

Before the

MARLBOROUGH DISTRICT COUNCIL

Under the

Resource Management Act 1991

In the matter

of an application by Burkhart Fisheries Limited
Application for Resource Consent – Coastal Permit
and Land Use Consent – Ward Beach, East Coast
of Marlborough (U191050)

**MEMORANDUM OF COUNSEL FOR BURKHART FISHERIES LIMITED AND LANFAR
HOLDINGS (NO.4) LIMITED IN RESPONSE TO MINUTE 4**

Dated this 10th day of December 2021

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May it Please the Panel:**The spatial area sought as an exemption at Ward Beach**

- 1 The spatial area sought as an exemption at Ward Beach is that area identified in U191050. A copy of that consent is **attached**.

Area sought for an exemption at the Salt Works Jetty

- 2 The relevant area is depicted in our submission of 31 August 2021 below paragraph 4. While in practical terms the area necessary to be used will be a lot smaller it might be prudent to allow works to occur between the pier and the intake point marked with a star and an equal distance to the south.

Suggested Terms of Reference to the Harbourmaster

- 3 Burkhart Fisheries Limited / Lanfar Holdings (No.4) Limited suggest the questions for the Harbourmaster ought to be:
- (a) What risks exist with recreational boat launching at Ward Beach?
 - (b) What consequences do those risks have for recreational access to and along the Ward Beach coast?

Copies of the resource consents for gravel extraction and copies of resource consents held for salt water extraction

- 4 I **attach** the following consents:

Location	Type and number	Description
Ward Beach	Resource Consent - Coastal Permit U191050.01 Details: Decision: Granted Decision Date: 5 Feb 2021 Expiry Date: 1 Apr 2026 Consent Status: Active	To excavate approximately 3,500 cubic metres of seabed material from the northeast corner of Ward Beach, including the formation of a temporary causeway with beach gravels and the incidental discharge of sediment, from time to time as needed over a 5 year period in order to maintain a channel to facilitate the launching and retrieval of vessels.
Ward Beach	Resource Consent - Coastal Permit U191050.02 Details: Decision: Granted Decision Date: 5 Feb 2021 Expiry Date: 1 Apr 2026 Consent Status: Active	To excavate approximately 3,500 cubic metres of seabed material from the northeast corner of Ward Beach, including the formation of a temporary causeway with beach gravels and the incidental discharge of sediment, from time to time as needed over a 5 year period in

		order to maintain a channel to facilitate the launching and retrieval of vessels.
Saltworks jetty point	Resource Consent – Land Use U990121.01 Details: Decision: Granted Decision Date: 6 May 1999 Expiry Date: Consent Status: Active	To operate a brine shrimp (Artemia) farm trial with associated groundworks and discharges.

5 The latter consent was associated with a water take and discharge consent. Those take and use consents have been surrendered. In addition they do not seem to be directly relevant to the operation undertaken.

6 Other entities have resource consents to take water in the area. In the New Year Burkhart/Lanfar will investigate whether its operation is covered by a permitted activity rule or whether a consent is required.

The ability to deviate

7 The mapping provided by Burkharts and Lanfar is intended to show a 20m wide strip over which vehicles can be taken to enable the launching of boats.

8 In addition, there needs to be an ability to deviate from that line. I have modelled the following on the ability to deviate in the cases of right of ways which exist in certain circumstances. A bylaw could provide:

If the user of a boat launching area is obstructed from using the area identified, the user may go around the obstruction so as to connect the two parts of the area on each side of the obstruction, and for this purpose, as long as the obstruction remains, deviate provided that it is done in a reasonable manner.

Dated this 10th day of December 2021



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Quentin A M Davies
Solicitor for the Applicant

RESOURCE MANAGEMENT ACT 1991**Decision of Marlborough District Council**

RESOURCE CONSENT: U191050
APPLICANT: Burkhart Fisheries Limited
LOCATION: Ward Beach, Flaxbourne

THIS IS THE DECISION ON THE APPLICATION FOR RESOURCE CONSENT:

DECISION: **Granted**

RESOURCE CONSENT(S) ISSUED:

Type of Consent	Number	Activity	Section
Coastal Permit (Disturb Foreshore)	U191050.1	To excavate approximately 3,500 cubic metres of seabed material from the northeast corner of Ward Beach, including the formation of a temporary causeway with beach gravels and the incidental discharge of sediment, from time to time as needed over a 5 year period in order to maintain a channel to facilitate the launching and retrieval of vessels.	12(1D)
Land Use (Land Disturbance)	U191050.2	To excavate approximately 3,500 cubic metres of seabed material from the northeast corner of Ward Beach, including the formation of a temporary causeway with beach gravels and the incidental discharge of sediment, from time to time as needed over a 5 year period in order to maintain a channel to facilitate the launching and retrieval of vessels.	9

Pursuant to sections 34A(1) and 104B and after having regard to Part 2 matters and sections 104 and 104B of the Resource Management Act 1991, the Marlborough District Council **grants** consent to excavate approximately 3,500 cubic metres of seabed material from the northeast corner of Ward Beach, including the formation of a temporary causeway with beach gravels and the incidental discharge of sediment, from time to time as needed over a 5 year period in order to maintain a channel to facilitate the launching and retrieval of vessels, subject to conditions imposed under section 108 of the Resource Management Act 1991 shown on the attached Certificate of Resource Consent.

Reasons

Proposal

1. This is an application by Burkhart Fisheries Limited (the Applicant) for resource consent to excavate approximately 3,500 cubic metres of seabed material from the northeast corner of Ward Beach. The excavation is required in order to maintain a channel for the launching of the Applicant's vessels used for commercial fishing purposes.
2. The Applicant proposes to excavate on an as-required basis but not exceeding six excavation events for every two year period of the term of the consent if granted. Each event must be completed within 7 consecutive days and the combined number of events per year to not exceed a total of 18 days. The excavation activity will include the formation of a temporary causeway with beach gravels enabling the excavator to access the excavation site.
3. Excavated material will then be deposited within and over a defined area of Ward Beach located in close proximity to the excavation site. The defined area straddles the existing line of Mean High Water Springs (MHWS) meaning that it sits partially on land and partially within the coastal marine area.
4. The Applicant is seeking a 15 year term of consent, if granted.

The Receiving Environment

5. Ward Beach is located on the Wharanui coastline which extends from just north of Chancet Rocks southwards to Willawa Point. The area has been described in detail in Council commissioned reports on natural character, landscape and marine sites. The relevant extracts of these reports were appended to the hearing package compiled by Mr Johnson, Council's Senior Environmental Planner.
6. Borrowing from the extracts the Committee noted the following in respect of the receiving environment. The Wharanui coastline is dominated by sand/gravel beaches of variable size intermingled with rocky headlands, platforms, outcrops and reefs, onshore and offshore. Broad and deeply incised mudstone reefs and limestone outcrops distinguish the northern sector and expansive sand/gravel beaches the southern sector. Access to this coastline is limited to a few locations, with the principal access gained at Ward Beach. Notable features such as the Chancet Rocks can only be accessed on foot walking along the shoreline from Ward Beach. Public access at Ward Beach is enhanced by the availability of camping facilities (provided by a landowner) and a car parking area.
7. Informed by the Council commissioned reports the Proposed Marlborough Environment Plan (PMEP) contains the following overlays that have a bearing on the application site:
 - a) High Natural Character overlay (above MHWS);
 - b) Very High Natural Character overlay (below MHWS);
 - c) Outstanding Natural feature and Landscape overlay;
 - d) Ecologically Significant marine sites overlay (Site 9.1, below MHWS); and
 - e) Threatened Environments: indigenous Vegetation Sites overlay (above MHWS).

8. The Kaikoura Earthquake struck on 14 November 2016 with a magnitude 7.8. The earthquake resulted in a significantly altered coastline including an uplift of the Ward Beach coastline of between 2.5 and 3.0 metres. The shoreline was shifted seawards increasing the width of the beach. Photos appended to the application illustrate the considerable extent to which this beach was altered by the earthquake.

