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Record No: 10165099
File Ref: C135-E03
Ask For: Mike Porter

Notice of Committee Meeting - Wednesday, 9 June 2010

A meeting of the Environmental Policy Committee will be held in the Council Chambers, District Council Administration Building, Seymour Street, Blenheim on **Wednesday, 9 June 2010 commencing at 1.30 pm.**

B U S I N E S S

As per Agenda attached.

ANDREW BESLEY
CHIEF EXECUTIVE

Marlborough District Council

**Meeting of the ENVIRONMENTAL POLICY COMMITTEE
to be held in the Council Chambers, District Administration Building, Seymour Street,
on WEDNESDAY, 9 June 2010 commencing at 1.30 pm.**

Committee	Clr J Bunting (Chairman) Clr F D Maher (Deputy) Clr A D Barker Clr G S Barsanti Clr C R Bowers Clr E I Davidson Clr G A Hope Clr P J S Jerram Clr G Taylor
Departmental Head	Mr F Pauwels (Manager, Environmental Policy Department)
Staff	Kathy Payne (Committee Secretary)

In Public

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1. Adoption of Variation 2 – Coastal Occupancy Charges

(Report prepared by Tania Bray)

M135-15-02

Purpose

1. The purpose of this report is for the Council to adopt the Variation 2 – Coastal Occupancy Charges, a change to the regional coastal plan, so that it may be referred to the Minister of Conservation for approval.

Background

2. The Resource Management Amendment Act 1997 gave regional councils the opportunity of introducing a charging regime for the occupation of coastal space within the coastal marine area. Regional councils were required to set out a coastal occupancy charge regime in their regional coastal plan or to say they would not do so.
3. After considering the implications of the amendments the Council commissioned a detailed analysis of the various issues arising from coastal occupancy charges in Marlborough. The subsequent report raised a number of issues which needed to be addressed before a coastal occupancy charges regime could be implemented.
4. After considering the report the Council on the 15 December 1999 made a resolution to introduce a variation to the proposed Marlborough Sounds Resource Management Plan to record that no coastal occupancy charges will be imposed at that time, and that the Council would undertake the work identified in the report, so that coastal occupancy charges could be introduced at a later date.
5. A variation (Variation 2) was subsequently prepared, notified and decisions released. The decision to accept the Variation (with modifications) was appealed to the Environment Court by a member of the community living in the Sounds, who sought the introduction of coastal occupation charges straight away.
6. The Council, with the agreement of the appellant, worked with central government and other regional councils to develop an equitable charging regime. However, as the work progressed it became apparent that the legislation regarding coastal occupancy charges was flawed and it would be very difficult for regional councils to introduce a charging regime. The appeal reached an impasse and the matter was set down for hearing by the Environment Court.
7. Prior to the hearing commencing, the Council and the appellant reached an agreement regarding the wording of the Variation and subsequently the Environment Court accepted the submitted consent order (**attached**).
8. Changes to the regional coastal plan are dealt with slightly differently to changes to the district or regional plan, in that the Minister of Conservation is required to approve the plan change/variation before the Council makes the change operative. In this case Variation 2 is a change to the regional coastal plan and the Council is required in accordance with Cl 18 of the First schedule to the Resource Management Act 1991 to adopt the provisions before sending them to the Minister for approval.

Summary

9. Appeals on Variation 2 to the Proposed Marlborough Sounds Resource Management Plan have been resolved by way of consent order and the Council is now required to adopt the provisions and forward them to the Minister of Conservation for approval.
10. Following the approval, the Council is then required to make those provisions operative.

RECOMMENDED

- 1. That in accordance with Cl 18 of the First Schedule to the Resource Management Act 1991 that Council adopts the Variation 2 provisions, in the attached Annexure 1.**
- 2. That on approval of the provisions in Variation 2 by the Minister of Conservation, in accordance with Cl 20 of the First Schedule to the Resource Management Act 1991, the Council shall publicly notify the operative date as soon as practicable.**

Annexure 1

Proposed Variation 2 to Marlborough Sounds Resource Management Plan

Statement on Coastal Occupancy Charges

9.1.1 Coastal Occupancy Charges

The Resource Management Amendment Act 1997 gave regional councils the opportunity of introducing a charging regime for the occupation of coastal space within the coastal marine area. The amendment placed a responsibility on councils to place a statement in their Regional Coastal Plans, either to set out a charging regime or to say they will not do so. The Act also specified that any money so collected must be spent on the sustainable management of the coastal marine area.

Section 64A of the Act requires Council to have regard to both public and private benefits in determining whether or not a coastal occupation charging regime should apply. Council must consider the extent to which:

- Public benefits from the coastal marine area are lost or gained; and
- Private benefit is obtained from the occupation of the coastal marine area.

The premise underlying coastal occupation charges is that exclusive occupation of the coastal marine area is a privilege not a right - it is public space over which everyone has a right of access, and if used so as to exclude others a similar option of use, the public should be compensated for that exclusion and loss of opportunity.

Most occupations will result in elements of both public and private benefit, and the extent to which they are exclusive will vary. The identification of benefits (public/private) is limited to those directly arising from a structure which is occupying the space, not the associated activity that is facilitated by that structure being present. The benefits or otherwise of the associated activity are assessed through the coastal permit process.

Council has carried out an exercise to assess the relative benefits associated with different types of occupation. This has allowed a comparative assessment in terms of where the principal benefit lies. If charges are to offset the loss of public opportunity as a consequence of exclusive occupation, they should apply in principle wherever there is a net private benefit to the occupier.

In carrying out this exercise Council considers that it is justified in principle in charging for occupation of coastal space in circumstances where net private benefit is greater than net public benefit. In these circumstances the Council is committed to introducing a coastal occupancy charging regime.

Council has completed an information database on the various occupations within the Coastal Marine Area and is satisfied that it now has adequate information in that database to enable the implementation of a coastal occupancy charging regime. However, further work is required to determine the circumstances in which charges will be imposed (and possibly waived), the level of charges and use of monies received, as well as preparing plan provisions, including objectives, policies and methods, to implement such a regime.

However there are a number of issues that need to be dealt with before a charging regime is introduced. There are some gaps in the information database Council holds on the various occupations, particularly for moorings. Council is also concerned at some of the inequities of the charging regime prescribed by the Act, particularly in relation to marine farm leases/licences issued prior to the introduction of the Act. The coastal occupancy charges are not applicable to these marine farms but are applicable to marine farms granted permission by way of resource consent.



In determining an appropriate regime for charging for the occupation of coastal space, the Council will take account of the scale of the occupancy, such as the amount of coastal space occupied, as well as the private versus public benefit discussed above.

~~Once these issues are addressed the Council will introduce a charging regime by way of future variation plan change. Prior to charges being introduced the Council will carry out further investigatory work and undertake consultation (as required by the Act) with the community and other affected parties on the following:~~

~~When a charge will be imposed;~~

~~• When charges may be waived;~~

~~• How the charges would be collected;~~

~~• What the level of charges would be;~~

~~• What the money would be spent on; and~~

~~• How the regime would be administered.~~

The Council is committed to this process and proposes to introduce provisions dealing with coastal occupation charges into the Marlborough Regional Policy Statement. A new regional policy statement is scheduled to be notified in December 2009. These provisions would then be implemented through plan change or plan review processes

The Act requires that any money received by the Council from a coastal occupation charge must be used only for the purpose of promoting the sustainable management of the coastal marine area. Through the Marlborough Regional Policy Statement, this Resource Management Plan and State of the Environment Monitoring, the Council has already set out some of the issues for sustainably managing the coastal marine area.

In the context of the Plan, issues concerned with promoting the sustainable management of the coastal marine area can be found in many of the chapters of the Plan, given the integrated nature of the document. However those chapters of specific relevance include the following: Natural Character (2); Indigenous Flora and Fauna and their Habitats (4); Landscape (5); Tangata Whenua and Heritage (6); Public Access (8); and Coastal Marine (9).

~~This Section is subject to a reference to the Environment Court [RMA140/01 (6,7,8)] and subsequently is not operative.~~



2. Adoption of Plan Change 16 & 53 – Allocation of Authorisations

(Report prepared by Tania Bray)

M135-15-16 & W045-15-53

Purpose

1. For the Council to adopt Plan Changes 16 and 53 – Allocation of Authorisations, changes to the regional coastal plans, so that it may be referred to the Minister of Conservation for approval.

