

BEFORE THE

Marlborough District Council

UNDER THE

the Local Government Act 2002

AND

Section 22AB of the Land Transport Act 1998

IN THE MATTER

of hearings on a proposed Bylaw using a Special Consultative Procedure (the Proposed East Coast Beach Vehicle Bylaw)

MEMORANDUM OF COUNSEL FOR BURKHART FISHERIES LIMITED AND LANFAR HOLDINGS (NO.4) LIMITED REGARDING RESOURCE CONSENT U220164

Dated this 24th day of May 2022

GASCOIGNE WICKS
LAWYERS
BLLENHEIM

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May it Please the Panel:

- 1 Counsel filed a Memorandum on 1 April 2022 summarising the resource consent application lodged by Lanfar Holdings (No. 4) Limited.
- 2 We also noted during presentation to the Panel at the reconvened hearings, on 3 May, that the Council's view had been that consent was required for the physical pipes that facilitate the seawater take, but not the actual take itself.
- 3 The consent has since been granted and is **enclosed** here for the Panel's reference.

Dated this 24th day of May 2022



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Quentin A M Davies / Emma L Deason
Solicitors for the Applicant

RESOURCE MANAGEMENT ACT 1991

Decision of Marlborough District Council

RESOURCE CONSENT: U220164
APPLICANT: Lanfar Holdings (No.4) Limited
LOCATION: Clifford Bay, East Marlborough

THIS IS THE DECISION ON THE APPLICATION FOR RESOURCE CONSENT:

Coastal permit for the continuation of an existing subsurface seawater intake pipe in Clifford Bay.

DECISION: **Granted**

RESOURCE CONSENT ISSUED:

Coastal Permit

Certificate of Resource Consent

Consent Holder:	Lanfar Holdings (No.4) Limited
Consent Type:	Coastal Permit
Consent Number:	U220164.01
Lapse Date:	1 July 2022
Expiry Date:	1 July 2042
Part 3, Section:	12

Pursuant to sections 34A(1) and 104B and after having regard to Part 2 matters and section 104 of the Resource Management Act 1991, the Marlborough District Council **grants** the application for a coastal permit for the continuation of an existing subsurface seawater intake pipe in Clifford Bay, subject to the following conditions imposed under section 108 of the Resource Management Act 1991.

Conditions

1. Except insofar as required to comply with other conditions of this consent, the activity must be undertaken and remain in accordance with the application for resource consent as held on Council's electronic file U220164.
2. In accordance with Section 128 of the Resource Management Act 1991, the Marlborough District Council may review the conditions of this consent, for the specified purposes identified in section 128(1), including for the purpose of ensuring the adverse effects upon the following matters are adequately avoided, remedied or mitigated:
 - (a) Maritime safety; and/or
 - (b) Recreation values; and/or
 - (c) Public access; and/or
 - (d) Amenity values.

Notice of review for these purposes may be given during the months of January to December (inclusive) of any year for the duration of this consent.

3. Unless a replacement resource consent is applied for and granted, the consent holder, at the consent holder's expense, must remove the pipe and all associated material from the coastal marine area and provide written confirmation that this has been done to the Compliance Manager of Marlborough District Council within three months of any of the following events occurring, whichever is first in time:
 - (a) Expiry of the resource consent; or
 - (b) Surrender of the resource consent; or
 - (c) The pipe becoming derelict or abandoned.

Advice Notes

1. All electronic correspondence relating to the operation of this consent and compliance with consent conditions should be sent to monitoring@marlborough.govt.nz.
2. The consent holder shall be required to pay the administrative charge or charges incurred in respect to inspections and monitoring of the structures and compliance with the conditions of consent.
3. At expiry of the resource consent it is a breach of section 12 of the RMA 1991 for the structure to remain in the Coastal Marine Area. The consent holder must ensure its removal to avoid the risk of enforcement action.