Background

9. The Applicant established its fishing activity from Ward Beach in the 1970s, and in the intervening timeframe the company has developed and continues to operate a live lobster export business based in Ward. The company is part of the CRA5 fleet that commercially fishes for rock lobster under the fishing quota system. CRA5 is the Canterbury Marlborough Commercial Rock Lobster quota.
10. Over this time the fishing operation has involved the launch and retrieval of lobster fishing vessels at the northeast corner of Ward Beach. The launch and retrieval operation utilises bulldozers to tow the vessel trailers in and out of the sea.
11. The Kaikoura earthquake, and associated uplift of the seabed, had a detrimental impact on the Applicant's fishing operation. The ability to safely launch and retrieve vessels from this site has been constrained because the rocks located in the launch and retrieval area of the foreshore were closer to the surface of the water than they were prior to the earthquake. Relevant to this application, the uplift of the seabed means that any accumulation of gravels in the launching and retrieval area have an affect on this activity occurring.
12. The Applicant has attempted to resolve this problem by applying for resource consent to utilise the beach in other ways that would enable launch and retrieval of the vessels at other locations. The associated adverse environmental effects and other matters have been insurmountable and a solution was not found.
13. The following three coastal permits have since been issued to the Applicant each for one-off dredging events at the location the subject of application U191050:
 - a) U180232 - To excavate the seabed at the northeast corner of Ward Beach by removing the rock outcrops and boulders from an area of approximately 950 square metres, including the formation of a temporary gravel causeway and associated earthworks and incidental discharge of sediment. Granted 30 April 2018.
 - b) U190230 - To excavate approximately 3,000 cubic metres of gravel from the foreshore and seabed at the northeast corner of Ward Beach, including the formation of a temporary causeway with beach gravels and the incidental discharge of sediment, in order to form a channel to facilitate the launching and retrieval of vessels. Granted 26 April 2019.
 - c) U200805 - To excavate approximately 3,000 cubic metres of gravel from the foreshore and seabed at the northeast corner of Ward Beach, including the formation of a temporary causeway with beach gravels and the incidental discharge of sediment, in order to form a channel to facilitate the launching and retrieval of vessels. Granted 10 November 2020.

Of the three consents, only U180232 was given effect to with the excavation being undertaken in May 2018. Photos of the excavation were attached as Appendix 2 of the hearing package at page 89. It was at this time that rock outcrop and boulders were removed from the channel to enable launching and retrieval of the fishing vessels. U190230 was not given effect to and the consent expired 1 August 2019. On the day of the hearing of application U191050 the Applicant was preparing to excavate under U200805 and was waiting for a series of days with suitable weather conditions before work could commence. The excavation would remove gravels that had since filled in the channel limiting again the launching and retrieval of the fishing vessels.

Activity Status

14. The proposed excavation will take place entirely within the Coastal Marine Zone of the Wairau Awatere Resource Management Plan (WARMP) and the Coastal Marine Zone of the PMEPP.
15. In terms of the WARMP zone boundaries the area identified for the depositing of the excavated material covers both the Conservation Zone and the Coastal Marine Zone. In terms of the PMEPP zone boundaries the area identified for the depositing of the excavated material covers both the Open Space 3 Zone and the Coastal Marine Zone.
16. The application was lodged on 2 December 2019. At the time of lodgement the application was subject to the rules of the WARMP. At the point of the closure of the hearing the decision on the PMEPP had been issued and the timeframe in which to lodge any appeals had closed.
17. According to s 86B of the Resource Management Act 1991 (RMA / the Act) the provisions of the PMEPP were deemed to have legal effect. Section 86F provides that a rule in a proposed plan must be treated as operative, and any previous rule inoperative, if :
 - a) No submissions in opposition have been made or appeals have been lodged; or
 - b) All submissions in opposition and appeals have been determined; or
 - c) All submissions in opposition have been withdrawn and all appeals withdrawn or dismissed.
18. Section 86F does not apply to the objective and policies of a proposed plan. Increasing weight should be given to those provisions as the PMEPP progresses through its statutory process towards becoming operative.
19. No appeals have been lodged in respect of PMEPP Chapter 16 – Coastal Marine Zone, Rule 16.6.10 and Chapter 19 – Open Space 3 Zone, Rule 19.4.1. The Committee concluded that it should treat Rule 16.6.10 and Rule 19.4.1 as having legal effect.
20. A coastal permit is required for works undertaken in the Coastal Marine Zone and works not within this zone but located seaward of the MHW line. Land use consent is required for works undertaken in the Open Space 3 Zone.
21. The Committee agreed that the proposal to excavate material within the Coastal Marine Zone and to deposit the material within the Coastal Marine Zone and Open Space 3 Zone is a discretionary activity under Rules 19.4.1 and 16.6.10 of the PMEPP.

Notification and Affected Parties

22. The application was publicly notified on 20 January 2020, with the timeframe for the lodging of submissions closing at 5.00pm on 17 February 2020. In all seven submissions were lodged in response to the application. The nature and content of the submissions are described in summary below.
23. There were no affected party approvals obtained by the Applicant in respect of this application.



Procedural Matters

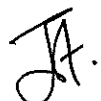
24. Prior to the hearing, a report was produced pursuant to section 42A of the RMA by Council's Lead Senior Environmental Planner, Peter Johnson. The section 42A report set out an analysis of the matters that required the consideration of the hearing panel (the Panel). Mr Johnson identified the various aspects of the proposed activity that would be consistent and inconsistent with the relevant planning provisions. He concluded that if fully implemented on the terms described in the application the proposal would have significant adverse effects on the existing natural character, landscape values, amenity values and habitat values of Ward Beach.
25. Mr Johnson appended the following documents to the section 42A report:
 - i. The amended application as lodged;
 - ii. Photographs of the previous dredging (excavation);
 - iii. Extract from the Natural Character Report;
 - iv. Extract from the Landscape Study;
 - v. Extract from the Marine Sites report;
 - vi. Submissions received;
 - vii. Input from the Biodiversity Coordinator;
 - viii. Input from the Coastal Scientist;
 - ix. Ngāi Tahu Iwi Environmental Management Plan Provisions;
 - x. New Zealand Coastal Policy Statement Provisions;
 - xi. Marlborough Regional Policy Statement Provisions;
 - xii. Wairau/Awatere Resource Management Plan Provisions;
 - xiii. Wairau/Awatere Resource Management Plan Assessment Criteria;
 - xiv. Proposed Marlborough Environment Plan Provisions; and
 - xv. Potential consent conditions
26. The report together with the above documents comprised the hearing package which was circulated prior to the hearing in accordance with statutory timeframes. The report was taken as read at the hearing.
27. The evidence and submissions from the parties were lodged and circulated in accordance with the statutory timeframe requirements. The material was also taken as read at the hearing.
28. Prior to the hearing the submitter Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu (collectively referred to as Ngāi Tahu) in a letter dated Te 19 o kā rā o Whitu 2020 (19 November 2020) withdrew its right to be heard. In its initial submission Ngāi Tahu stated that Te Rūnanga o Ngāi Tahu is statutorily recognised as the representative tribal body of Ngāi Tahu Whānui and was established as a body corporate under section 6 of the Te Rūnanga o Ngāi Tahu Act 1996. Further, the Te Tai o Marokura (Kaikoura Coastal Marine Area) is a Statutory Acknowledgement area included in the Ngāi Tahu Claims Settlement Act 1998.
29. Ngāi Tahu opposed the entire application on the basis that the application had not fully considered the effects of the activity on Ngāi Tahu values, and the assessment of effects on the ecology of the area had not been supported by technical data prepared by a suitably qualified expert. However, if the Panel were of a mind to grant consent to the application Ngāi Tahu sought a shortened duration of consent and conditions that would adequately mitigate the effects of works on the Mahinga Kai values associated with Ward Beach and surrounding coastal waters.