Background

2. On the 1 January 2005 the Resource Management Amendment Act (No.2) 2004 (the Act) introduced major changes to the way in which aquaculture was managed in New Zealand. Among the many changes was the requirement that aquaculture could only occur in aquaculture management areas (AMAs) and that any new AMAs needed to be created through a plan change. The new legislation also required that the right to apply for marine farming within new AMAs (*authorisations*), created either through a Council initiated or a private plan change, had to be publicly tendered.
3. New Zealand King Salmon Company Limited (NZKS) require more space to develop their business and the only way in which they can get access to new undeveloped sites is through the creation of new AMAs. However, under the default provisions in the Act any AMA created through a private plan change process is required to be tendered, which gives no certainty to the plan change proposer that they will get access to the space at the end of the process.
4. On the 16 October 2008, Council received a private plan change request from NZKS seeking to amend the method of allocation of authorisations for the Marlborough Sounds. NZKS proposed to replace the default method of public tendering with a new method which allocated the authorisations to the person who requested the plan change.
5. During consideration of the plan change request (Plan Change 16) by NZKS the Council made the decision to adopt the wording proposed by NZKS and apply that wording (suitably modified) to the Wairau Awatere Resource Management Plan (Plan Change 53) as well. The Council saw that it would be beneficial to integrate the provisions across the district as well as enabling efficiencies in costs and staff time by running the two plan changes together.
6. The Plan Changes were subsequently prepared, notified and decisions released. No appeals were lodged and the Plan Changes are now beyond challenge.
7. Plan Changes 16 and 53 are changes to the regional coastal plan and the Council is required in accordance with Cl 18 of the First schedule to the Resource Management Act 1991 to adopt the provisions before sending them to the Minister of Conservation for approval. Following on from receiving the Minister of Conservation's approval the Council is required to make the Plan Changes operative.

Summary

8. Decisions on Plan Changes 16 and 53 have been released and no appeals have been lodged. The Council is now required to adopt the provisions and forward them to the Minister of Conservation for approval.
9. Following the approval, the Council is then required to make those provisions operative.

RECOMMENDED

- 1. That in accordance with CI 18 of the First Schedule to the Resource Management Act 1991 that Council adopts the Plan Change 16 and 53 provisions, in the attached Schedules of Changes.**
- 2. That on approval of the provisions in Plan Changes 16 and 53 by the Minister of Conservation, in accordance with CI 20 of the First Schedule to the Resource Management Act 1991, the Council shall publicly notify the operative date as soon as practicable.**

3. Mooring Management Area

(Report prepared by M Porter)

L225-01

Purpose

1. The purpose of the report is to determine whether a bylaw to address the issues of boat accommodation in Waikawa Bay is the most appropriate way of addressing those issues.

Background

2. Council has received a private plan change to the Marlborough Sounds Resource Management Plan from Port Marlborough New Zealand Limited (PMNZ) addressing issues of boat accommodation in Waikawa Bay. The private plan change promotes the establishment of a new mooring management area in the water space at Waikawa Bay.
3. The application follows a major resource consent application for all swing moorings in Waikawa Bay, where all applications were considered in bulk. The hearing for the moorings consent got underway in late April 2008 before an independent Resource Management Commissioner (John Maassen). During the hearing, the idea of a 'bay-wide solution' was put forward in relation to the moorings in Waikawa Bay. The Commissioner adjourned the hearing to enable mooring holders and PMNZ to work together to see if a bay-wide solution could be agreed to. This private plan change is in response to this
4. The Environmental Policy Committee at its meeting on 19 April 2010 accepted the private plan change request by PMNZ. The Committee noted that PMNZ submitted that the plan change is dependent on the proposed bylaw and supporting moorings management plan to mitigate effects and either required a resolution by the Council to undertake the proposed bylaw or the assessment of effects needed to be amended to assess the effects without the bylaw.
5. The Environmental Policy Committee noted that the plan change proposes to establish a new mooring management system for swing moorings within the existing Coastal Marine 1 Zone at Waikawa Bay. The proposed plan change also seeks to provide for long term boat storage by extending the marina zone into an area of Waikawa currently zoned Coastal Marine Zone 1.
6. The establishment of moorings within these areas would be permitted in the Marlborough Sounds Resource Management Plan. It has been suggested by the applicants that the allocation and management of the moorings should be controlled through a bylaw under the Local Government Act 2002, rather than by resource management controls.
7. The Local Government Act 2002 (the Act) sets out the procedure and process that Council has to follow in order that such a bylaw could be considered.
8. It is usual for the Environment Committee to consider bylaw related issues, however in this case it is considered that the Environmental Policy Committee be the delegated Committee to deal with the following process, as this issue is very closely related to the PMNZ Plan Change request.

Determination

9. Section 155 of the Act requires that Council make a determination that a bylaw is the most appropriate way of addressing the perceived problem. As bylaws are coercive powers which require people to do certain things, and if breached, penalties may be imposed, it is important that alternative mechanisms for dealing with a problem are carefully considered. Fully informed policy decisions, based on good consultation with stakeholders and the community are less likely to be challenged and more likely to lead to successful operational decisions. The Act contains principles of decision making (section 76) and five specific decision making requirements set out in sections 77,78,80,81 and 82. The five requirements are:
 - Identify and Assess options (s77)

- Consider the views and preferences of affected or interested people (s78)
- Identify and explain any decisions inconsistent with council policy or plan (s80)
- Provide Maori with opportunity to contribute (s81)
- Promote compliance with principles of consultation (s82).

NZ Bill of Rights

10. Under section 155 of the Act Council must also determine whether the proposed bylaw is the most appropriate form of bylaw, and whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990 as bylaws cannot be inconsistent with the New Zealand Bill of Rights Act 1990.

Special consultative procedure

11. Section 86 of the Act requires a resolution of Council to commence the special consultative procedure process. The special consultative process will involve:
 - Notifying the public of the proposed bylaw
 - Providing a draft copy of the bylaw, the reasoning for the bylaw and other options considered
 - Making the draft bylaw available for public inspection at the principal public office and other places considered necessary to provide all ratepayers and residents with reasonable access to the proposed bylaw
 - Providing the public with the opportunity to make submissions on the proposed bylaw
 - Hearing oral submissions on the proposed bylaw.
12. It is suggested that the Environment Committee hear any oral submissions and make a recommendation to Council. If the Committee recommends the introduction of the proposed bylaw, the Committee will then make a recommendation to Council for the introduction of the bylaws.

Introducing the bylaw

13. Council will then be required to make a resolution to introduce the proposed bylaw. The bylaw can then be implemented. As soon as practicable after a bylaw is made, Council must give public notice of the making of the bylaw, stating:
 - the date on which the bylaw will come into operation; and
 - that copies of the bylaw may be inspected and obtained at the office of the local authority on payment of a specified amount.
14. Council must:
 - keep copies of all its bylaws at the office of the local authority; and
 - make its bylaws available for public inspection, without fee, at reasonable hours at the office of the authority; and
 - supply to any person, on request and on payment of a reasonable charge, a copy of any of its bylaws.

Type of bylaw

15. The type of bylaw that Council creates will need to ensure that Council has reasonable but sufficient power to address issues of boat accommodation in Waikawa Bay.

Determination Whether a Bylaw is the Most Appropriate Way of Addressing the Perceived Problem

Identification of the problem and solution sought

16. Council currently has problems in managing areas where large numbers of moorings are permitted (the resource consent application referred to above highlights this issue) and given the possibility of mooring management areas being created, Council anticipates a problem in ensuring that moorings in such areas are allocated in a fair and safe manner and thereby avoiding hazards to navigation safety.
17. Based on the information and the nature of the problem, the desired outcome is the safe and efficient management of the water space at Waikawa Bay by implementing a long-term, integrated planning solution to resolve conflicts in mooring allocation within the waters of Waikawa Bay by balancing the needs and aspirations of mooring owners and applicants, aspirant marina berth holders, and the commercial marina operator (PMNZ) and other commercial interests with the needs and aspirations of tangata whenua, adjacent property owners, non-boating users of the area, other stakeholders and environmental considerations.

Identification of practicable strategies

18. As part of its decision making process Council is required by the Act to identify and assess all reasonably practicable strategies that could provide the desired solution. The section 32 report accompanying the private plan change request also covers this issue.
19. One of the strategies is simply to do nothing. It is considered that this is not an option as there are numerous users of the bay and without a system for controlling who may moor and where, there will be environmental and navigation safety issues.
20. Without a bylaw, Council would have to develop an alternative method of managing the location and use of swing moorings within the mooring management area. Such an alternative method may not be as effective as the licence system promoted by the bylaw, which is a method easily applicable to any future mooring management areas, and enables the management of a large number of moorings in a holistic way. Any alternative would in all likelihood be resource consent reliant which has the potential to be piecemeal and inefficient as each applicant would be required to justify the use of the water space and the effects on the environment, rather than as one process through the plan change.
21. In order to assess the ability of the strategies to address the defined problem staff have followed the legislative requirements in relation to decision making as set out in section 77 of the Act.
22. There are procedural costs associated with the preparation and implementation of the bylaw, and the initial allocation of licenses under the new bylaw would require significant resourcing. A limited and short-term benefit of not enacting the bylaw would be to avoid these costs, however much of this work is already completed by a consultant under contract for Council. It should be noted that the alternative method (consent) discussed above would also involve considerable cost and resources.
23. Any alternative method for managing the mooring management area would require some type of cost to operate however, so this may not result in a benefit overall
24. The bylaw would result in a simple, straightforward mechanism for the allocation and management of swing moorings. The bylaw is more flexible than the resource consenting process and provides increased certainty to existing and would-be mooring holders. If the bylaw is not enacted, these benefits will not be available and so would be an opportunity cost of this option.
25. Having the bylaw in place would provide considerable efficiencies in the administration and monitoring of swing moorings, providing a simple and certain process for licensees and the moorings manager. Such systems are operative in other regional jurisdictions and are proven to be

functional and efficient. They allow the comprehensive management of a large number of swing moorings, and the same system can be applied over numerous locations should that be appropriate. If a bylaw was not in place an alternative method would be required, such as individual resource consents which may not be as efficient.