Reasons

Proposal

1. The applicant seeks resource consent for the continuation of an existing subsurface seawater intake pipe located in Clifford Bay adjacent to the Lake Grassmere saltworks. The pipe is of heavy-duty PVC construction and measures 380-millimetres in diameter and about 80 metres in length. Of that length, about 65 metres is located in the coastal marine area. A 10-metre long stainless steel screen allows screened seawater to enter the pipe, which is then drawn by gravity along the pipe to a 10.6-metre deep well located on paper road above the high tide mark.

Background

2. The facility was established in 1986 as part of a salmon farm development under consent reference number 7/00/0661. The pipe and associated well continue to be used to take seawater as a permitted activity under Rule 16.1.20 for various commercial fishing enterprises.

Description of Receiving Environment

3. The pipe is buried under the gravels and sands of the foreshore and seabed of Clifford Bay, west of Cape Campbell. The intake/outfall pipe and support structure for the Lake Grassmere saltworks is located a short distance to the north of the subject pipe and is the only visible built structure along this stretch of beach.

Activity Status

4. The site is zoned Coastal Marine in the Proposed Marlborough Environment Plan (PMEP). The continuation of the pipe in the coastal marine area requires consent as a discretionary activity under Rule 16.6.10.

Notification and Affected Parties

5. For reasons recorded separately the application was processed without public or limited notification.

Assessment of Effects

6. In terms of the considerations required by section 104(1)(a) of the Resource Management Act 1991, the continued existence of the pipe – due to its location buried beneath the foreshore and seabed and in proximity to the saltworks intake structures – is concluded to be likely to have acceptably small adverse effects on the existing ecological values, maritime safety, natural character, landscape values, water quality, recreational values (including public access) and amenity values of the immediate locality. In terms of positive effects, the pipe enables the unobtrusive taking of seawater to facilitate various commercial fishing operations.

Relevant Statutory and Plan Provisions

7. In terms of the considerations required by section 104(1)(b) of the Resource Management Act 1991, Policies 2, 6, 11, 13, 15, 18 and 19 of the New Zealand Coastal Policy Statement 2010; Objectives 7.1.2, 7.1.9, 7.2.7 and 8.1.2 and Policies 7.1.7, 7.2.8, 7.2.10 and 8.1.6 of the Marlborough Regional Policy Statement; Policies 2.1.2.1.2, 9.9.1.1, 9.15.1.1 and 10.2.1.2 of the Wairau Awatere Resource Management Plan; and Policies 6.2.2, 6.2.3, 13.2.1, 13.2.2, 13.2.3, 13.2.4, 13.2.5, 13.10.5 and 13.10.10 of the PMEP are of relevance to an evaluation of the proposal. Within the context of the site it is concluded that the proposal is consistent with most of the identified provisions.

Part 2 Resource Management Act 1991

- 8. Having considered the matters of national importance, other matters and principles of the Treaty of Waitangi as required by Part 2 of the Resource Management Act 1991, it is concluded that the sole purpose of the Act would be better achieved through a grant of resource consent, subject to the conditions specified.

Consent Duration and Lapse Date

- 9. Section 123 of the Resource Management Act 1991 requires that every coastal permit have an expiry date. In this case a consent duration of 20 years accords with Policy 13.2.3 of the PMP and is consistent with sustainable management of the subject resource. As the pipe is already in existence this consent will be given effect to upon commencement. Therefore a lapse date of 1 July 2022 is imposed for Council's administrative purposes only.

Recommended for approval:



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Peter Johnson
Environmental Planner

Approved:



19 May 2022

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Anna Eatherley
Marlborough District Council Manager Resource Consents

Additional Important Information for Resource Consent Holders

The following information provided in this information sheet is a guide to the legal rights of applicants and submitters.

If you want to discuss matters raised in this information sheet you are welcome to contact Council. However, if you require specific advice you should contact an independent professional and refer to the relevant sections of the Resource Management Act 1991.