JA.

30. On 19 November 2020 Ngāi Tahu withdrew its right to be heard on the basis that it supported the recommendation in the section 42A report of a 5 year term of consent if granted and the recommended conditions addressed outstanding concerns.
31. In its letter Ngāi Tahu noted that the Applicant had in the application proposed a condition of consent that required an annual beach profile to be taken and the site photographed before and after works. Ngāi Tahu were concerned that the condition was too narrow in its focus and should be drafted so as to focus on potential cumulative effects of the activity on the wider marine environment along the coast. Ngāi Tahu also noted that the Applicant had not proposed a condition that required the Applicant to report on whether environmental change had occurred as a result of the works or set triggers for responsive actions if specified effects in the localised or wider environment are identified.
32. As explained below at paragraph 41, Ngāi Tahu was able to participate in the process around revised proposed conditions. The Panel were satisfied that although the Applicant had failed to consult with Ngāi Tahu, the iwi had recorded that its concerns had been met through the consent term and conditions of consent.
33. There were three submissions lodged for which the submitters did not exercise their right to be heard at the hearing.
34. S L and J J Broadhurst supported the application in its entirety for the reason that the application will provide benefit to all beach users in terms of the safer launch and retrieval of boats.
35. The Paua Industry Council Limited (PICL) also supported the application. In its submission PICL explained that the Marlborough east coast north of the Clarence is an important part for the PAU7 (Marlborough) paua fishery. Commercial paua divers operate from small vessels, often launching from beaches. Access to a range of launching areas along the coastline is important as it enables the catch to be spread across the entire quota management area. This avoids any concentration of fishing activity and, as a consequence, paua stock depletion in any area where fishing has been concentrated. Ward Beach is the preferred east coast launching site because it is sheltered from the prevailing winds and the presence of the Applicant on the beach improves the safety of launching and retrieval of vessels at this site.
36. Although the east coast PAU7 fishery is currently closed following the Kaikoura earthquake, the paua fishers will in the future require access to a safe and reliable launching area. The safe and reliable launching and retrieval site at Ward beach will be critical to the rebuilding and sustainable management of the PAU7 fishery, once reopened.
37. The Flaxbourne Settlers Association also submitted in support of the application. The Association, however, requested that any gravel extraction northwards of the current site be restricted to avoid impact on the rock formations and the natural vista of the beach.

The Hearing Process

38. The Panel undertook a site visit on Monday 23 November 2020 and was accompanied by Ms Bulfield-Johnston, Marlborough District Council's Hearing Facilitator.
39. On the day of the hearing a range of views were expressed as to the extent and location of the area over which the Applicant proposed to deposit the excavated material. The three one-off consents issued previously for this activity have each described different areas over which to deposit the material, and the conditions have evolved with each of the consents issued. Mr Johnson provided the latest suite of conditions at the hearing for the Panel to consider and the conditions were modified further on the day of the hearing.



40. Following the hearing the Hearing Panel Chairperson issued a Minute and Directions dated 25 November 2020 to the parties in response to unresolved issues that arose during the course of the hearing. The Chairperson recorded in the Minute that the hearing was adjourned. He directed the Applicant to file a set of revised proposed conditions and a graphic of the site using the drone imagery overlaid with an outline of the proposed dredging area and the proposed area on which the excavated material will be deposited. The Applicant and Mr Johnson were directed to collaborate on producing the revised conditions and diagram and to provide an explanation on points where they were not in agreement, including their reasons. The directions set out timeframes for the provision of this information and for responses from the submitters and the Reporting Officer.
41. The recipients of the Minute and Directions included Ngāi Tahu, despite their having withdrawn their right to be heard. The Committee considered this to be appropriate because Ngāi Tahu had withdrawn its right to be heard based on the proposed conditions of the consent if granted. Any changes to the proposed conditions may have an effect on this stance.
42. Responses to the revised conditions were provided by Ngāi Tahu, the East Coast Protection Group and Forest and Bird. On receipt of the responses from the submitters and Mr Johnson, the Chairperson issued a further Minute and Directions dated 9 December 2020 directing the application to provide its reply, and on receipt of that the hearing was formally closed on Tuesday 12 January 2021.

The Hearing and Appearances

43. The hearing took place as scheduled on Tuesday, 24 November 2020 in the Council Chambers of the Marlborough District Council Administration Building. It commenced at 9.00 am before a Panel consisting of members of the Resource Hearing Sub-Committee delegated to hear and determine applications for resource consent. The Panel comprised of Cllr J Arbuckle (Chairperson), Cllr B Fauls and Cllr D Oddie.
44. The hearing was attended by:
 - Mr T Burkhart (Applicant)
 - Ms A Benseman (Applicant's Agent)
 - Mr Q Davies (Applicant's Counsel)
 - Ms K Moor (Applicant's Counsel)
 - Mr L Wichman (Submitter)
 - Ms D Martin, Royal Forest & Bird Protection Society (Submitter) – via Zoom
 - Mr R Stolwerk, East Coast Protection Group (Submitter) – via Zoom
 - Mr P Johnson (Marlborough District Council, Lead Senior Environmental Planner)
 - Ms S Bulfield-Johnston (Marlborough District Council, Hearing Facilitator)

Summary of Evidence and Submissions presented at the Hearing

45. At the commencement of the hearing Mr Johnson tabled the recently issued consent U200805. His purpose was to bring to the Panel's attention the latest iteration of consent conditions designed to manage the proposed activity. He viewed these conditions as superior to the conditions provided in the section 42A report that formed part of the hearing package circulated to the parties to the hearing. While the conditions represented a refinement in his thinking he cautioned that they were drafted so as to manage a one-off excavation activity rather than an activity that could be repeated on an on-going basis over a longer term of consent.

The Applicant

46. The case for the Applicant was presented by Mr Davies, Ms Benseman and Mr Burkhart.
47. Mr Davies tabled a series of aerial photos of the site to illustrate the extent to which the gravels have shifted between 2017 and 2020. He and Mr Burkhart spoke of the need to avoid depositing the excavated material southwards of the excavation site. In essence the gravels would likely be returned to the foreshore through wave action and storm events. The gravels would then refill the excavated area and necessitate another excavation event. Placing the gravels northwards of the extraction site would assist to reduce the number of extractions required over the term of the consent.
48. Mr Burkhart and Mr Davies anticipated that gravel extraction would only be required annually. They explained that the additional numbers of extraction events applied for were on a "just in case" basis in the event that gravel migrated into the channel more frequently necessitating additional excavation. The intention was to avoid interruption to the fishing season while a new application for consent was lodged and processed.
49. Mr Davies confirmed there was no intention to operate heavy machinery in a way that would cause damage to the exposed rocks. He reiterated that the distribution of gravel over the beach would be undertaken in a way so as to achieve a natural look to the beach. Piles of gravel and debris such as logs would be avoided. These matters could be covered by conditions.
50. To avoid repetition the matters covered by Mr Davies in his opening legal submissions for the Applicant are set out in the section entitled Principle Issues of Contention.
51. In his statement of evidence Mr Burkhart covered the history of their fishing activity on Ward Beach and the economic benefits this operation provides to the Ward Community through employment and the utilisation of wider regional services.
52. The Applicant has been largely unable to launch and retrieve its fishing vessels since January 2020 due to the channel filling in with gravels. Prior to that during a fishing season the vessels could be on the water as much as daily. The consent U200805 will resolve this situation for the time being but a longer term solution was being sought with application U191050.
53. Mr Burkhart spoke of the dynamic and ever changing nature of Ward Beach. The beach gravels move constantly in a northerly direction and the profile of the beach is frequently altered by wave action and storm events. Gravels deposited on the beach will also migrate northwards over time. He disputed the suggestion by Council's Biodiversity Coordinator, Mr Aviss, that the application if granted could result in unnaturally large piles of gravel on the beach. Gravels would be deposited in a way so as to have a natural appearance.
54. Ms Benseman was both the Agent and the Planning expert acting for the Applicant. In the application document, and evidence for the hearing, Ms Benseman provided her assessment of environmental effects summarised as:
 - a) Coastal processes and water quality
 - Adverse effect on water quality resulting from the excavation will be negligible given the short timeframe over which works will occur.
 - Material excavated will only be pea-gravel absent of fine sediment. Sediment that is mobilised will quickly re-settle. Given the poor water clarity along this coastline significant cumulative or long terms effects are unlikely.
 - The area where the excavated material will be deposited adjoins the excavation site and northwards to assist the material to migrate northwards along the beach rather than being washed back into the coastal water, only to re-fill the launching channel.

