

Proposed Marlborough Environment Plan

**Section 42A Hearings Report for Hearing Commencing
10 September 2018**

Report dated 8 August 2018

**Addendum to Report
Dated 28 March 2018
Report on submissions and further submissions on
Topic 11: The Use of the Coastal Environment**

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List of Abbreviations

S42A Report	S42A Report – Topic 11 The Use of the Coastal Environment, dated 12 th March 2018, prepared by Debbie Donaldson
MEP	Proposed Marlborough Environment Plan
RMA	Resource Management Act 1991
NZCPS	New Zealand Coastal Policy Statement
CE	Coastal Environment
CMA	Coastal Marine Area
MHWS	Mean High Water Springs
MDC	Marlborough District Council

List of Submitters

PMNZ	Port Marlborough New Zealand
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Introduction

1. This report is an addendum to my main report dated, 12th March 2018, and Addendum Reports dated 21st March and 28th March containing recommendations to the Hearing Panel on submissions made on Topic 11 - The use of the Coastal Environment. This addendum should be read in conjunction with the 12th March s42A report, including the background and explanation within it, and the Addendum Reports dated 21st and 28th March 2018.
2. The addendum addresses;
 - The miscoding of submission point 433.146 from Port Marlborough New Zealand (PMNZ). The submission point related to Rule 14.1.5 to be heard within Topic 11 - Use of the Coastal Environment hearing stream, however the submission point was miscoded and subsequently not addressed within the 12th March s42A report or subsequent addendum reports.
 - Other miscoded submission points that should have been considered in Topic 11- Use of the Coastal Environment.
3. My name is Debbie Donaldson. I am a Resource Management Planner from Perception Planning Limited, based in Martinborough. My qualifications and experience are as follows:
4. I hold a Bachelor of Laws and a Bachelor of Science (Major Geography) from Victoria University of Wellington. I have over 10 years of experience in resource management roles within New Zealand, the United Kingdom and Australia.
5. I was not involved with the preparation of the MEP. I was contracted by the Marlborough District Council (Council) in 2017 (after the MEP submission period had closed) to evaluate the relief requested in submissions and to provide recommendations in the form of a section 42A report.
6. I have read Council's Section 32 reports.

Code of Conduct

7. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with it.
8. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.
9. I am authorised to give this evidence on the Council's behalf.

Scope of Hearings Report Addendum

10. This report is prepared in accordance with section 42A of the Resource Management Act 1991 (RMA).
11. As noted above, this report is an addendum to my main s42A report (s42A report) dated 12th March 2018, and Addendum Report of the 21st March 2018.
12. As submitters who indicate that they wish to be heard are entitled to speak to their submissions and present evidence at the hearing, the recommendations contained within this report are preliminary, relating only to the written submissions.
13. For the avoidance of doubt, it should be emphasised that any conclusions reached or recommendations made in this report are not binding on the Hearing Panel. It should not be assumed that the Hearing Panel will reach the same conclusions or decisions having considered all the evidence to be brought before them by the submitters.

Submissions

Submission Point 433.146

14. A memo was received from PMNZ by the Council on 7th June 2018. PMNZ identified that PMNZ's submission in relation to Rule 14.1.5 was miscoded as

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a submission in relation to Rule 14.1.5. As a result, the submission point was not addressed during the hearing on Topic 11: Use of the Coastal Environment, and does not fall within any other hearing topics still to be heard.

15. PMNZ state within their memo that the submission to Rule 14.1.5 is of considerable importance to PMNZ, having implications for the day-to-day operation and future development of the Port.
16. PMNZ request that submission point 433.146 is considered by the Council in relation to Rule 14.1.5.
17. The PMNZ memo states that Ms Taylor for PMNZ has addressed the equivalent rules in Topic 11 for the Port Zone and the Marina Zone (Rules 13.1.1.5 and 15.1.12), and requests that Ms Taylor's evidence¹ on these rules is applied to PMNZ's submission on Rule 14.1.5.
18. Ms Taylor's evidence states;

It is my opinion that the additions sought by Port Marlborough are important to include, so that there is no confusion that the upgrade of a building or structure on a wharf (a replaced bollard at Waimahara Wharf in Shakespeare Bay for example) is covered by the resource and does not require resource consent. This change would also ensure the relevant permitted activity standard (13.2.1) applies to these buildings and structures.