26. If the bylaw did not proceed, Council would need to establish an alternative method of managing swing moorings within the zone.
27. A bylaw is considered to be an efficient, appropriate and robust option for the management of some aspects of swing moorings. However, if the bylaw is not enacted space allocation can still be managed, but this is more likely to need to be consent based which is more cumbersome.

Significance of the decision

28. Under the Act Council needs to consider the significance of an issue, decision or matter in accordance with council's significance policy. The significance of an issue helps determine how Council will comply with the decision-making requirements. In other words, the degree of significance affects the process that Council is required to use to make its decision and whether it will consult further about the proposal or decision. The need for further consultation is also affected by the amount of information that Council currently holds about the community views on this matter.
29. It is important to recognise that the significance of the problem and the significance of the decision to determine that a bylaw is the most appropriate way of dealing with the problem are not the same thing. Even if the perceived problem is regarded as significant, this does not necessarily mean that this particular decision (the subject of this report) is significant.
30. Advice received is that this particular decision (that a bylaw is the most appropriate method of dealing with the problem identified) is unlikely to be at the high end of the significance spectrum. Staff's analysis of this issue also supports this conclusion and consequently staff have determined that this decision is not significant.

Summary

31. To summarise, it is considered that the establishment of a bylaw is the appropriate way of addressing the perceived problem.
32. Subject to Council determining that a bylaw is the most appropriate way of addressing the perceived problem, the following also needs to be determined to enable the special consultative procedure to be commenced.

Bylaw

Statement of proposal

33. In drafting the bylaw Council is required by the Act to determine the most appropriate form of bylaw and whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990. These considerations are included in the statement of proposal. The Act also requires that the statement of proposal is included on a council agenda. The statement of proposal is therefore **attached** as Appendix 1. The statement of proposal also includes the draft bylaw. A summary of the draft statement of proposal is as follows:
 - **The reason for the proposal** – Council currently has problems in managing areas where large numbers of moorings are permitted.
 - **The definition of the problem** – with the possibility of mooring management areas being created, Council anticipates a problem in ensuring that moorings in such areas are allocated in a fair and safe manner and thereby avoiding hazards to navigation safety.
 - **The desired outcome** – the safe and efficient management of the water space at Waikawa Bay by implementing a long-term, integrated planning solution to resolve conflicts in mooring allocation within the waters of Waikawa Bay by balancing the needs and aspirations

of mooring owners and applicants, aspirant marina berth holders, and the commercial marina operator (PMNZ) and other commercial interests with the needs and aspirations of tangata whenua, adjacent property owners, non-boating users of the area, other stakeholders and environmental considerations.

- **Consideration of whether the bylaw is the most appropriate mechanism for solving the problem** – Council has determined that a bylaw is the most appropriate mechanism.
- **The significance of this decision** – advice has indicated that the decision to introduce the bylaw is not considered to be significant.
- **The views and preferences of the public** – the private plan change application is the culmination of comprehensive planning and research undertaken by PMNZ, with much of this planning and research involving consultation with a wide range of stakeholders.
- **The New Zealand Bill of Rights Act 1990** – legal advice and staff analysis considers that the proposed bylaw does interfere with some freedoms (ability to moor where a person wants to or move through water where a person wants to because other boats are moored there) but on balance the interference is thought to be reasonable because it will assist with the overall management of the bay in a way that promotes safety for boat owners and other water users.
- **Power to make a bylaw** – the power to make a bylaw to regulate the placing and maintenance of moorings and maritime facilities is contained with section 684B of the Local Government Act 1974.
- **Definitions in the bylaw** - definitions have been included to ensure ease and clarity of understanding relating to the conditions set out in the bylaw.
- **Fines for not complying with the proposed bylaw** – The Act sets out that the maximum fine for breach of a bylaw is \$20,000. The courts on conviction determine the level of fine.
- **Public notices** - Council must publicly notify the adoption of this bylaw under section 157 of the Act.

Summary

34. Subject to Council determining that the proposed bylaw is the most appropriate form of bylaw, the special consultative procedure must be followed.

Special Consultative Procedure

35. Section 83 of the Act sets out the procedure of consultation. It is proposed that the draft bylaw will be advertised in both the print and radio media and on Council's website. A submission period of at least a month will be allowed for.

Summary

36. Council must first determine that a bylaw is the most appropriate way of addressing the perceived problem.
37. If this is done then Council must determine that the proposed bylaw is the most appropriate form of bylaw.
38. Council must also determine that the proposed bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
39. Council must also consider the statement of proposal, including the draft bylaw and approve the commencement of the special consultative procedure.

RECOMMENDED

1. **That the report be received.**

- 2. That Council determine that a bylaw is the most appropriate way of addressing the perceived problem.**
- 3. Subject to 2. above being adopted, that Council determine that the proposed bylaw is the most appropriate form of bylaw.**
- 4. Subject to 2. above being adopted, that Council determine that the proposed bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.**
- 5. Subject to 3. and 4. above being adopted, that Council considers the statement of proposal, including the draft bylaw and approve the commencement of the special consultative procedure.**

Statement of Proposal

Summary of information

Marlborough District Council is seeking feedback on its proposed mooring management bylaw. Council has determined that a bylaw is the most appropriate method to address the problem of ensuring that moorings in such mooring management areas are allocated in a fair and safe manner and thereby avoiding hazards to navigation safety.

Council has drafted a bylaw in accordance with Local Government Act 2002. The bylaw gives Council the power to ensure the safe and efficient management of the water space at Waikawa Bay by implementing a long-term, integrated planning solution to resolve conflicts in mooring allocation within the waters of Waikawa Bay by balancing the needs and aspirations of mooring owners and applicants, aspirant marina berth holders, and the commercial marina operator (Port Marlborough New Zealand Limited) and other commercial interests with the needs and aspirations of tangata whenua, adjacent property owners, non-boating users of the area, other stakeholders and environmental considerations.

A full Statement of Proposal (including the draft bylaw) can be obtained by contacting Marlborough District Council on 03 520 7400, fax 03 520 7496, email to mdc@marlborough.govt.nz, via Council's website at www.marlborough.govt.nz or by mail at PO Box 443, Blenheim.

If you wish to make a submission on the proposed bylaw, please provide it in writing to at PO Box 443, Blenheim or by fax to 03 520 7496 or by email to mike.porter@marlborough.govt.nz. Please include your name and postal address, and daytime phone number so that we can acknowledge your submission, and also please indicate in your submission if you wish to speak.

Submissions must be made to Council by xxxxxxx. If you wish to speak to your submission, the hearing date is proposed to be xxxxxxx. You will be contacted prior to the hearing date to arrange a time to speak.

Statement of Proposal

Introduction

The Marlborough District Council is proposing to introduce a mooring management bylaw that ensures that moorings in mooring management areas are allocated in a fair and safe manner and thereby avoid hazards to navigation safety.

Section 684B of the Local Government Act 1974 provides for Council to make a bylaw to regulate the placing and maintenance of moorings and maritime facilities.

The Local Government Act 2002 (the Act) requires that Council follows the special consultative procedure to make the proposed bylaw. This Statement of Proposal has been prepared in accordance with the requirements set out in section 86 of the Act for the adoption of the special consultative procedure.

It includes:

- the reasons for the proposal
- consideration of whether a bylaw is the most appropriate way to address the perceived problem
- whether the proposed bylaw is the most appropriate form of bylaw
- implications under the New Zealand Bill of Rights Act 1990
- a draft of the proposed bylaw.

Reason for proposal

Council has received a private plan change to the Marlborough Sounds Resource Management Plan from Port Marlborough New Zealand Limited (PMNZ) addressing issues of boat accommodation in Waikawa Bay. The private plan change promotes the establishment of a new mooring management area in the water space at Waikawa Bay.

Problem definition

Council currently has problems in managing areas where large numbers of moorings are permitted (the resource consent application referred to above highlight this issue) and given the possibility of mooring management areas being created, Council anticipates a problem in ensuring that moorings in such areas are allocated in a fair and safe manner and thereby avoiding hazards to navigation safety.

Desired outcome

The desired outcome is the safe and efficient management of the water space at Waikawa Bay by implementing a long-term, integrated planning solution to resolve conflicts in mooring allocation within the waters of Waikawa Bay by balancing the needs and aspirations of mooring owners and applicants, aspirant marina berth holders, and the commercial marina operator (PMNZ) and other commercial interests with the needs and aspirations of tangata whenua, adjacent property owners, non-boating users of the area, other stakeholders and environmental considerations.