- b) Ecological effects
- The proposal includes the disturbance of the seabed and foreshore which has the potential to have an adverse effect on ecological values.
 - The application site does not contain any rock formations.
 - The highly mobile nature of the waters in the coastal area of the application site means it is unlikely that damage to significant ecological environment will occur.
 - Ecological effects on the seabed and intertidal area will be less than minor.
 - Banded Dotterel nest in the area to the south of the application site between September and January. The Applicant proposes nesting activity surveys, avoidance of works around nesting birds, and careful relocation of habitat material. Council's Biodiversity Coordinator has suggested these birds appear to avoid the eastern end of the beach in preference to the freshwater associated with the Flaxbourne River. Moving the gravel deposition site away from the river mouth in conjunction with the nesting activity surveys will mitigate potential effect on the Banded Dotterel population.
 - No works to be undertaken within 50 metres of the river mouth to avoid disturbance of the ecology within the river.
- c) Landscape, natural character, seascape and natural effects
- The wider area has important landscape values but Ward Beach itself is a relatively modified part of the coastline. Human activity related modifications at Ward Beach can sustain vehicle activity without compromising natural character and landscape values.
 - Excavation works will not be visible once completed and coastal processes are unlikely to be altered significantly.
 - Use of vehicles on the beach will have a short term effect on visual amenity of the beach.
 - The proposed activity will be limited to a maximum of 7 days per event and not more than 18 days overall per year.
 - The excavated material will be distributed over the beach following existing or similar contours and to an extent no more than that which can be reasonably anticipated due to natural processes. Part of the deposition area is subject to regular storm surges. The beach will retain a largely natural contoured appearance.
 - Effects from the re-contouring of the beach will be temporary and less than minor.
 - While the proposed works will have an effect on the natural character values of the area both during the works and for a short time afterwards, in the context of the heavily trafficked and naturally dynamic receiving environment the effects of the activity on natural character will be temporary and acceptable.
 - The amenity of Ward Beach includes the long history of launching the fishing vessels from the beach.
- d) Public Health, safety and access
- Given the short term of the consent (the Applicant requested 15 years) and the limited periods during which works are carried out there will be no significant or long term effects to public access. Machinery associated with the fishing industry has utilised the beach area for over 40 years, the Applicant is cognizant of public health and safety, and they can easily be accommodated without adverse effect.
 - Moving the application site down the beach as suggested by Mr Johnson will enhance public access along the gravel beach frontage.

JA.

- e) Cultural effects
- The application site falls within the statutory acknowledgement area of Ngāi Tahu, important for mahinga kai values.
 - The Applicant has accessed Ward Beach for 40 years and has not observed food gathering activity in the vicinity of the application site. Based on this the proposed activity will not adversely limit access for mahinga kai activities. The management of the proposed activity around nesting birds and away from the river mouth, and the minimal effect on seabed reefs will ensure the quality of the environment to support resources for mahinga kai will be maintained.
 - Improved launching for all boat users including iwi in terms of recreational and economic interests.
- f) Other effects and alternative options
- Limitations to frequency and duration of excavation events will avoid significant cumulative effects on landscape, natural character and public access.
 - There will be no long-term build-up of gravels on the beach due to wave action and the natural mobilisation of gravels northwards along the beach
 - An annual survey of the beach profile used to compare the profile with a baseline survey already undertaken will enable assessment of any cumulative effects arising from the depositing of the excavated gravels. Ongoing monitoring and a section 128 RMA review can be undertaken if required.
 - The application will have positive economic effect for the Applicant and result in a reduction of health and safety risk associated with the launching of boats for commercial and recreational activity and maritime rescue.
 - Section 4 RMA requires an assessment of alternative locations and methods for a proposed activity which will result in significant adverse effect. Ms Benseman assessed the proposal as having no adverse effects; therefore alternatives are not required to be considered.
 - The use of structures to provide access is not appropriate given the high wave energy and the lack of structures in the area generally.
 - Alternative launch locations have been considered and discounted.

55. Ms Benseman set out in a table the relevant planning provisions of the resource management plans and statutory framework. In a column on the far right of the table Ms Benseman recorded that the proposed development was in the majority consistent with each of the provisions and not contrary to a small group of the provisions. It was her opinion that subject to appropriate conditions, consent could be granted for the term of 15 years.

56. **Royal Forest and Bird Society of New Zealand Incorporated (Marlborough Branch and Central Office)**

Ms Martin, in a submission from Royal Forest and Bird Society of New Zealand Incorporated (Marlborough Branch and Central office) (Forest and Bird / the Society), was both opposed and neutral to the application. The Society had been involved in the previous processes the Applicant has gone through in its attempt to resolve the water access issue that it had faced post the Kaikoura earthquake. The Society recognised the benefit the consent will provide to the fishing operation in terms of boat launching and retrieval.

JA.

57. Nonetheless the Society sought amendments to the proposed conditions to allay its concerns relating to the months in which the works would be undertaken which coincided with the bird nesting and re-nesting activity on Ward Beach. It sought a term of five years or a five year review cycle for the duration of the consent if issued for a longer term, and for the consent to be cancelled if not utilised. The shorter timeframe would allow for appropriate assessment of any effects on the broader area. Finally, the Society requested the access for boat launching to be limited to the Applicant. A section 128 review had limitations in that it could not be utilised as a mechanism to decline consent in the event of unforeseen adverse environmental effects.
58. Ms Martin expanded on this submission in the hearing. She spoke of the dynamic nature of the Ward Beach coastal ecology and expressed concern in terms of the potential for longer-term effects if the consent were to be granted for a term longer than 5 years. In particular, she spoke about the limestone outcrop which is part of Geopreservation Site 1813, the importance of this site and the potential for it to be partially covered by the depositing of the excavation material. This concern related specifically to a rocky outcrop located within the area of deposition. Ms Martin acknowledged that the mobility of the gravels on the beach may cover these rocks at times; she requested that any damage to the rocks caused by the excavator and/or vehicles depositing the excavated material be avoided.
59. **East Coast Protection Group**
- Mr Stolwerk, in a submission from the East Coast Protection Group (ECPG) opposed the application for the following reasons:
- a) While the reasons for the excavation of the channel and subsequent depositing of the excavated material were understood, the application represented an increase in the scale of the activity undertaken previously. The Applicant sought the increase in scale with limited means by which to monitor or review the consent if granted.
 - b) The proposed activity had the potential to come into conflict with ground nesting shore birds during the breeding season.
 - c) The application contained no assessment of:
 1. The effect of depositing the excavated material on the beach;
 2. Potential effect on the flow of gravels around the river mouth;
 3. Alternative more efficient means of disposing of the material; and
 4. Effects on biodiversity.
60. Based on the description of the activity in the application, ECPG estimated the activity as proposed could occur on up to 35 days per year affecting the experience of other beach users.
61. In his statement tabled for the hearing, Mr Stolwerk recorded the group's support for proposed conditions 1-4, 6 and 12 of the conditions appended to the hearing package. He reasoned that the cumulative impacts of the dredging and depositing of the material on Ward Beach foreshore are unknown. He concluded that limiting the affected area and the consent duration, in conjunction with a review condition, will provide flexibility to deal with unknown effects on habitats, flora and fauna.
62. The group also supported proposed condition 5 subject to an amendment to the wording from rare or threatened to at risk or threatened. The change was to make the descriptor consistent with the NZ Threat Classification System.
63. The Committee noted this proposed condition had been amended in the revised proposed conditions appended to the Memo to the Hearing Panel dated 27 November 2020, lodged on behalf of the Applicant.