19. Submission Point 433.146 relates to permitted activity rule 14.1.5 within the Port Landing Area Zone. Rule 14.1.5 provides for, as a permitted activity, the 'Maintenance, repair or replacement of a building or structure within the coastal marine area'.
20. PMNZ submit that as notified, resource consent (Restricted Discretionary) is required for any new building in the coastal marine area within the Port Zone, whereas construction of buildings and structures outside the coastal marine area is permitted. PMNZ considers that the construction of buildings on existing wharves should also be a permitted activity. PMNZ also submit that for clarity, the word 'use' should be included within this rule.

¹ See Evidence of Ms Louise Taylor dated 29th March 2018 at paragraphs 79-81 and Appendix B

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21. PMNZ submit that the wording of Rule 14.1.5 is amended to read (amendments proposed underlined);

'Maintenance, repair or replacement and use of a building or structure in the coastal marine area, and the construction, use, maintenance repair or replacement of buildings and structures on existing wharves'.

Assessment

22. Within the Port Zone the construction and use of a building or structure is permitted activity pursuant to Rule 13.2.1, where the building or structure is on land above mean high water springs or on an existing wharf, and is to be used for a permitted activity. The construction of a building or structure within the coastal marine area and associated occupation of the coastal marine area is a restricted discretionary activity pursuant to Rule 13.4.1. Therefore, construction and use of a building or structure on an existing wharf is a permitted activity within the Port Zone, and the construction and use of a structure within the coastal marine area within the Port Zone is a restricted discretionary activity.

23. Within the Port Landing Area Zone, the 'construction and use' of a building, provided it applies to a permitted activity listed in 13.1, is a permitted activity subject to the standards within 14.2.1- 14.2.8.

24. The standards within the 14.2.1 do not exclude construction and use within the coastal marine area, however it is noted that the standards within 14.2.2 would prevent the construction of a building or structure within the coastal marine area on the foreshore or seabed, given that such an activity would be likely to result in foreshore and seabed disturbance that can be remedied by natural processes within 7 days (Rule 14.2.2.1). Construction (and subsequent use) of a building or structure within the coastal marine area would therefore most likely to be a Discretionary Activity pursuant to Rule 14.4.1 and Rule 14.4.3.

25. The exception to this would be the construction of a building or structure on an existing wharf, that would be located within the coastal marine area of the Port Landing Area Zone, but given its location above the foreshore and seabed is unlikely to result in any disturbance. In this situation, the Rules

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within the Port Landing Area Zone provide for the construction and use of a building on an existing wharf, subject to it being for a permitted activity listed in 14.1, and subject to the building or structure meeting the standards contained within 14.2.1-14.2.8.

26. Objective 13.8 of the MEP seeks that the operation and maintenance of the Port, Port Landing Area and Marina Zones occurs in a way that minimises adverse effects on adjoining zones, water quality, area quality and the values of the coastal environment.
27. Policy 13.18.2 seeks to ensure that the intensity, character and scale of development and operation of the Port, Port Landing Area and Marina Zones is appropriate in relation to the values of the coastal environment in these locations.
28. Policy 13.18.1 recognises within the explanation that the relatively unmodified coastal environment at Elaine Bay and Oyster Bay means that the range of activities provided for is more limited than those permitted within the ports of Picton and Havelock.
29. The standards contained within the Port Landing Area Zone within Rule 14.2.1 are more stringent than those contained within the Port Zone (i.e. building and structure heights) and reflects the less modified character of these Port Landing Area Zones, compared to the Port Zones of Picton and Havelock.
30. It is noted that the existing wharves within the Port Landing Area Zones of Elaine Bay and Oyster Bay are very limited in their size, and as such would be limited in the structural ability to support a building or structure. For these reasons, it is anticipated that only limited small buildings and structures would be provided for within this permitted activity. It is also noted that the permitted activities provided for within 14.1 are much more limited than within the Port Zone, and as such buildings and structures constructed would be limited to those required for shipping activity, cargo handling and marine fuel facilities.
31. It is considered that these types of activities, and any building and structures associated with these activities, would be anticipated within the Port Landing Area Zone on existing wharves.

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Recommendation

32. For the reason outlined above, I accept in part the submission of PMNZ in relation to Rule 14.1.5. The outcome sought by PMNZ, that being that the construction and use of buildings on existing wharves is already provided for as a permitted activity within the Port Landing Area Zone. As such I do not consider that it is necessary to amend the permitted activity rules within 14.1 of the MEP.

Other Miscoded Submission Points

33. Through the hearings of the Rural Environment topic it was identified that a number of submission points should have been covered within Topic 13 – The Use of the Coastal Environment, but had been miscoded.