Identification of practicable strategies

As part of its decision making process Council is required by the Act to identify and assess all reasonably practicable strategies that could provide the desired solution. The section 32 report accompanying the private plan change request also covers this issue. One of the strategies is simply to do nothing. It is considered that this is not an option as there are numerous users of the bay and without a system for controlling who may moor and where, there will be environmental and navigation safety issues.

Without a bylaw, Council would have to develop an alternative method of managing the location and use of swing moorings within the mooring management area. Such an alternative method may not be as effective as the licence system promoted by the bylaw, which is a method easily applicable to any future mooring management areas, and enables the management of a large number of moorings in a holistic way. Any alternative would in all likelihood be resource consent reliant which has the potential to be piecemeal and inefficient as each applicant would be required to justify the use of the water space and the effects on the environment, rather than as one process through the plan change.

In order to assess the ability of the strategies to address the defined problem staff have followed the legislative requirements in relation to decision making as set out in section 77 of the Local Government Act 2002.

There are procedural costs associated with the preparation and implementation of the bylaw, and the initial allocation of licenses under the new bylaw would require significant resourcing. A limited and short-term benefit of not enacting the bylaw would be to avoid these costs, however much of this work is already completed by a consultant under contract for Council. It should be noted that the alternative method (consent) discussed above would also involve considerable cost and resources.

Any alternative method for managing the mooring management area would require some type of cost to operate however, so this may not result in a benefit overall.

The bylaw would result in a simple, straightforward mechanism for the allocation and management of swing moorings. The bylaw is more flexible than the resource consenting process and provides increased certainty to existing and would-be mooring holders. If the bylaw is not enacted, these benefits will not be available and so would be an opportunity cost of this option.

Having the bylaw in place would provide considerable efficiencies in the administration and monitoring of swing moorings, providing a simple and certain process for licensees and the moorings manager. Such systems are operative in other regional jurisdictions and are proven to be functional and efficient. They allow the comprehensive management of a large number of swing moorings, and the same system can be applied over numerous locations should that be appropriate. If a bylaw was not in place an alternative method would be required, such as individual resource consents which may not be as efficient.

If the bylaw did not proceed, Council would need to establish an alternative method of managing swing moorings within the zone.

A bylaw is considered to be an efficient, appropriate and robust option for the management of some aspects of swing moorings. However, if the bylaw is not enacted space allocation can still be managed, but this is more likely to need to be consent based which is more cumbersome.

Most appropriate form of bylaw

In drafting the bylaw, the council must determine whether the proposed bylaw is the most appropriate form of bylaw. Council believes it has developed the most appropriate form of bylaw. In drafting the bylaw Council has considered the following issues:

Significance

Under the Local Government Act 2002 Council must consider the significance of an issue, decision or matter in accordance with Council's significance policy. The significance of an issue helps determine the extent of compliance with the decision-making requirements.

Advice received is that this particular decision (that a bylaw is the most appropriate method of dealing with the problem identified) is unlikely to be at the high end of the significance spectrum. Staff analysis of this issue also supports this conclusion and consequently staff have determined that this decision is not significant.

The views and preferences of the public

Council is bound to consider the views and preferences of persons likely to be effected by, or to have an interest in the proposed bylaw. The private plan change application is the culmination of comprehensive planning and research undertaken by PMNZ, with much of this planning and research involving consultation with a wide range of stakeholders.

New Zealand Bill of Rights Act 1990

In addition to the considerations undertaken above, the proposed bylaw must meet the legal standards of reasonableness, and cannot be inconsistent with the freedoms protected and affirmed in the New Zealand Bill of Rights Act 1990. Legal advice and staff analysis considers that the proposed bylaw does interfere with some freedoms (ability to moor where a person wants to or move through water where a person

wants to because other boats are moored there) but on balance the interference is thought to be reasonable because it will assist with the overall management of the bay in a way that promotes safety for boat owners and other water users.

Explanation of bylaw provisions

Definitions

The bylaw contains a number of definitions. These definitions have been included to ensure ease and clarity of understanding relating to the conditions set out in the bylaw.

Fines for breach of bylaw

A fine is the only available penalty option for breach of bylaw under section 239 of the Act. The court has a general discretion to impose a fine up to the maximum amount of up to \$20,000.

Public notices

Council must publicly notify the adoption of this bylaw under section 157 of the Act.

DRAFT MOORING MANAGEMENT BYLAW

MARLBOROUGH DISTRICT COUNCIL

MOORING MANAGEMENT BYLAW 2010

The Marlborough District Council hereby makes by resolution the following Marlborough District Council Mooring Management Bylaw 2010 pursuant to the powers contained in Section 684B of the Local Government Act 1974, and any other Act or authority in any way enabling the Council in that behalf

1.0 **Title & Commencement**

- 1.1 This Bylaw is the Marlborough District Council Mooring Management Bylaw 2010.
- 1.2 This Bylaw shall come into force on the same day as any Plan Change in respect of the Marlborough Sounds Resource Management Plan which provides for Moorings Management Areas becomes operative in terms of the Resource Management Act 1991.
- 1.3 It is an offence not to comply with the provisions of this Bylaw.

2.0 **Areas Within Which this Bylaw Applies**

- 2.1 This Bylaw applies to all areas which in terms of the Marlborough Sounds Resource Management Plan have been zoned Moorings Management Areas.

3.0 **Definition of Terms**

- 3.1 In this Bylaw, unless the context otherwise requires:

Management Plan means any management plan prepared and adopted by the Moorings Manager for application to Moorings Management Areas. Specific Management Plans may be adopted for specific Moorings Management Areas.

Moor means the securing of any vessel by attachment to a rope chain or other connective device

which in turn is fastened to a weight or screw on the seabed but the temporary securing of a vessel utilising an anchor is not included.

Mooring means:

- (a) Any weight or article placed in or on the foreshore or seabed for the purpose of securing a vessel; and
- (b) Includes any wire, rope, chain, buoy or other device attached or connected to the weight; but
- (c) Does not include an anchor that is normally removed with the vessel when it leaves the site or anchorage.

Moorings Management Area or *Moorings Management Areas* means such area or areas as are zoned within the Marlborough Sounds Resource Management Plan as a *Moorings Management Area* in terms of such Plan.

Moorings Manager means the person appointed by Marlborough District Council to exercise authority under this Bylaw and all relevant associated legislation.

Owner means the person who is for the time being responsible for the management of the vessel.

Rules means Rules made by the Moorings Manager pursuant to this Bylaw.

Vessel includes any ship, recreational craft whether driven by power, sail or otherwise and any floating structure.

4.0 **Placement of Moorings**

- 4.1 No person may place a mooring in any Moorings Management Area unless such person has been issued with a licence by the Moorings Manager enabling the placement of such mooring.

5.0 **Maintenance of Moorings**

- 5.1 Every person who is the holder of a licence allowing the placement of a mooring in a Moorings Management Area shall at all times:
 - (a) Meet all of the requirements for maintenance, supervision and replacement of such mooring as may be contained in the licence;
 - (b) Meet and comply with all of the requirements of any Management Plan or Rules; and

- (c) Comply with all other reasonable directions issued by the Moorings Manager for the maintenance, supervision and replacement of such mooring on the basis that such directions by the Moorings Manager shall be in writing unless the exigencies of the situation require an oral notice to be given.

6.0 **Moorings of Vessels**

6.1 No person may moor or permit any vessel to be moored in any Moorings Management Area unless such person has been issued with a licence by the Moorings Manager enabling the mooring of such vessel in such Area.

6.2 Every person who is the holder of a licence allowing a vessel to be moored in a Moorings Management Area shall at all times:

- (a) Meet all of the requirements for mooring, vessel placement, vessel safety and otherwise as may be contained in the licence;
- (b) Meet and comply with all of the requirements of any Management Plan or Rules; and
- (c) Comply with all other reasonable directions issued by the Moorings Manager relating to the mooring of such vessel on the basis that such directions by the Moorings Manager shall be in writing unless the exigencies of the situation require an oral notice to be given.

7.0 **Terms of Mooring Licence**

7.1 A mooring licence is required for each component being:

- (a) The placement of the mooring;
- (b) The mooring of a vessel.

7.2 The conditions of any mooring licence issued by the Moorings Manager may include but are not limited to:

- (a) The design and specifications of the mooring;
- (b) The precise location of the mooring;
- (c) The type of anchoring device;
- (d) The type of mooring structure which is attached to the anchoring device;
- (e) The type of buoy or float;

- (f) The markings or colours required on any part or parts of the mooring structure;
- (g) The size and type of any vessel which may be attached to the mooring;
- (h) The manner in which any vessel shall be attached to the mooring;
- (i) That the licence holder shall comply with the terms of any Rules or Management Plan.

7.3 The Moorings Manager shall not grant any licence for a mooring unless satisfied that:

- (a) There is adequate space in the Moorings Management Area for the proposed mooring;
and
- (b) The proposed mooring is of a design and specifications and of a type as to make economical use of water space while maintaining safety.