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64. In its response to the revised conditions provided in accordance with the directions of the Hearing Chairperson, ECPG reiterated its preference for the excavated material to be deposited on Ward Beach southwards of the excavation site. The Panel did not adopt this request for reasons set out below.
65. **CRAMAC 5 Association**
- Mr Wichman, in a submission from the CRAMAC 5 Association supported the application in its entirety. He explained that CRAMAC 5 is a committee that manages the commercial access to the rock lobster resource through shareholder quota rights. There are 52 shareholders in this group. He spoke of the importance of the highly productive Cape Campbell lobster fishery to the CRA 5 Canterbury Marlborough commercial rock lobster fishery overall. The total allowable commercial catch (TACC) of 350mt is spread across the CRA 5 area, a practice that promotes the sustainability of the fishery. The inability to launch fishing vessels at Ward Beach has resulted in this portion of the allocation being transferred for other fishermen to harvest. This could result in depletion in those areas due to the increased levels of fishing to meet the quota. Furthermore, the continued inability to fish from Ward Beach could result in a review of the CRA 5 fishery and a reduction in the TACC. This reduction would be applied across the fishery affecting all shareholders.
66. The Committee noted that Mr Wichman's presentation at the hearing provided the Panel context in terms of the positive economic effect the Ward fishery created and the associated potential risk to the CRA 5 fishery resulting from the inability to launch from Ward Beach.
67. **Marlborough District Council Officers**
- Council's Biodiversity Coordinator, Mr Aviss and Coastal Scientist, Mr Wade provided advice to Mr Johnson in response to the application. Mr Wade was also in attendance at the hearing and spoke in response to the matters canvassed on the day. Mr Aviss was not in attendance at the hearing. The points made by these staff members are summarised in the following paragraphs.
68. Mr Aviss noted that at maximum utilisation the proposal represented the excavation and deposition of 17,000 cubic metres per annum and up to 260,000 cubic metres over the term of the consent if granted for 15 years. The proposal has the potential to alter the shape and depth of the beach in the areas beyond the intertidal zone.
69. Ward Beach is important for shore birds, in particular the threatened Banded Dotterel which breeds on this beach. Banded Dotterel are recorded as undertaking their nesting activity along the gravel banks of the beach both west and east of the application site. While there is no data available from the time prior to the Applicant commencing launching activity on the beach, Mr Aviss suggested it is likely these birds previously used the application area for nesting activity. Initially hatched chicks forage for food in the area of the lagoon behind the beach before widening the foraging area to include the beach.
70. Mr Wade said that without the fishing activity taking place the application area would in time be colonised by flora and fauna. He noted, however, that this area is subject to high traffic as it is the access point to this part of the coastline. He also held the view that the proposed activity had a high likelihood of altering the physical and ecological character of the beach.
71. Both Mr Aviss and Mr Wade cautioned that, without an understanding of the coastal processes of the coastline in the area of Ward Beach, difficulty remained when assessing the effects of the proposed activity. They each recommended that advice be obtained on the coastal morphology of the coastline of Ward Beach and wider area.

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72. Mr Wade also noted that the east coast coastline ecosystem was still in the settling phase following the Kaikoura earthquake. Effects included a change to the volume of sediment/gravels going into the catchment. He agreed there was a huge amount of gravel moving south to north along this coastline but it was difficult to ascertain the volume that was localised to Ward Beach. He agreed that excavated material deposited in the intertidal area south of the excavation site will likely be returned to the seabed through wave action.
73. The wider area is the subject of a tidal recovery study being undertaken by Canterbury University and the Cawthron institute. Over time more information about Ward Beach and the wider coastal environment will become known. Currently the effects of the proposed activity are difficult to ascertain when the number of excavation works and the actual volume of material deposited are unknown.
74. To assist the Panel, Mr Johnson tabled a diagram showing the outlines of the filling areas granted under the three previous consents, the area proposed by the Applicant in this application, and the area recommended in the section 42a report which was then amended in response to the matters raised in the hearing. He also tabled a set of revised proposed conditions that also reflected the matters covered in the hearing.
75. In terms of a section 128 review Mr Johnson said he had little experience of this process. A review would be constrained by the terms of the section 128 condition. Care would need to be taken to ensure the consent remained viable following the review and any subsequent change to conditions.
76. Mr Johnson said there must be a physical limit to the volume of material deposited on the beach and beyond that excess material should be removed by truck. While the WARMP has a preference for land based disposal of material the PMEP leaves the door open for the disposal of the excavated material into the sea. At that point Mr Burkhart confirmed that if the natural processes of Ward Beach did not adequately remove the deposited material the Applicant would have to consider other methods.

Principal Issues of Contention

77. The Panel defined the principal issues in contention as:
- a) The assessment of the relevant planning provisions
 - b) Cumulative effect
 - c) Term of consent
 - d) The location of the areas defined for the depositing of excavated material, and potential for damage to bed rock
 - e) The number of excavations that can occur annually
 - f) Public access
78. The Panel noted that Ms Benseman for the Applicant and Mr Johnson for Council each set out what they held to be the relevant provisions of the Marlborough Regional Policy Statement, WARMP, PMEP, New Zealand Coastal Policy Statement and the Te Rūnanga o Kaikōura Environmental Management Plan. They largely identified the same provisions but each reached their own conclusions as to the scale of the activity should consent be granted. The Panel have not specifically referred to the particular objectives, policies and assessment criteria of the relevant planning instruments in this decision, but wish to record these provisions have been read and considered.
79. The Panel noted that Ms Benseman provided some explanation of her assessment before concluding that the proposed activity was in the main consistent with the relevant planning provisions. She held the view that if implemented to the full extent applied for the effect of the proposed activity on the environment would be minor. Such was the strength of her view that she stated in the application that the consent could be processed and consent granted without notification.



80. The Panel, however, gave less weight to the planning assessment for the Applicant. While the assessment canvassed the necessary array of subject matter to be expected in an application of this nature, the conclusions reached were not supported by independent technical expert advice. The Panel further noted that the case for the Applicant relied on the presence of the Applicant on Ward Beach for the previous 40 years, and that the fishing activity and the effects of it were firmly imbedded into the Ward Beach environment and its associated amenity. The Panel did not accept the premise that the effects of the proposed activity were no more than that which came before it because the proposed activity is a recent development in response to the Kaikoura earthquake.
81. The Applicant has been granted three consents to excavate gravels and deposit the material on the beach. Each of the three consents was for a single event and for different volumes and areas of deposition. Of the three consents only one had been exercised at the time of the hearing of the current application and on that no evidence was tabled.
82. The Panel preferred the assessment of Mr Johnson who took a more cautious approach. He concluded while a small number of excavation events may not be inconsistent with the identified provisions, the effects of the application if fully implemented would have significant adverse effects on the existing natural character, landscape values, amenity values and habitat values. The case for the Applicant did not overcome the lack of information on the Ward Beach morphology which meant there could be no surety as to the cumulative effect of the proposed activity.
83. The Panel did accept that the Applicant was a provider of employment to the Ward community and that there would be implications if the Applicant was unable to fish under the CRA5 quota allocation.
84. Regarding what was considered to be an appropriate term of consent if granted, there was an ongoing difference in views that remained unresolved throughout the course of the hearing. Mr Johnson for Council, Ngāi Tahu, the East Coast Protection Group, and Forest and Bird all advocated for a shorter term of five years due to the uncertainty as to the potential for adverse effects on the environment. A five year term would in their view provide time for information to be compiled on the activity and its associated effects. The Applicant sought a term of fifteen years on the basis that this was a shorter term than the usual twenty years granted for coastal permits and that the potential effects could be anticipated with certainty. The reduced fifteen year term was offered in recognition that Ward Beach is a dynamic coastal environment that was constantly changing.
85. The Panel agreed that the effects of the full utilisation of the consent, if granted as proposed, could not truly be ascertained from the current perspective. There was no factual evidence presented to it on the previous excavation and deposition event that would support the case for a fifteen year term of consent. Had evidence been tabled, it would only have been in respect of a one-off event. Some forward speculation would still be required to form a view on the potential cumulative effects of the proposal, which was for multiple excavation events per year over a longer timeframe.
86. The Panel was not opposed to granting consent, but considered the term of fifteen years was too long. It agreed with submitters and Council staff that the potential adverse effect of the proposed activity were not well understood.