Commencement of a Resource Consent

Refer to section 116 of the Resource Management Act 1991

- Where no submissions were lodged or any submissions were withdrawn, a resource consent commences, (and may be actioned) on the date of the receipt of the decision.
- Where submissions were lodged to the application, and not withdrawn, the resource consent commences once the time for lodging an appeal has passed, provided no appeals have been received, or when all appeals have been resolved or withdrawn.
- If the resource consent was for activities controlled by the district plan on reclaimed land or land in the coastal marine area, or a restricted activity; then there are specific provisions regarding the commencement of resource consent. These provisions are outlined in section 116 of the Resource Management Act 1991.

Lapsing

Refer to section 125 of the Resource Management Act 1991

- If no lapse date is specified in the consent, the consent will lapse 5 years after the decision date, unless the consent has been actioned (given effect to).
- Council requires full implementation of the establishment conditions prior to the lapse date in order to demonstrate effect has been given to the consent. Please note this includes commencing the activity you have applied for (for example taking water). It is important that when you commence the activity you do so in the sequence that your conditions require (for example installing a meter, then completing a meter inspection, then taking water, all before the lapse date). If you are unable to do so you are strongly recommended to make an application to extend the lapse date or vary the condition that is posing difficulty to implement.

Conditions of Resource Consent

Refer to section 108 of the Resource Management Act 1991

- If conditions are imposed these will be set out in the decision document.
- Please read your consent and ensure that you fully understand any conditions.
- If you have concerns with any condition(s), in the first instance you should discuss your concerns with Council, although an option may be to lodge an appeal or objection.
- It is a legal requirement that there be **compliance with** all conditions.
- If any conditions are contravened it may be that the Council or members of the public will initiate enforcement action (outlined in Part XII of the Resource Management Act 1991).

Change or Cancellation of Conditions of Resource Consent

Refer to section 127 of the Resource Management Act 1991

- The consent holder may apply to the Council to change or cancel conditions of the consent, except a condition specifying duration.

Monitoring Fees

Refer to section 36 of the Resource Management Act 1991 and the Council's Schedule of Fees

- The consent holder will be charged for actual and reasonable costs associated with the monitoring of this consent.

Objections

Refer to section 357 of the Resource Management Act 1991

- In certain circumstances the applicant has the right to object to the Council's decision.
- Any objection shall be made in **writing** and will need to outline the reasons for the objection.
- An objection needs to be lodged with the Council within **15 working days** of the Council's decision being received by you or your agent.

Appeals

Refer to Form 16 and sections 120 and 121 of the Resource Management Act 1991

- The applicant and any submitters have the right to appeal the whole or any part of the Council's decision, however there is no right of appeal against the whole or any part of the decision to the extent that the decision relates to one or more of the following, but no other, activities:
 - a) a boundary activity, unless the boundary activity is a non-complying activity;
 - b) a subdivision, unless the subdivision is a non-complying activity;
 - c) a residential activity as defined in section 95A(6), unless the residential activity is a non-complying activity.

A submitter can only appeal to the Environment Court if their appeal is related to a matter raised in their submission and their submission, or the part of their submission to which the appeal relates, has not been struck out under section 41D of the Resource Management Act 1991.

- A notice of appeal must be lodged with the Environment Court and the Council, within **15 working days** of the Council's decision being received (or received by your agent on your behalf). A copy also needs to be served on the applicant and submitters to the application within 5 working days of the notice being lodged with the Environment Court.

Before lodging an objection or an appeal it is recommended that you seek professional advice.

Subdivision Consents

Refer to sections 223 and 224 of the Resource Management Act 1991

- If no lapse date is specified in the conditions of this consent, the consent will lapse 5 years after the decision date, unless the consent has been actioned (given effect to). The lapse date is subject to the provisions of section 125 of the Resource Management Act 1991.
- The consent holder has a further 3 years following the issue of the section 223 approval to obtain a section 224 certificate from Council and lodge the survey plan for deposit with Land Information New Zealand prior to the resource consent lapsing.
- Payment of any compensation due as a result of road vesting or esplanade acquisition will be made upon receipt of your invoice and evidence that the new certificates of title have issued with the esplanade strip agreement registered on them, or vesting completed.

Annotation History

Date	Reason for Amendment/Alteration