7.4 Every mooring licence shall include the following terms and conditions:

- (a) A term that the licence shall end on the 30th day of June next following the date on which the licence was issued but on the basis that unless the Moorings Manager determines otherwise, the licence shall be renewed for a further term of one year commencing on the 1st day of July next following and shall thereafter continue on a rolling term basis unless and until terminated by the Moorings Manager;
- (b) A term that the holder of the licence shall pay all reasonable fees as shall be determined by Marlborough District Council in terms of the Local Government Act 2002 Part 6 Subpart 3. Such fees shall not be unfairly discriminatory against any particular licensee and shall be of uniform application according to reasonable classifications;
- (c) A term that neither Marlborough District Council nor the Moorings Manager nor any of Council's employees or agents shall be responsible for any damage or loss that may arise to any vessel or property associated with any vessel where that vessel is within a Moorings Management Area including loss or damage that may arise out of negligence;
- (d) An acknowledgement and acceptance by the licensee that the whole of the mooring swing circle shall not be exclusive to the licensee and that there will be some overlap of the swing circle by another or other swing circles adjoining.

Quantification of Reasonable Fees

7.5 The reasonable fees which Marlborough District Council shall be entitled to recover shall be such as to allow a fair and proper recovery of all costs incurred or likely to be incurred by Council in relation to the particular Moorings Management Area and shall include:

- (a) A fair allowance for overheads including overheads associated with staff, contractors and others required to be engaged by Council;
- (b) A fair allowance for insurances;
- (c) A fair allowance for administration.

8.0 Rules and Management Plan

8.1 (a) The Moorings Manager may make such Rules or may adopt such Management Plan as the Moorings Manager shall consider fair, reasonable, necessary or appropriate for the management of the Moorings Management Area or for such other reasonable purposes as may be associated with the Moorings Management Area;

- (b) Such Rules or Management Plan shall when made or varied be posted to each Licensee at that Licensee's last known address and shall be deemed to have been received by such Licensee.

9.0 Administrative Matters

9.1 (a) The holder of any mooring licence shall be responsible for compliance with this Bylaw in respect of any mooring or vessel to which the Licence relates and in the event of any non compliance with the Bylaw such Licensee shall have committed an offence notwithstanding the fact that some other person or persons may have also committed such an offence.

File: M135-15-16



MARLBOROUGH SOUNDS
RESOURCE MANAGEMENT PLAN

Plan Change No. 16

Allocation of Authorisations

Private Plan Change Request from the New Zealand King Salmon
Company Limited

Schedule of Changes Only

Notified 12 March 2009

Schedule of Changes

Where text is proposed to be added to the Marlborough Sounds Resource Management Plan (the Plan) through this plan change, it has been shown as blue underlined. Where text is shown as ~~black struck through~~ in this Plan Change the text is existing text and is to be deleted. Where the changes are shown as either Red underlined or ~~Red struck through~~ these amendments arising from the decisions. All other text is either existing text from the Plan and has been included for context to assist the reader in determining where the changes occur or provides the reader with information and does not form part of the plan change.

The Marlborough Sounds Resource Management Plan is amended in accordance with the following schedule:

Volume One - Chapter 9 - Coastal Marine

9.1 Introduction

Amend the 7th paragraph as follows:

The Act contains provisions enabling the regional councils to implement a system of coastal tendering to safeguard the Crown's interest in the foreshore and seabed, as well as to secure benefits such as meeting a public expectation that coastal allocation will be fair and efficient. ~~An Order in Council was gazetted in July 1996, limiting the ability of Council to issue new coastal permits for marine farming applications in the Marlborough Sounds for two years while the Crown evaluated options for an appropriate coastal tendering system. It should be noted that this system will address only those issues relating to the allocation of coastal space between competing users. Environment effects will continue to be addressed through the Act processes of plan and consent administration.~~

Add the following after the 7th paragraph:

A reform of the legislation covering the management of marine farming - the Aquaculture Reform 2004 - came into effect on 1 January 2005. The aim of the

reform was to create a more integrated aquaculture management regime, with a balance between enabling economic development, looking after the environment, settling the Crown's Treaty obligations to Maori, and responding to community concerns. As a result of this reform, marine farming is now mostly covered by the Resource Management Act, with one process for planning where marine farms should go and for granting consents for them to occupy coastal space. Areas for new marine farming (Aquaculture Management Areas - AMA's) need to be identified in the Plan, and coastal permits for marine farms within AMA's are issued by the Council. The Ministry of Fisheries contributes to the Plan process by testing for any undue adverse effects on commercial, customary or recreational fisheries prior to an AMA being approved in the Plan. Space within AMA's is also to be allocated to iwi to settle Maori claims to commercial marine farming.

Add new Section

9.1.2 Aquaculture Management

The Act states that aquaculture activities (marine farming) can only take place within areas identified in the Plan as Aquaculture Management Areas (AMA's). Marine farming is prohibited outside AMA's. Council has the main role in managing marine farming in the Marlborough Sounds. Providing for marine farming within AMA's enables effects on the community, environment and economy to be managed in an integrated way through the Plan preparation processes, before individual applications for marine farms are considered. The cumulative effects of several marine farms in one area can also be considered.

The Ministry of Fisheries (MFish) continues to play a significant role in the creation of AMA's. Before starting on the public notification processes for including a new AMA in the Plan, Council must request MFish to undertake an assessment as to whether the proposed AMA would have an "undue adverse effect" on commercial, customary or recreational fishing. Areas within the proposed AMA that would unduly affect customary or recreational fishing will be removed from the proposal prior to notification. Any areas that would unduly affect commercial fishing will be identified in the Plan and anyone wanting to establish a marine farm in those parts of the AMA must first reach an agreement with the affected quota holders before they can apply for a resource consent.

Part of the Aquaculture Reform 2004 included the settlement of Treaty of Waitangi commercial aquaculture claims through the Maori Commercial Aquaculture Claims Settlement Act 2004. These provisions are intended to settle all Maori claims to commercial marine farming interests since September 1992. Iwi are provided with

an allocation of area for marine farming equivalent to 20% of marine farming spaces allocated since 1992 and 20% of new marine farming space. This is partly met through the allocation to iwi of some of the new space that comes available through the creation of AMA's. This is intended to ensure iwi have access to coastal marine space to develop their marine farming interests, and to allow the marine farming industry to develop without risks from ongoing Treaty claims.

Existing lawfully established marine farms are deemed to be AMA's, which means they do not need to be included in the Plan through a Plan Change. Marine farming permits and licences granted under previous Marine Farming and Fisheries legislation are generally deemed to be coastal permits.

When resource consents for a marine farm are about to expire, if the site is in an AMA, the existing marine farmer can make an application for a new marine farming consent for the same water space. The application from the existing marine farmer will be decided first, before any other application can be considered for that space.

Creating new AMA's requires a Plan Change. There are three different processes available to undertaken this:

- a Council-initiated Plan Change, where Council decides to undertake a plan change to establish an AMA in the coastal marine area,
- a standard Private Plan Change, where any person or organisation can request a change to the Plan to establish an AMA in the coastal marine area. and
- a Council Invited Private Plan Change (I P P C), which involves the Council inviting applications from the public to establish new AMA's. The Council may identify areas of the coastal marine area which will be excluded from applications. These Plan Changes are processed in a similar manner to Private Plan Changes.

All these processes follow the consultation and public notification processes set out in the Act.

Removal or modification of existing AMA's in the Plan, including deemed AMA's, also involves a Plan Change process.

Once an AMA is created, 20-40% of authorisations (or the right to apply for a resource consent for marine farming) are allocated by the Council to a trustee to resolve historic Treaty claims, and the remaining authorisations become publicly available.

Where AMA's have been created through a Council-initiated Plan Change, the remaining authorisations are allocated by public tender. Where an AMA has been created through the I P P C process the remaining authorisations are allocated to the person or organisation that requested the Plan Change. Where an AMA has been created through the standard Private Plan Change process the Act specifies that the authorisations are allocated by public tender unless an alternative method of allocation is used. Once the authorisations have been allocated, the holders of the authorisations then need to apply for resource consents for marine farming.

Add new Section 9.4A

9.4A Issue

Allocation of ~~authorisations~~ the right to apply for a coastal permit for marine farming in Aquaculture Management Areas (AMA's) in a manner that is effective, efficient and fair to all parties involved.

As explained in Section 9.1.2 of the Plan, there are three different processes for Plan Changes to include new AMA's in the Plan. With a Council-initiated Plan Change, authorisations are allocated by public tender. Where an AMA has been created through the I P P C process, authorisations are allocated to the person or organisation that requested the Plan Change. These methods are considered to be effective, efficient and fair to the parties involved.