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87. PMEP Policy 13.2.3 provides for a periodic reassessment of whether activities and developments are affecting the values of the coastal marine area, to encourage efficient use of a finite resource and in consideration of the dynamic nature of the coastal environment. The policy acknowledges that the RMA grants consents within the coastal marine area for a maximum of thirty five years. However, a twenty year term has been generally applied by Council because it has found this term to be appropriate in the Marlborough context. Further, the policy states that shorter terms are considered appropriate when:
- the coastal marine area is public open space that is used or valued for a range of different reasons;
 - there are growing pressures and increasing demand for coastal space;
 - there are changing and challenging issues facing use of coastal resources;
 - the coastal environment is of a dynamic nature, constantly changing; and
 -
88. The Panel accepted that the Applicant has offered to further limit the term of consent, if granted, to fifteen years in recognition of policy 13.2.3. The Panel found that given the limited understanding of the potential effects of the proposed activity, a five year term would be appropriate in this instance. A shortened term of consent will enable the Applicant to undertake the activity on an on-going and as required basis for the next five years, enabling it to overcome the current launching access obstacles. In this timeframe the Applicant will be able to compile information on the effects of the activity. This information could be provided in support of the replacement application, and may in turn support a longer term of consent.
89. All parties to the hearing had a view as to the scale and location of the area defined for the depositing of the excavated material. Ultimately the Panel preferred the area drawn by Mr Johnson at the hearing having taken into account the issues raised by all the parties. The diagram is attached, Appendix 1, and referenced in condition 13. The southwards extent of the area was reduced to lessen the possibility of the material returning to the seabed and ultimately the launching channel. Over time the material will move in a northward direction along the beach but wave action and storm surges would in the meantime carry the gravel back into the water. If this occurred southwards of the launching channel the material would travel back to the channel and another excavation would be required. While recurring excavations cannot be avoided, moving the deposition area northwards may assist to lessen the frequency of these events.
90. The defined area partially extends below the high tide line because the Applicant proposes to excavate material from this part of the beach to construct the temporary causeway. The causeway material would be returned to this area of the beach in a manner that follows the beach profile. The tide will assist to sculpt the material to a natural profile. The Panel accepted the Applicant's assertion that the material excavated from the launching channel would be deposited above the wet-line. The Panel interpreted this to mean the area above the reach of the waves. This would also lessen the frequency of repeat excavations because this material was less likely to return to the seabed except when carried back into the water by storm surges.
91. The Panel held reservations in terms of the effects of a higher number of excavations occurring in a year. Specifically, if the maximum number of six excavations is calculated on a per two year basis, the Panel was concerned that a high number of excavations could occur on a "year two" followed by a high number of excavations on the following "year one". In other words while the intention is to avoid a concentration of excavation events, this could nonetheless occur under this model. The Panel resolved that a rolling two year calculation, where the total number of excavation events was calculated on a current year and previous year basis, would allow for the Applicant to meet its needs while avoiding such an outcome. The Panel were satisfied that condition 3 of this consent which sets a maximum number of excavation events over two contiguous years addressed this concern.

92. The Panel also noted that Mr Burkhart and Mr Davies anticipated that gravel extraction would only be required annually. They had indicated during the hearing that the additional number of extraction events applied for were on a "just in case" basis in the event that gravel migrated into the channel more frequently, necessitating additional excavation. The intention was to avoid interruption to the fishing season while a new application for consent was lodged and processed.
93. Mr Johnson on the other hand held the view that six excavations over two years was too high a number and the corresponding adverse effects on the environment potentially significant. He proposed the number of occurrences be reduced to four events over two years.
94. The Panel found there was no evidential basis that would support this recommended reduction in the frequency of excavation events. Furthermore, if the number of excavations was reduced and it transpired that additional excavation was indeed required, the Applicant would find itself once again having to face an application process. The Panel found this eventuality to be unpalatable in the context of a consent granted for a term of five years.
95. The Panel concluded there was some merit in granting consent on the basis of up to six excavation events within any two contiguous years over the shorter term. It relied on the level of protection provided by the section 128 review condition which will require the Applicant to respond to any unforeseen adverse environmental effects, as the Council deems appropriate. At the time of the replacement application the Applicant should have a truer sense of the frequency of excavation events required and be able to support the proposition with evidence compiled over the term of this consent.
96. The Panel noted that the Applicant stated in the hearing that in the event the material did not sufficiently migrate northwards between excavation events the excess excavated material would be disposed of in other ways. The Panel found it could not rely on this with certainty because at this point in time the scale of adverse effect which would trigger this response could not be quantified. It again referred back to the section 128 condition and records in this decision that the Applicant is prepared to investigate alternative disposal options if required.
97. The Panel also recorded that it asked Mr Burkhart whether a Coastal Engineer would be overseeing the excavation works. Mr Burkhart stated that would not be the case, instead he would be engaging an experienced digger operator who would essentially stop excavating when he hit bedrock. The Panel saw this approach as somewhat un-measured, however, it took comfort from the proposed conditions designed to manage the activity and any potential effects of it.
98. Whilst the Applicant volunteered condition 11 in order to define the extent of each excavation, the Panel also held the view that a condition requiring that the works are undertaken by a suitably qualified and experienced professional excavator operator was also appropriate. It imposed this requirement in condition 7.
99. Given that the works would not be overseen by a Coastal Engineer, the Panel concluded that a baseline set of data about the beach was warranted and ongoing monitoring of potential environmental effects as the deposited material migrates northwards. The Panel recognised that under the terms of U200805, which was about to be given effect to (see paragraph 13 above), a digital elevation model would be provided and held on Council's file. The model extends northwards of the deposition site and will therefore adequately meet this requirement. Condition 15 sets out the information provision requirements the Applicant must meet following each excavation event. The Panel was satisfied that there will be ongoing reporting and subsequent monitoring over the term of the consent.

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100. The Panel recognised the concerns of the submitters regarding the potential for damage to occur to the exposed embedded rocks within the deposition area. The concern was a response to the Applicants use of heavy vehicles when distributing the excavated material over the beach area. The Applicant responded to this concern with a proposed condition requiring that it take all reasonable steps to avoid such damage occurring. The Panel directed that the initial report provided by the Coastal Scientist or Coastal Engineer should record the condition of the rocks, the on-going state of the rocks should also be included in the annual updates for the term of the consent.
101. The Panel were satisfied that the reporting discussed above in conjunction with the surveying of the site for bird nesting behaviour would be sufficient to measure and record the effects of the activity on Ward Beach and the wider environment. The Panel directed that a condition be included in this consent to articulate this reporting requirement.
102. Regarding public access, the Panel noted that the initial diagram showed the area for depositing the excavated material extended to the rocks at the top of the beach. This area is frequently used by public accessing the beach north of Ward Beach, for example when walking to Chancet Rocks. Access through this area would be prevented while the works are undertaken and thereafter the loose material would make traversing over this area difficult. Any works that bring heavy vehicles in proximity to the public should be avoided in the Panel's view. The Panel once again preferred the area drawn by Mr Johnson because it moved the deposition area away from the top of the beach thus ensuring the proposal did not prevent public access.
103. Continuing of the theme of public access, the Panel concluded that the parking of heavy machinery on the beach when not being used for launching or retrieving of fishing vessels, or excavation is inappropriate. The Panel imposed condition 18 to reflect its position on this particular matter.

