourage good management practice without relying on strict input requirements.</p> <p>The MEP should exempt the farmers who are identifying, and mitigating environmental risks on their farms through Farm Environment Plans.</p> <p>Farmers can use Farm Environment Plans to identify actions associated with fertiliser application that will deliver the greatest positive environmental gains in the context of their unique farm.</p> | |
| <p>Definition</p> <p>Reasonable mixing</p> | Oppose | <p>The definition for reasonable mixing includes artificial watercourses. However, the definition of rivers explicitly excludes this type of waterbody.</p> <p>B+LNZ submits that all references to artificial waterways should be removed from the definition of reasonable mixing to avoid confusion/ interpretation issues.</p> | <p>Amend definition of reasonable mixing to the effect of:</p> <p>Reasonable mixing means for any point source discharge the zone of reasonable mixing in the receiving water must extend from the discharge point as follows:</p> <p>For rivers and streams, the lesser of:</p> <ul style="list-style-type: none"> a) a distance downstream that equals seven times the width of the river or stream when the flow is at half the median flow; or b) 200m downstream <p>For rivers subject to tidal influence:</p> |

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| | | | <p>As for rivers and streams plus a distance upstream equal to half of that allowed downstream when the width is taken at half the median river flow at mid-tide.</p> <p>For artificial watercourses (including farm drainage channels), the greater of:</p> <p>a) 200m downstream; or</p> <p>b) the property boundary.</p> |
| Definition Vegetation clearance | Oppose | <p>The rules and standards around vegetation clearance appear to be written to protect waterways from mechanical clearance. However, the definition includes spraying and chemical treatment also. This apparent disconnect may mean a number of lower risk activities are caught up and restricted by the definition.</p> <p>B+LNZ submits that the definition of vegetation clearance is limited to mechanical treatments only.</p> | <p>Vegetation clearance means the cutting, destruction or the removal of all forms of indigenous <u>indigenous</u> vegetation including indigenous and exotic plant vegetation by cutting, burning, cultivation, crushing, spraying or chemical treatment.</p> |
| Definition River | Oppose | <p>This definition of 'river' is too broad to pragmatically implement a number of the rules, such as for 'Livestock entering onto the bed of a river'</p> <p>As an alternative, B+LNZ recommends Council adopt the Dairying and Clean Stream's Accord definition:</p> <p><i>"deeper than a red-band gumboot (ankle deep), wider than a stride (1 metre) and permanently flowing."</i></p> <p>This definition is:</p> <ul style="list-style-type: none"> • Already agreed across industry as an appropriate | <p>Amend the definition of River to the effect of:</p> <ul style="list-style-type: none"> • <u>a river or stream that is deeper than 15 cm and wider than 1 metre;</u> but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal) |

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| | | definition; <ul style="list-style-type: none"> • Widely known and understood by farmers; • Easy to measure/ test when out in the field; and • A pragmatic response to balancing environmental gains with costs to landowners. | |
| Definition Intensive farming | Support | The drafting gate used of 'two or more characteristics' is a good way of identifying those farming activities that pose a higher environmental risk. | Retain definition of intensive farming as notified. |
| Definition Intensively farmed livestock | Oppose | <p>B+LNZ supports the intent behind identifying farming activities that potentially pose a higher risk of adversely affecting water quality. B+LNZ submits that the definition provided for intensively farmed stock will inadvertently capture lower risk activities.</p> <p>Irrigated land in Marlborough does not necessarily equate to intensively farmed livestock. Irrigation can also be used to mitigate risk, given the dry climate of the Marlborough region. This fact is recognised Council's discussion under Objective 4.1, where Council states "<i>Given Marlborough's dry climate, reliable supplies of freshwater for irrigation provide land use options for rural resource users.</i>"</p> | <p>Amend the definition of intensively farmed stock to remove irrigated land, i.e:</p> <ul style="list-style-type: none"> a) cattle or deer grazed on irrigated land or contained for breakfeeding of winter feed crops (<u>July – September inclusive</u>); b) dairy cattle; c) farmed pigs. <p>If there are concerns that the definition does not capture intensively farmed cattle, a industry agreed stocking rate or alternative measure could be introduced.</p> |