34. As these submission points have not yet been addressed within any s42A report, and should have been addressed within Topic 11 – Use of the Coastal Environment, I will also consider with these submission points within this addendum report.

Submission Point 426.152

35. Submission Point 426.152 was received from the Marine Farmers Association. The submission related to Policy 13.12.2, but was miscoded in error to Policy 13.5.2.

36. Policy 13.12.2 states that '*The disposal of contaminants or material containing contaminants should be avoided*'. The submitter seeks that Policy 13.12.2 is deleted on the basis that;

- (a) The policy does not say it prohibits disposal in the CMA (although implied);
- (b) 'Contaminant' has a broad meaning, where some of which are considered harmful, others not. There is no policy reason for prohibiting the disposal of non-harmful contaminants;
- (c) Material containing a contaminant is a contaminant, so there is duplication within the policy itself;
- (d) Presumption that this is an example where use of the word 'avoid'

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does not mean avoid; and

(e) This duplicates Issue 15A and associated policies, which address discharge of contaminants into water, including coastal water.

37. I note that the submission of Marine Farmers Association is identical to the submission of Aquaculture New Zealand², which was considered within the s42A report dated 12th March 2018. At paragraph 807 I recommend that Policy 13.12.2 is deleted in its entirety for the reasons identified within 796 – 805 of the s42A report.

38. The submission point raises no additional matters to be considered and as such I recommend that Policy 13.12.2 is deleted in its entirety, and that the submission point 426.152 by the Marine Farmers Association is accepted.

Submission Point 401.138

39. Submission Point 401.138 was received from Aquaculture NZ in relation to Method 13.M.11. The submitter sought the inclusion within the MEP of a new method of implementation, being a marine farm protection overlay within 1000m of the boundary of any marine farm.

40. This matter was addressed under submission 401.038, also from Aquaculture NZ, and was addressed within the s42A report at paragraphs 1325 -1329.

41. Further information on the details of this submission were provided within the hearings on Topic 13 – The Use of the Coastal Environment, and legal submissions presented by Mr Quentin Davies for the submitter.

42. Mr Davies outlined the intention of the proposed Overlay within his evidence at paragraphs 30-40³. The overlay is proposed by the submitter to apply within 1000m of a marine farm (on both land and water). The implications of being located within the marine farm protection overlay proposed by the submitter are:

(a) At the point of subdivision, or at the point of a resource consent for a septic tank system, consideration will need to be given to the fact that the land is within the marine farm protection overlay; and

² Aquaculture New Zealand 401.147

³ Submission of Counsel for the Marine Farming Association INC and Aquaculture New Zealand Limited – Hearing Block 4 Topic 11: Coastal Environment, dated 4th April 2018, paragraphs 30-40.

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(b) A policy (and associated method) will require accidental discharge to be notified to the Marlborough District Council immediately, who then would advise potentially affected persons, such as marine farmers and their representative bodies.⁴

43. I note that further information on the request for a Marine Farm overlay was given within the legal submission presented by Mr Davies within Topic 12: Rural Environments⁵.

44. Within the Topic 12 - s42A Reply to Evidence, Mr Andrew MacLennan, stated that;

“Given the effect that is sought to be managed relates to the discharge of effluent from underperforming septic tanks, I consider that this is not within the scope of what this Hearing (being Topic 12) seeks to manage. I note that the Waste Topic Chapter 16, may be a more appropriate location to discuss the management tools used to manage underperforming septic tanks. Policy 16.3.8 and Method 16.M.20 within Chapter 16 relate to this issue.”

45. This topic will be further addressed within Topic 16 - Waste, and for these reasons, I recommend that submission point 401.138 is rejected.

Methods 13.AER.1

46. Two submissions were received on Anticipated Environmental Result 13.AER.1⁶

47. The submission by Friends of Nelson Haven and Tasman Bay Incorporated states that a key issue facing the coastal environment is that the ability to manage activities in the coastal environment is hindered by a lack of understanding about some coastal processes and the effects of activities on them. They request that the 3rd and 4th monitoring effectiveness measures listed under AER.1 are amended to add the wording ‘while acknowledging gaps in knowledge’

⁴ Submission of Counsel for the Marine Farming Association INC and Auaculture New Zealand Limited – Hearing Block 4 Topic 11: Coastal Environment, dated 4th April 2018, paragraphs 33.

⁵ Submission of Counsel for the Marine Farming Association INC and Auaculture New Zealand Limited – Hearing Block 7 Topic 12: Rural Environments, dated 25th June 2018, paragraphs 8-22.