Part 2 Resource Management Act 1991

104. The Panel noted that the PMEP was a product of the recently reviewed Marlborough Resource Management Plans. Now at the tail end of the review process, the Panel was satisfied that the PMEP adequately addresses Part 2 of the RMA as it relates to this application. Therefore, recourse to Part 2 and a further assessment of sections 5, 6, 7 and 8 by the Panel is not required.
105. Subject to the shortened term of consent and the conditions specified, the Panel was satisfied that the proposal as amended through the course of the hearing will be consistent with the Objectives and Policies of the PMEP, and therefore will achieve the purpose of the RMA.

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Consent Duration and Lapse Date

106. As discussed above, the Panel imposed a term of five years on this consent. Given that the beach was recently dredged and there is no certainty in terms of when the next excavation event will be required, the Panel resolved that the period in which the consent should be given effect to should also be extended for five years. A lapse and expiry date of 28 February 2026 is imposed.

JA Arbuckle

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Councillor J Arbuckle
Chair, Hearings Committee, Marlborough District Council

05 - 02 - 2021
.....
Date

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Certificate of Resource Consent

Consent Holder:	Burkhart Fisheries Limited
Consent Type:	Coastal Permit (Disturb Foreshore) and Land Use (Land Disturbance)
Consent Number:	U191050.1 and U191050.2
Lapse Date:	This consent will lapse on 1 April 2026 unless given effect to prior to that date.
Expiry Date:	If this consent is given effect to, the consent will expire on 1 April 2026.

Pursuant to sections 34A(1) and 104B and after having regard to Part 2 matters and sections 104 and 104B of the Resource Management Act 1991, the Marlborough District Council **grants** consent to excavate approximately 3,500 cubic metres of seabed material from the northeast corner of Ward Beach, including the formation of a temporary causeway with beach gravels and the incidental discharge of sediment, from time to time as needed over a 5 year period in order to maintain a channel to facilitate the launching and retrieval of vessels, subject to the following conditions imposed under section 108 of the Resource Management Act 1991.

Other Conditions

1. Except insofar as required to comply with other conditions of this resource consent, the activity must be undertaken in accordance with the Application for Resource Consent held on Council's electronic file U191050.
2. No more than six dredging events may be carried out within any two contiguous calendar years, and physical works must not occur on more than 18 calendar days in any calendar year.
3. Three calendar days prior to any works being undertaken between 1 August and 31 January in any year, a bird survey must be undertaken by a suitably qualified expert within and up to 100 metres from the dredging and filling areas identified in Appendix A below. The survey must identify the location and species of any birds nesting or preparing to nest in the survey area. The survey results must be recorded in a written report with an appropriate accompanying map(s).
4. At least two calendar days prior to the commencement of each dredging event, electronic notice of the impending commencement must be given to the Compliance Manager, Marlborough District Council at monitoring@marlborough.govt.nz and Te Rūnanga o Kaikōura at takahanga.office@ngaitahu.iwi.nz. Such notice shall include:
 - a) the written findings of the bird survey required by Condition 3;
 - b) the anticipated date and time of the commencement of works; and
 - c) the name and contact phone number of the site operator/supervisor.

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5. In the event that the bird survey undertaken in accordance with Condition 3 identifies any at risk or threatened bird species nesting or preparing to nest in or within 100 metres of the dredging and/or filling areas identified in Appendix A, then no earthmoving, dredging or filling activities envisaged by this resource consent may be carried out until the nesting has concluded.
6. Should a dredging event be notified to the Compliance Manager under Condition 4 and not undertaken for any reason, the Compliance Manager and Te Rūnanga o Kaikōura at takahanga.office@ngaitahu.iwi.nz shall be informed of the change in circumstances. In these circumstances, notification shall not be considered use of one of the dredging events able to be exercised under this consent.
7. All excavation work must be undertaken by a suitably qualified and experienced excavator operator.
8. No works may at any time be undertaken within 50 metres of the mouth of the Flaxbourne River as it exists at the time of works.
9. All practicable measures must at all times be taken to prevent the spillage or loss of hydrocarbons and/or petrochemicals from the activity to the coastal marine area.
10. No storage of hydrocarbons and/or petrochemicals within the coastal marine area or within 20 metres of a waterbody.
11. The material used to form the temporary causeway must be sourced from only within the filling area and/or the dredging area as identified in Appendix A below. No imported or artificial material may be used to form the causeway.
12. As volunteered, excavation shall not extend deeper into the seabed substrate than works undertaken in accordance with U180232.
13. If any artefact and/or any historical, cultural or archaeological material of Maori origin or likely to have significance to Maori is found or uncovered during undertaking work authorised by this consent, the following shall be complied with:
 - a) Work shall cease immediately;
 - b) Advice of the discovery shall be given, as soon as possible, to the Compliance Manager, Marlborough District Council and Heritage New Zealand Pouhere Taonga;
 - c) The Applicant shall contact Te Rūnanga o Kaikōura at takahanga.office@ngaitahu.iwi.nz and/or phone 03 319 6523 within six hours of contacting Marlborough District Council.

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- d) No work shall recommence until both:
 - i) Three working days have elapsed since the Compliance Manager has been informed, or earlier if agreement has been reached with the Compliance Manager; and
 - ii) An archaeological authority has been issued by Heritage New Zealand if the find involves an archaeological site or Heritage New Zealand (in consultation with Te Rūnanga o Kaikōura if the discovery is of Māori origin or significant to Māori) provides a statement in writing to the Compliance Manager, Marlborough District Council that appropriate action has been undertaken in relation to the archaeological material discovered.

[Advice Note: For sites solely of Maori origin, this evidence of Archaeological Material may be in the form of accumulations of shell, bone, charcoal, burnt stones, etc. In later sites, artefacts such as bottles or broken glass, ceramics, metals, etc., may be found or evidence of old foundations, wells, drains, tailings, races or other structures. Human remains/kōiwi may date to any historic period.]

- 14. All dredged and causeway material must be spread out within the filling area shown in the diagram attached at Appendix 1 and contoured so that it matches the general appearance of the natural beach located immediately to the northeast and southwest of the filled area, and accords with the following:
 - a) No existing logs on the beach are buried, partially buried or piled together.
 - b) The resultant fill height must be no higher than the beach immediately adjoining on the landward side of the filling area.
 - c) There is a gradual increase in the thickness of filled material from natural beach levels around the edge of the filled area.
 - d) The finished surface of the filled area is smoothly contoured.
- 15. All works including site re-contouring must be completed within seven contiguous calendar days following the commencement of works. Electronic notice of the completion of works must be given to the Compliance Manager, Marlborough District Council at monitoring@marlborough.govt.nz and Te Rūnanga o Kaikōura at takahanga.office@ngaitahu.iwi.nz within two working days of the completion of each dredging event. Each notice must include:
 - a) an estimate of the net volume of material which has been excavated from the dredging area;
 - b) confirmation of the actual number of calendar days on which the dredging event occurred.
- 16. Following a dredging event:
 - a) Within one month an updated drone-derived digital elevation model must be captured across the consent filling area and for a distance of at least 50 metres immediately to the north and southwest. The updated digital elevation model must be the same in methodology and datum to that provided by the consent holder at the hearing of U191050 and enable relative changes in height of the beach to be measured.