Under the standard Private Plan Change process, any person or organisation can request a change to the Plan to establish an AMA in any part of the coastal marine area. These Private Plan Changes are processed in terms of Schedules 1, Part 2 and 1A of the Act. The time, resources and costs involved with evaluating new AMA's and providing for them in the Plan through a Plan Change process are considerable. With a standard Private Plan Change, these costs will be borne by the applicant. The Council recognises that people or organisations are not likely to make requests for new areas, unless they have some certainty that they will receive ~~authorisations~~ the right to apply for a coastal permit for marine farming should the Plan Change succeed. While the Act states as a default that authorisations should be allocated by public tender, the Council acknowledges that public tendering does not give the Plan Change applicant sufficient certainty that they will receive the right to apply for a coastal permit for marine farming ~~authorisations~~ within that new AMA.

In order to enable effective, efficient and fair use of a standard Private Plan Change approach for the consideration of new AMA's, the Council considers that the Plan should specify an alternative method of allocating the right to apply for coastal permits for marine farming ~~authorisations~~. The alternative ~~authorisation~~

allocation method adopted by the plan is considered to be fair and provide certainty to the Plan Change applicant.

In addition, the public tendering process assumes multiple applications for authorisation allocations. Public notification, calling for authorisation applicants, is the default process in the Act. In circumstances where there can only be one applicant (the Private Plan Change applicant), this process of public notification for authorisations is considered unnecessarily time-consuming and costly. The Plan, therefore, adopts an alternative method which provides the right to apply for coastal permits for marine farming directly to the operative Private Plan Change applicant. This method is considered to be more efficient and avoids unnecessary delays in the process.

9.4A.1 Objectives and Policies

<u>Objective 1</u>	<u>An effective, efficient and fair process for the allocation of the right to apply for coastal permits authorisations for marine farming in Aquaculture Management Areas</u>
<u>Policy 1.1</u>	<u>Allocation of authorisations by way of public tendering for coastal space in AMA's created through Council Plan Changes.</u>
<u>Policy 1.2</u>	<u>Processes for obtaining the right to apply for coastal permits allocation of authorisations for coastal space in AMA's that are effective, efficient and fair, and provide sufficient certainty for marine farmers to enable proposals for new AMA's and marine farms to be put forward for evaluation through standard and Council Invited Private Plan Changes.</u>
<u>Policy 1.3</u>	<u>Allocation of authorisations new coastal space to iwi in accordance with the procedures established through the Aquaculture Reform 2004.</u>

9.4A.2 Methods of Implementation

<u>Zoning</u>	<p><u>Aquaculture management areas (AMA's) will be included in the Plan as Aquaculture Management Area Zones (AMA Zones).</u></p> <p><u>Existing, lawfully established marine farms are deemed to be AMA's and will be included in the Plan in a special AMA Zone.</u></p> <p><u>All new marine farms must be established in an AMA Zone following the granting of the necessary resource consents for coastal permits.</u></p> <p><u>At some later date, Council may decide to propose new AMA Zones in the Plan by way of Council-initiated Plan Change or I P P C processes, as priorities and resources for Council determine.</u></p>
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	<p><u>New AMA Zones may be established in the Plan by way of requests for Private Plan Changes.</u></p> <p><u>AMA Zones will be managed for aquaculture activities (marine farming).</u></p>
<u>Rules</u>	[To be notified in the Proposed Marlborough Resource Management Plan].
<u>Authorisations Rights to apply for coastal permits for marine farming</u>	<p><u>Authorisations for available space within AMA Zones, which have been included in the Plan as a result of a Council-initiated Plan Change, will be allocated by way of public tender.</u></p> <p><u>An alternative method is specified in the Plan for obtaining the right to apply the allocation of authorisations for available space within AMA Zones which have been included in the Plan as a result of a request for a standard Private Plan Change. In these circumstances, authorisations the right to apply for available space within AMA Zones will be offered to the first person whose Private Plan Change was complete and successfully resulted in an operative AMA Zone for that area of coastal marine area</u></p> <p><u>Where the authorisation right to apply for available space or the resulting coastal permit for marine farming is not taken up or lapses, allocation will be by way of public tender.</u></p>
<u>Monitoring</u>	[To be notified in the Proposed Marlborough Resource Management Plan].

Volume Two

Insert the following new chapter

35A.0 Aquaculture Management Area Zone

35A.1 Preamble

This section of the Plan provides for the implementation of specific and general objectives and policies for aquaculture management areas as detailed in Volume One of the Plan. It also provides for the specific requirements for aquaculture management areas and aquaculture activities as set out in Part 7A of the Act.

Aquaculture management areas are included in this Plan as Aquaculture Management Area Zones. There are three processes available to include new Aquaculture Management Areas Zones in the Plan - a Council-initiated Plan Change; a standard Private Plan Change requested by any person or organization; and a Council Invited Private Plan Change (IPPC) where the Council invites applications to establish new AMA's.

Part 7A of the Act specifies the processes that must be followed by the Council for the establishment of aquaculture activities in the coastal marine area. Responsibilities of others, such as the Chief Executive of the Minister of Fisheries, the Minister of Conservation and the Trustee under Section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004, are also set out in this part of the Act. Chapter 35A of the Plan sets out those matters which must be contained in a Plan in order for resource consent applications for aquaculture to be considered for approval.

Volume One, Section 9.1.2, Aquaculture Management, describes the methods by which ~~authorisations~~ the right to apply for resource consents for marine farming will be ~~allocated by the Council~~ obtained.

~~A cross-reference to Information Requirements for Private Plan Changes for Aquaculture Management Area Zones to be inserted by a subsequent Council-initiated Plan Change No. 19.~~

35A.2 General Rules

~~General Rule 35A.2.1 shall not have effect until Plan Change 16 becomes operative.~~

~~General Rule 35A.2 shall have not effect until Plan Change 16 becomes operative and the reviewed objectives, policies and methods for aquaculture in the Proposed Marlborough Regional Policy Statement have been notified.~~

35A.2.1 Alternative Allocation Method for ~~Authorisations—the Right to Apply~~ for Available Water Space in Aquaculture Management Areas

~~These General Rules specify the method that Council will be used to offer authorisations apply for coastal permits for marine farming in operative AMA Zones arising from standard Private Plan Change requests under Schedules 1, Part 2, and 1A of the Act. These General Rules do not apply to AMA Zones arising from Council Invited Private Plan Changes (I P P C).~~

35A.2.1.1 Circumstances under which the Alternative Allocation Method will apply

~~Rule 35A.1.2 shall be used by Council to offer authorisations obtain the right to apply for coastal permits for marine farming in operative AMA Zones, where the AMA Zone, or the part of the AMA Zone, arose from a Private Plan Change under Schedules 1, Part 2, and 1A of the Act. Where Rule 35A.2.1.2 refers to a Private Plan Change, it is referring to the Private Plan Change which successfully resulted in the creation of the operative AMA Zone.~~

35A.2.1.2 Alternative Allocation Method

~~Under the circumstances specified in Rule 35A.2.1.1, Council the right to apply for coastal permits for marine farming will only offer authorisations be obtained by way of the following methods:~~

35A.2.1.2.1 One Private Plan Change Request

~~The available authorisations right to apply for coastal permits for marine farming for an area in an AMA Zone arising from a single Private Plan Change for an area in an AMA Zone shall be offered to obtained by the person who requested the Private Plan Change.~~

35A.2.1.2.2 More than One Private Plan Change Request for the same area

Where more than one Private Plan Change request was made to Council for the same area of an AMA Zone, the ~~available authorizations~~ right to apply for coastal permits for marine farming for the overlapping area shall be ~~offered to~~ obtained by the person whose Private Plan Change request was the first to either:

- i. ~~provide all required information, or~~
- ii. ~~decline to provide further or additional information requested by the Council in writing and when the Council or the Environment Court determines that the requested information was not required to be provided;~~

and the Private Plan Change successfully resulted in the creation of an operative AMA zone for that area. Subject to Rule 35A.2.1.3 (which relates to reservations for commercial fishing), this right to apply for coastal permits for marine farming shall be obtained on the date on which the Private Plan Change becomes operative.

35A.2.1.2.3 ~~The Right to Apply for Coastal Permits for Marine Farms not taken up Offer of Authorisation and/or Resource Consent for Authorised Space not taken up~~

Where ~~an authorisation~~ the right to apply for a coastal permit for marine farming is ~~offered to~~ has been obtained by a person under Rules 35A.2.1.2.1 or 35A.2.1.2.2, and:

- ~~i. The offer for the authorisation is not taken up by that person; or~~
- ~~ii. An authorisation is granted to~~ The right to apply for a coastal permit for marine farming by ~~that person lapses;~~ or
- iii. A coastal permit for marine farming is granted to ~~that the person for marine farming in the area covered by the authorisation~~ that has the right to apply, but it lapses;

authorisations within that area shall be offered by way of public tendering.

For the purposes of Rule 35A.2.1.2.3 i., "lapse" shall have the meaning specified in Section 165N of the Act, as if the right to apply for a coastal permit for marine farming was an authorisation.

35A.2.1.2.4 Offer of Authorisations following Cancellation or Expiry of Coastal Permits

When:

- i. the term of a coastal permit for marine farming expires and a new coastal permit is not granted to the existing permit holder; or
- ii. a coastal permit is cancelled under Section 126 of the Act;

authorisations within that area ~~shall be~~ if offered shall be by way of public tendering.