⁶ Judy and John Hellstrom 688.156, Friends of Nelson Haven and Tasman Bay Incorporated 716.170

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48. While I appreciate the concerns of the submitter, Policy 3 of the NZCPS requires that a precautionary approach is adopted towards proposed activities where effects on the coastal environment are uncertain, unknown or little understood but are potentially adverse.
49. In addition, an AEE (Assessment of Environmental Effects) as part of any resource consent application is required to identify any actual or potential effects of a proposal⁷. Where the effects are unknown due to a gap in knowledge to identify effects, this should be acknowledged and addressed within an AEE.
50. It is considered that the monitoring of the matters contained within the monitoring effectiveness measures within 13.AER.1 will assist in reducing knowledge gaps.
51. For these reasons I do not consider it necessary to include the amendments proposed by the submitter, and as such recommend that submission point 716.179 is rejected.

13.AER.6 – 13.AER.8

52. Four submissions were received from Judy and John Hellstrom⁸ in support of the 13.AER.6 – 13.AER.8 as notified.
53. All submissions received were in support of these provisions as notified, and as such I recommend that 13.AER.6, 13.AER.7 and 13.AER.8 are retained as notified, and that the submission points are accepted.

13.AER.9

54. Four submissions were received in relation to Anticipated Environmental Result 13.AER.9. One submission was received in support as notified by Judy and John Hellstrom⁹. Three submissions were received from Marlborough District Council¹⁰ seeking amendments to the AER.

⁷ RMA Schedule 4 Clause 6(a)(b)

⁸ Judy and John Hellstrom 688.113, 688.161, 688.163 and 688.162

⁹ Judy and John Hellstrom 688.164

¹⁰ Marlborough District Council 91.071, 91.072 and 91.138

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55. MDC sort the inclusion of two new monitoring effectiveness indicators, those being;

- Monitor erosion of coastal areas caused by ships. – This indicator is sought to reflect the continuing shoreline profile monitoring in Tory Channel and Queen Charlotte Sound.
- No adverse change to the shoreline or benthic communities as a result of waves from the shipping activity. – This indicator is sought to reflect the continuing monitoring that is occurring.

56. MDC also seek a correction in the numbering referred to in the third listed monitoring effectiveness indicator, as the incorrect method of implementation has been referenced. MDC seek to amendment of the indicator in 13.AER.9 to read:

A five yearly assessment is carried out to determine the need to undertake monitoring specified in Policy 13.16.4 and the monitoring method (13.M.4922) set out for water transportation.

57. I consider that the amendments proposed to 13.ARE.9 are reflective of the monitoring effectiveness indicators that are currently taking place by MDC and provide more accuracy to the plan reflecting what types of monitoring are occurring. I also consider that the proposed amendment by MDC to refer to the correct method within the AER are required for plan accuracy and interpretation.

58. For the above reasons I recommend that the submission of MDC in relation to Policy 13.AER.9 are accepted and that 13.AER.9 is amended to read:

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13.AER.9

Waves generated from ships do not create adverse effects on the environment.

Ship operators comply with speed limits specified in MEP rules or by resource consent conditions through monitoring of ships' Data Recording Device.

Monitor the number and nature of complaints made by the public about ship-generated waves.

A five yearly assessment is carried out to determine the need to undertake monitoring specified in Policy 13.16.4 and the monitoring method (13.M.1922¹¹) set out for water transportation.

Monitor erosion of coastal areas caused by ships¹².

No adverse change to the shoreline or benthic communities as a result of waves from the shipping activity¹³.

13.AER.10

59. One submission was received in relation to Anticipated Environmental Result 13.AER.10 in support as notified by Judy and John Hellstrom¹⁴. One submission was received from Friends of Nelson Haven and Tasman Bay Incorporated¹⁵ submitting that the term 'coastal structures' is not defined, and that 13.AER.10 is amended to read;

AER.10 ~~A proliferation of coastal structures is avoided. Inappropriate proliferation of coastal structures to be avoided.~~

60. I do not consider that there is a need to define 'coastal structure', as both the terms 'coastal waters' and 'structure' are defined within the MEP, referring to the definitions contained within Part 2 of the RMA.

¹¹ Marlborough District Council (91.138)

¹² Marlborough District Council (91.071)

¹³ Marlborough District Council (91.072)

¹⁴ Judy and John Hellstrom 688.165

¹⁵ Friends of Nelson Haven and Tasman Bay Incorporated 716.173

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61. Given the any coastal structure within the Coastal Marine Zone (apart from temporary structures) will require resource consent pursuant to Rule 16.6.1 of the MEP, it follows that when a resource consent is assessed it will be considered by Council as to whether the structure is appropriate. It is therefore considered unnecessary to include the word 'inappropriate' within the AER.