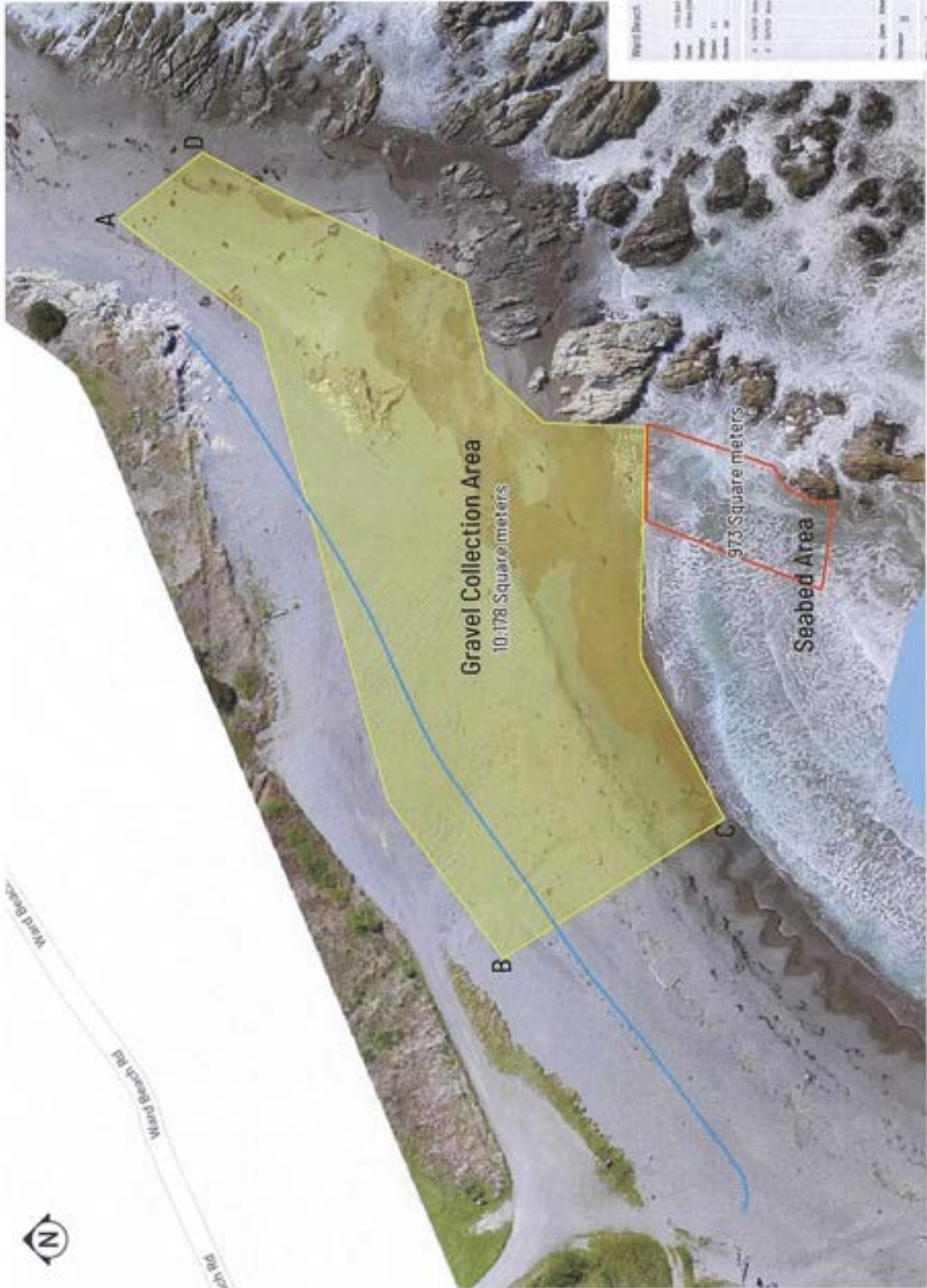
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- b) Within 3 months a report outlining the findings of the modelling undertaken in clause a) including detailing any changes in the height of the beach between the dredging event and previous dredging events authorised by this consent must be provided to the Compliance Manager, Marlborough District Council at monitoring@marlborough.govt.nz and Te Rūnanga o Kaikōura at takahanga.office@ngaitahu.iwi.nz.
17. The Applicant will take all reasonable steps to avoid driving any vehicles on exposed embedded rocks in the filling area. For the avoidance of doubt, 'rock' does not include loose gravel.
18. The Applicant shall not leave/park vehicles/machinery on the beach when not being utilised for the launching or retrieval or fishing vessels, or for the excavation provided for by this consent.
19. In accordance with section 128 of the Resource Management Act 1991, the Marlborough District Council may review the conditions of this consent for the purpose of ensuring that adverse effects on bird habitat, mahinga kai, coastal morphology and/or amenity values are adequately avoided, remedied or mitigated. Notice of review for such purposes may be served during the months of January to December (inclusive) for the duration of the consent.

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. Pursuant to section 36 of the Resource Management Act 1991 and the Marlborough District Council's schedule of fees, the consent holder will be responsible for all actual and reasonable costs associated with the administration and monitoring of this resource consent.
3. All archaeological sites are protected under the Heritage New Zealand Pouhere Taonga Act 2014. It is an offence under the Act to modify, damage or destroy any archaeological site, whether the site is recorded or not. Application must be made to Heritage New Zealand for an Authority to modify, damage or destroy an archaeological site.





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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 conditions of this consent, the consent will lapse 5 years after the decision date, unless the consent has been actioned (given effect to).
- Establishment conditions must be fully implemented to avoid a state of lapse. You may apply to vary these conditions or extend the lapse date.

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.

JA .



MARLBOROUGH

Resource Management Act



DISTRICT COUNCIL

Resource Consent

No: U 990121

Applicant: Burkhart Fisheries Limited

Proposal: To operate a brine shrimp (*Artemia*) farm trial with associated groundworks and discharges.

Date of Site Visit 1/02/99 Miles Taylor

RC No:U 990121

DECISION

Pursuant to the Resource Management Act 1991 consent is hereby granted to the application for a resource consent.

Land Use - Activity

Location: Lake Grassmere Salt Ponds, Lake Grassmere.

Grid Reference E 2608175 N 5943170

Subject to the following condition(s)

- 01 That the development be in general accordance with the plans submitted with the application, reference U990121.

Coastal Permit - Discharge to Seawater

Location: Lake Grassmere Salt Ponds, Lake Grassmere.

Grid Reference E 2608175 N 5943170

Subject to the following condition(s)

01 That in accordance with Section 128 of the Resource Management Act 1991, from 31st May 1999 the Marlborough District Council may review the conditions of consent at annual intervals in order to:

1. Deal with any adverse effect on the environment which may arise from the exercise of this consent and which it is appropriate to deal with during the duration of this consent.
2. To require the holder of this consent to adopt the best practicable option to remove or reduce any adverse effect on the environment.
3. In order to make the exercise of this consent consistent with any requirement for sustainable management arising from the Resource Management Act 1991, regulations constitute under the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996, regulations constituted under the Hazardous Substances and New Organisms Act 1996, or any rule in any resource management plan brought into force during the exercise of this consent and
4. If the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which material influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions."

02 The duration of this consent is for a period of 35 years and will expire on 31st May 2002.

03 That the maximum rate of discharge shall not exceed 400 l/s.

04 That the development be in general accordance with the assessment of environmental effects submitted with the application, reference U990121.

Grounds

01 The grounds for the decision were that this application has been granted with conditions that acknowledge that the Resource Management Act 1991 sets as a primary object in Part II, sustainable management of natural and physical resources.

Footnotes

01 This consent does not relieve the holder from any obligation to obtain any consent, privilege, licence or right under any other legislative requirement.

DELEGATION SCHEDULE ITEM NUMBER(S): 12 21 (3)

DELEGATED COUNCIL COMMISSIONER/OFFICER(S)

APPROVED DEFERRED FOR COMMITTEE DECISION

[Signature]

Date: 6-5-99

Miles Taylor

Resource Planner

Tuesday, 4 May 1999