35A.2.1.3 Reservations Relating to Commercial Fishing

When an AMA Zone becomes operative and is subject to a reservation relating to commercial fishing, Sections 165G and 165J of the Act shall apply with all necessary modifications as if the right to apply for a coastal permit for marine farming was an authorisation.

35A.2.1.4 Right to Apply for Coastal Permit does not Confer Right to Coastal Permit

The obtaining of a right to apply for a coastal permit for marine farming does not confer any right to the grant of a coastal permit in respect of the space that the right to apply relates to.

35A.2.1.5 Right to Apply for Coastal Permit Transferable

The right to apply for a coastal permit for marine farming or any part of it may be transferred by its holder to any other person, but the transfer does not take effect until written notice of it has been received by the Council. Rule 35A.2.1 applies to the person to whom the right to apply is transferred.

35A.3 Activities – Permitted, Controlled, Limited Discretionary, Discretionary, Non-Complying and Prohibited - in the Aquaculture Management Area Zone

[Rules, Conditions, Standards, Assessment Criteria - to be notified in the Proposed Marlborough Resource Management Plan]

35A.4 Information Requirements for Private Plan Changes for Aquaculture Management Area Zones

[To be to be notified in the Proposed Marlborough Resource Management Plan]

35A.5 Planning Maps – Aquaculture Management Area Zones

[To be to be notified in the Proposed Marlborough Resource Management Plan]

~~Note: the existing deemed Aquaculture Management Areas will be shown on future releases of the maps and may be done so without undertaking a plan change.~~

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WAIRAU/AWATERE RESOURCE MANAGEMENT PLAN

**Plan Change 53
Allocation of Authorisations**

Schedule of Changes Only

Notified 12 March 2009

Schedule of Changes

Where text is proposed to be added to the Wairau/Awatere Resource Management Plan (the Plan) through this Plan change, it has been shown as blue underlined. Where the changes are shown as either red underlined or ~~red struck~~ through these are amendments arising from the decisions. Where the text is shown between [] the text has been included to provide information to the reader and does not form part of this plan change.

The Wairau/Awatere Resource Management Plan is amended in accordance with the following schedule:

Volume One - Chapter 9 - Coastal Marine

Add new Section 9.1.2

9.1.2 Aquaculture Management

A reform of the legislation covering the management of marine farming - the Aquaculture Reform 2004 - came into effect on 1 January 2005. The aim of the reform was to create a more integrated aquaculture management regime, with a balance between enabling economic development, looking after the environment, settling the Crown's Treaty obligations to Maori, and responding to community concerns. As a result of this reform, marine farming is now mostly covered by the Resource Management Act, with one process for planning where marine farms should go and for granting consents for them to occupy coastal space. Areas for new marine farming (Aquaculture Management Areas - AMA's) need to be identified in the Plan, and coastal permits for marine farms within AMA's are issued by the Council. The Ministry of Fisheries contributes to the Plan process by testing for any undue adverse effects on commercial, customary or recreational fisheries prior to an AMA being approved in the Plan. Space within AMA's is also to be allocated to iwi to settle Maori claims to commercial marine farming.

The Act states that aquaculture activities (marine farming) can only take place within areas identified in the Plan as AMA's. Marine farming is prohibited outside AMA's. Council has the main role in managing marine farming in the Wairau/Awatere plan area. Providing for marine farming within AMA's enables effects on the community, environment and economy to be managed in an integrated way through the Plan preparation processes, before individual applications for marine farms are considered. The cumulative effects of several marine farms in one area can also be considered.

The Ministry of Fisheries (MFish) continues to play a significant role in the creation of AMA's. Before starting on the public notification processes for including a new AMA in the Plan, Council must request MFish to undertake an assessment as to

whether the proposed AMA would have an “undue adverse effect” on commercial, customary or recreational fishing. Areas within the proposed AMA that would unduly affect customary or recreational fishing will be removed from the proposal prior to notification. Any areas that would unduly affect commercial fishing will be identified in the Plan and anyone wanting to establish a marine farm in those parts of the AMA must first reach an agreement with the affected quota holders before they can apply for a resource consent.

Part of the Aquaculture Reform 2004 included the settlement of Treaty of Waitangi commercial aquaculture claims through the Maori Commercial Aquaculture Claims Settlement Act 2004. These provisions are intended to settle all Maori claims to commercial marine farming interests since September 1992. Iwi are provided with an allocation of area for marine farming equivalent to 20% of marine farming spaces allocated since 1992 and 20% of new marine farming space. This is partly met through the allocation to iwi of some of the new space that comes available through the creation of AMA’s. This is intended to ensure iwi have access to coastal marine space to develop their marine farming interests, and to allow the marine farming industry to develop without risks from ongoing Treaty claims.

Existing lawfully established marine farms are deemed to be AMA’s, which means they do not need to be included in the Plan through a Plan Change. Marine farming permits and licences granted under previous Marine Farming and Fisheries legislation are generally deemed to be coastal permits.

When resource consents for a marine farm are about to expire, if the site is in an AMA, the existing marine farmer can make an application for a new marine farming consent for the same water space. The application from the existing marine farmer will be decided first, before any other application can be considered for that space.

Creating new AMA’s requires a Plan Change. There are three different processes available to undertaken this:

- a Council-initiated Plan Change, where Council decides to undertake a plan change to establish an AMA in the coastal marine area,
- a standard Private Plan Change, where any person or organisation can request a change to the Plan to establish an AMA in the coastal marine area. and
- a Council Invited Private Plan Change (IPPC), which involves the Council inviting applications from the public to establish new AMA’s. The Council may identify areas of the coastal marine area which will be excluded from applications. These Plan Changes are processed in a similar manner to Private Plan Changes.

All these processes follow the consultation and public notification processes set out in the Act.

Removal or modification of existing AMA’s in the Plan, including deemed AMA’s, also involves a Plan Change process.

Once an AMA is created, 20-40% of authorisations (or the right to apply for a resource consent for marine farming) are allocated by the Council to a trustee to

resolve historic Treaty claims, and the remaining authorisations become publicly available.

Where AMA's have been created through a Council-initiated Plan Change, the remaining authorisations are allocated by public tender. Where an AMA has been created through the IPPC process the remaining authorisations are allocated to the person or organisation that requested the Plan Change. Where an AMA has been created through the Standard Plan Change process the Act specifies that the authorisations are allocated by public tender unless an alternative method of allocation is used. Once the authorisations have been allocated, the holders of the authorisations then need to apply for resource consents for marine farming.

Add new Sections 9.26-28

9.26 Issue

Allocation of ~~authorisations~~ the right to apply for a coastal permit for marine farming in Aquaculture Management Areas (AMA's) in a manner that is effective, efficient and fair to all parties involved.

As explained in Section 9.1.2 of the Plan, there are three different processes for Plan Changes to include new AMA's in the Plan. With a Council-initiated Plan Change, authorisations are allocated by public tender. Where an AMA has been created through the IPPC process, authorisations are allocated to the person or organisation that requested the Plan Change. These methods are considered to be effective, efficient and fair to the parties involved.

Under the standard Private Plan Change process, any person or organisation can request a change to the Plan to establish an AMA in any part of the coastal marine area. These Private Plan Changes are processed in terms of Schedules 1, Part 2 and 1A of the Act. The time, resources and costs involved with evaluating new AMA's and providing for them in the Plan through a Plan Change process are considerable. With a standard Private Plan Change, these costs will be borne by the applicant. The Council recognises that people or organisations are not likely to make requests for new areas, unless they have some certainty that they will receive ~~authorisations~~ the right to apply for a coastal permit for marine farming should the Plan Change succeed. While the Act states as a default that authorisations should be allocated by public tender, the Council acknowledges that public tendering does not give the Plan Change applicant sufficient certainty that they will receive ~~authorisations~~ the right to apply for a coastal permit for marine farming within that new AMA.

In order to enable effective, efficient and fair use of a standard Private Plan Change approach for the consideration of new AMA's, the Council considers that the Plan should specify an alternative method of allocating ~~authorisations~~ the right to apply for coastal permits for marine farming. The alternative ~~authorisation~~ allocation method adopted by the plan is considered to be fair and provide certainty to the Plan Change applicant.

In addition, the ~~public tendering process~~ assumes multiple applications for ~~authorisation of allocations~~. ~~Public notification, calling for authorisation applicants, is the default process in the Act. In circumstances where there can only be one applicant (the Private Plan Change applicant), this process of public notification for authorisations is considered unnecessarily time-consuming and costly. The Plan, therefore, adopts an alternative method which provides the right~~

to apply for coastal permits for marine farming directly to the operative Private Plan Change applicant. This method is considered to be more efficient and avoids unnecessary delays in the process.