62. For these reasons I recommend that the submission by Friends of Nelson Haven and Tasman Bay Incorporated¹⁶ is rejected and that 13.AER.10 is retained as notified.

13.AER.11

63. One submission was received from Judy and John Hellstrom¹⁷ in support of the 13.AER.11 as notified, and as such I recommend that 13.AER.11 is retained as notified, and that the submission point is accepted.

Submission Point 433.107

64. Submission Point 433.107 was received from PMNZ. The submission was omitted from consideration within Topic 11 – The use of the coastal environment, and as such was not considered within the section 42A report for this topic.

65. The submission point supports the permitted activity status for maritime education and maritime research in the Port zone as notified within Rule 13.1.12.

66. For these reasons, I accept the submission of PMNZ and recommend that permitted activity Rule 13.1.2 is retained as notified.

Submission Point 1140.037

67. Submission point 1140.037 was received from Sanford Limited. The submission was miscoded to Rule 7.3.13.1 within the Coastal Living Zone. The submission point does not relate to this provision and instead relates to

¹⁶ Friends of Nelson Haven and Tasman Bay Incorporated 716.173

¹⁷ Judy and John Hellstrom 688.166

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Rules 13.6.4, 14.5.4, 15.7.4 and 16.7.2 that prohibit the discharge of sewerage into the coastal marine area from vessels.

68. Sanford Limited within their submission states that they *'support the cessation of direct discharge of human waste into the coastal marine environment from vessels of all types including recreational anywhere in the marine environment. Owners of vessels should be put on notice that they have limited time to upgrade their vessel's effluent system i.e. by installing holding tanks. Equally marinas (commercial and recreational) need encouragement/incentives to extent their effluent collection services to cater for the additional demand - by for example a streamlined consent process for building the necessary infrastructure.'*
69. Sanford Limited seek to amend the rule so that all vessels with the capability to overnight on have wastewater (effluent) systems holding systems installed (and monitored for use) within five years of the plan being operative.
70. Submission Point 1140.037 is identical to submission points 1140.040, 041, 034, 035, 036 and 038 that were considered within the main section 42A report of the 12th March.
71. These submission were rejected for the reasons identified with the assessment of these provisions is Matter 13, paragraphs 1220-1319 of the section 42A report of the 12th March.
72. In addition to the reasoning provided within the s42A report, I do not consider that the provisions require amendment to require all vessels that can overnight to have wastewater holding systems installed. It is up to individual boat owner to establish how they may comply within these provisions.
73. For these reasons, I maintain the assessment contained with Matter 13, paragraphs 1220-1319 of the section 42A report of the 12th March in relation to Rules 13.6.4, 14.5.4, 15.7.4 and 16.7.2.
74. As such I recommend that submission point 1140.037 is rejected and that Rules 13.6.4, 14.5.4, 15.7.4 and 16.7.2 are retained as notified.

Appendix A – Recommended decisions on decisions requested

Submission Number	Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
433	146	PMNZ	2	14	14.1.15	Accept in part
426	152	Marine Farming Association	1	13	13.12.2	Accept
401	138	Aquaculture NZ	1	13	13.M.11	Reject
688	156	Judy and John Hellstrom	1	13	13.AER.1	Accept
716	170	Friends of Nelson Haven and Tasman Bay Incorporated	1	13	13.AER.1	Reject
688	113	Judy and John Hellstrom	1	13	13.AER.6	Accept
688	161	Judy and John Hellstrom	1	13	13.AER.6	Accept
688	163	Judy and John Hellstrom	1	13	13.AER.7	Accept
688	162	Judy and John Hellstrom	1	13	13.AER.8	Accept
91	71	Marlborough District Council	1	13	13.AER.9	Accept
91	72	Marlborough District Council	1	13	13.AER.9	Accept
91	138	Marlborough District Council	1	13	13.AER.9	Accept
688	164	Judy and John Hellstrom	1	13	13.AER.9	Accept
688	165	Judy and John Hellstrom	1	13	13.AER.10	Accept
716	173	Friends of Nelson Haven and Tasman Bay Incorporated	1	13	13.AER.10	Reject
688	166	Judy and John Hellstrom	1	13	13.AER.11	Accept
433	107	PMNZ	2	13	13.1.12	Accept
1140	037	Sanford Limited	2	13	13.6.4	Reject