9.27 Objectives and Policies

Objective 1	<u>An effective, efficient and fair process for the allocation of authorisations the right to apply for coastal permits for marine farming in Aquaculture Management Areas</u>
Policy 1.1	<u>Allocation of authorisations by way of public tendering for coastal space in AMA's created through Council Plan Changes.</u>
Policy 1.2	<u>Processes for the obtaining allocation of authorisations for coastal space the right to apply for coastal permits in AMA's that are effective, efficient and fair, and provide sufficient certainty for marine farmers to enable proposals for new AMA's and marine farms to be put forward for evaluation through standard and Council Invited Private Plan Changes.</u>
Policy 1.3	<u>Allocation of authorisations new coastal space to iwi in accordance with the procedures established through the Aquaculture Reform 2004.</u>

9.28 Methods of Implementation

Zoning	<u>Aquaculture management areas (AMA's) will be included in the Plan as Aquaculture Management Area Zones (AMA Zones). Existing, lawfully established marine farms are deemed to be AMA's, and will be included in the Plan in a special AMA Zone. All new marine farms must be established in an AMA Zone following the granting of the necessary resource consents for coastal permits. At some later date, Council may decide to propose new AMA Zones in the Plan by way of Council-initiated Plan Change or I P P C processes, as priorities and resources for Council determine. New AMA Zones may be established in the Plan by way of requests for Private Plan Changes.</u>
	<u>AMA Zones will be managed for aquaculture activities (marine farming).</u>
Rules	<u>[To be notified in the Proposed Marlborough Resource Management Plan]</u>
Authorisations Right to apply for coastal permits for marine farming	<u>Authorisations for available space within AMA Zones, which have been included in the Plan as a result of a Council-initiated Plan Change, will be allocated by way of public tender.</u>

An alternative method is specified in the Plan for obtaining the right to apply the allocation of authorisations for available space within AMA Zones which have been included in the Plan as a result of a request for a standard Private Plan Change. In these circumstances, authorisations- the right to apply for available space within AMA Zones will be offered to the first person whose Private Plan Change was complete and successfully resulted in an operative AMA Zone for that area of coastal marine area

Where the authorisation- right to apply for available space or the resulting coastal permit for marine farming is not taken up or lapses, allocation will be by way of public tender.

Monitoring [To be notified in the Proposed Marlborough Resource Management Plan]

Renumber 9.26 to 9.29, and undertake any consequential numbering amendments required.

Volume Two - Rules

Insert New Chapter 39A

39A Aquaculture Management Area Zone

39A.1 Preamble

This section of the Plan provides for the implementation of specific and general objectives and policies for aquaculture management areas as detailed in Volume One of the Plan. It also provides for the specific requirements for aquaculture management areas and aquaculture activities as set out in Part 7A of the Act.

Aquaculture management areas are included in this Plan as Aquaculture Management Area Zones. There are three processes available to include new Aquaculture Management Areas Zones in the Plan - a Council-initiated Plan Change; a standard Private Plan Change requested by any person or organization; and a Council Invited Private Plan Change (IPPC) where the Council invites applications to establish new AMA's.

Part 7A of the Act specifies the processes that must be followed by the Council for the establishment of aquaculture activities in the coastal marine area. Responsibilities of others, such as the Chief Executive of the Minister of Fisheries, the Minister of Conservation and the Trustee under Section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004, are also set out in this part of the Act. Chapter 39A of the Plan sets out those matters which must be contained in a Plan in order for resource consent applications for aquaculture to be considered for approval.

Volume One, Section 9.1.2, Aquaculture Management, describes the methods by which ~~authorisations- the right to apply for resource consents for marine farming will be allocated by the Council obtained.~~

39A.2 General Rules

~~General Rule 39A2.1 shall not have effect until Plan Change 53 becomes operative.~~

~~General Rule 35A.2 shall have not effect until Plan Change 53 becomes operative and the reviewed objectives, policies and methods for aquaculture in the Proposed Marlborough Regional Policy Statement have been notified.~~

39A.2.1 Alternative Allocation Method for ~~Authorisations- the Right to Apply~~ for Available Water Space in Aquaculture Management Areas

These General Rules specify the method that ~~Council~~ will be used to ~~offer authorisations- apply for coastal permits for marine farming in operative AMA Zones~~ arising from standard Private Plan Change requests under Schedules 1, Part 2, and

1A of the Act. These General Rules do not apply to AMA Zones arising from Council Invited Private Plan Changes (I P P C).

39A.2.1.1 Circumstances under which the Alternative Allocation Method will apply

Rule 39A.2.1.2 shall be used ~~by Council~~ to ~~offer authorisations~~ ~~restrict~~ obtain the right to apply for coastal permits for marine farming in operative AMA Zones, where the AMA Zone, or the part of the AMA Zone, arose from a Private Plan Change under Schedules 1, Part 2, and 1A of the Act. Where Rule 39A.2.1.2 refers to a Private Plan Change, it is referring to the Private Plan Change which successfully resulted in the creation of the operative AMA Zone.

39A.2.1.2 Alternative Allocation Method

Under the circumstances specified in Rule 39A.2.1.1, ~~Council will only offer authorisations by way of the following methods:~~ the right to apply for coastal permits for marine farming will only be obtained by way of the following methods:-

39A.2.1.2.1 One Private Plan Change Request

The ~~available authorisations~~ right to apply for coastal permits for marine farming for an area in an AMA Zone arising from a single Private Plan Change ~~for an area in an AMA Zone~~ shall be ~~offered~~ ~~obtained by~~ to the person who requested the Private Plan Change.

39A.2.1.2.2 More than One Private Plan Change Request for the same area

Where more than one Private Plan Change request was made to Council for the same area of an AMA Zone, the ~~available authorizations~~ right to apply for coastal permits for marine farming for the overlapping area shall be ~~offered~~ ~~restricted~~ ~~obtained by~~ ~~to~~ the person whose Private Plan Change request was the first to either:

- i. ~~provide~~ provide all required information, or
- ii. ~~decline to provide~~ decline to provide further or additional information requested by the Council in writing ~~and~~ ~~when~~ the Council or the Environment Court determines that the requested information was not required to be provided.

And the private plan change successfully resulted in the creation of an operative AMA zone for that area. ~~Subject to Rule 39A.2.1.3 (which relates to reservations for commercial fishing), this right to apply for coastal permits for marine farming shall occur on the date on which the Private Plan Change becomes operative.~~

39A.2.1.2.3 The Right to Apply for Coastal Permits for Marine Farms not taken up Offer of Authorisation and/or Resource Consent for Authorised Space not taken up

Where an authorisation- the right to apply for a coastal permit for marine farming is held by has been obtained by is offered to a person under Rules 39A.2.1.2.1 or 39A.2.1.2.2, and:

- i. — The offer for the authorisation is not taken up by that person; or
- ii. The right to apply for a coastal permit for marine farming by that person lapses; An authorisation is granted to that person but lapses; or
- iii. A coastal permit for marine farming is granted to that- the person for marine farming in the area covered by the authorisation, that has the right to apply, but it lapses;

authorisations within that area shall be offered by way of public tendering.

For the purposes of Rule 35A.2.1.2.3 i., "lapse" shall have the meaning specified in Section 165N of the Act, as if the right to apply for a coastal permit for marine farming was an authorisation.

39A.2.1.2.4 Offer of Authorisations following Cancellation or Expiry of Coastal Permits

When:

- i. the term of a coastal permit for marine farming expires and a new coastal permit is not granted to the existing permit holder; or
- ii. a coastal permit is cancelled under Section 126 of the Act;

authorisations within that area shall be if offered shall be by way of public tendering.

39A.2.1.3 Reservations Relating to Commercial Fishing

When an AMA Zone becomes operative and is subject to a reservation relating to commercial fishing, Sections 165G and 165J of the Act shall apply with all necessary modifications as if the right to apply for a coastal permit for marine farming was an authorisation.

39A.2.1.4 Right to Apply for Coastal Permit does not Confer Right to Coastal Permit

The obtaining of a right to apply for a coastal permit for marine farming does not confer any right to the grant of a coastal permit in respect of the space that the right to apply relates to.

39A.2.1.5 Right to Apply for Coastal Permit Transferable

The right to apply for a coastal permit for marine farming or any part of it may be transferred by its holder to any other person, but the transfer does not take effect

until written notice of it has been received by the Council. Rule 39A.2.1 applies to the person to whom the right to apply is transferred.

39A.3 **Activities - Permitted, Controlled, Limited Discretionary, Discretionary, Non-Complying and Prohibited - in the Aquaculture Management Area Zone**

[Rules, Conditions, Standards, Assessment Criteria - to be notified in the Proposed Marlborough Resource Management Plan]

39A.4 **Information Requirements for Private Plan Changes for Aquaculture Management Area Zones**

[Rules, Conditions, Standards, Assessment Criteria - to be notified in the Proposed Marlborough Resource Management Plan]

39A.5 **Planning Maps - Aquaculture Management Area Zones**

[Rules, Conditions, Standards, Assessment Criteria - to be notified in the Proposed Marlborough Resource Management Plan]

~~-Note: the existing deemed Aquaculture Management Areas will be shown on future releases of the maps and may be done so without undertaking a plan change.~~