

MARLBOROUGH DISTRICT COUNCIL
Decision in relation to
Private Plan Change No. 15 to the Marlborough Sounds Resource Management Plan
Oyster Bay, Port Underwood

Background

1. On 6 October 2005 Marlborough District Council (*Council*) received an application from Oyster Bay Developments Limited (*Applicant*) to change the zoning under the Marlborough Sounds Resource Management Plan (*Plan*) of more or less 26 hectares of land owned by shareholders of the Applicant at Oyster Bay, Port Underwood, from Rural 1 to Sounds Residential (*Application*).
2. The Application is a *request for a private plan change* in terms of the Resource Management Act 1991 (*Act*). Council's obligations upon and following receipt of a request for a private plan change are generally set out in Part II of Schedule 1 to the Act. This report is effectively the final step in the statutory process Council is required to follow in response to a private plan change request and is prepared under Section 32 of the Act. It sets out Council's overall reasons for its decision in relation to the Application and otherwise addresses the issues required to be addressed under Section 32.
3. The Application was heard by a Council Committee appointed particularly for purposes of the Application. Committee members are Councillor J. Bunting (as Chair), Councillor JM Craighead and Councillor AD Barker. The Committee made a site visit on 23 July 2007. A decision on the Application was made by the Council on 12 October 2007.
4. A chronology setting out all relevant dates and steps in the statutory process from receipt of the Application through to the date of this Report is at Appendix A to this Report.

The Subject Land

5. The site is located 10 kilometres due east of Picton. At present the land is marginal pastoral grazing land with the steepest slopes being used for exotic forestry, most of which has been harvested. For the last ten years the land has been utilised as a lifestyle farming unit by the Fitzgerald family.
6. The legal description of the land is Lot 6 DP 11879 and a portion of Pt Sec Blk XII Arapawa SD. Lot 6 DP 11879 is owned by RM and SK Fitzgerald and Pt Sec Blk XII Arapawa SD is owned jointly by RM and SK Fitzgerald and DC and EE Thomson who are shareholders of the Applicant. Mr. DC Thomson and Mr. RM Fitzgerald are Directors of the Applicant.
7. The property was farmed by John Guard Junior until about 1910. Early photographs show lightly grazed paddocks with the predominance of rush or tussock type growth. The land was owned by the Guard family until 1974 and in the ten years following changed ownership several times. An application for a subdivision of 40 1000m² sections has previously been made and was declined.
8. In 1981 the then-owners bulldozed all of the forestry on the flatter land and established a small deer unit of approximately 20 hectares. Mr. Jim Mark purchased the property in 1984 and continued with the forestry and farmed a small number of deer. Mr. Fitzgerald purchased the property in 1992 and sold a half share to the Thomson family. The property continued to be farmed as a deer unit. The Applicant's evidence was, however, that the farm itself is no longer large enough to be operated as an economic farm unit.

Current Status in Terms of the Plan

9. The Subject Land is presently zoned Rural 1 under the Plan. A map showing the zoning of the Subject Land and surrounding areas is at Appendix B. Council records show that no submissions were received in opposition to the rural zoning of the Subject Land at the time the Plan was notified in 1995.
10. The resource management policies and objectives and particular rules relating to land in the Rural zone are set out in the Plan. The Plan describes its objective for rural land as:

The sustainable management of rural resources and integrated resource use to protect the character and amenity of rural areas and to avoid, remedy or mitigate adverse effects of activities.

11. In terms of the Rules, there a variety of activities which are permitted in the Rural Zone without resource consent including farming, cultivation, excavation, homestays, river control and drainage. In the usual way, certain other activities in the Rural Zone are described as being *controlled* through to *prohibited*.
12. In terms of the Plan, one dwelling is able to be erected on each allotment on land in the Rural Zone. The minimum lot size for land in the zone is greater than or equal to 30 hectares. The combination of limitations on dwelling numbers and lot size effectively restricts the extent to which residential activity is able to be undertaken. In the Sounds Residential Zone, there is the same limit of one dwelling per allotment but the minimum lot size is 4000m². If the proposal were granted, the Applicant would, as of right, be able to reduce the lot size of each allotment as a permitted activity. Subdivision consent would be required but the threshold for considering the consent would be much lower. If the land were to remain in the Rural 1 Zone, the Applicant would be able to apply for subdivision consent as a *non-complying activity*.

The Application

13. The Applicant, through its agent, Connell Wagner Limited, submitted a report under Section 32 of the Act in support of the Application on 23 February 2006. The report described the overall proposal, if the plan change was accepted, as being:

To subdivide the land that is held in joint ownership to create up to 45 additional residential lifestyle lots, ranging in size from 4,000 m² (minimum size) to around 6,000 m² and for the remaining balance land (approximately 25 hectares) to remain in one title.

14. The Applicant commissioned advice from various professional advisory firms in relation to particular aspects of the Application. In particular:
 - Traffic Design Group provided a report examining road and traffic issues.
 - Abacus Design Group provided a report examining site and soil issues, particularly those relating to on-site domestic waste water disposal.

- Connell Wagner provided an engineering assessment which addressed flood hazard, stormwater drainage and water supply.
- Rory Langbridge, Landscape Architect, provided a landscape assessment report.
- Brown Copeland & Co, Limited, Consultant Economists, provided a discussion of the economic benefits and costs of the proposal.

The Hearing

15. The hearing was conducted over two days on 24 – 25 July 2007. The hearing was open to the public and persons who had previously made submissions following public notification were, together with the Applicant, able to make further oral presentations to the Committee. Including the Applicant, those persons who made submissions during the course of the hearing were:

On behalf of the Applicant

Mr. P James, Applicant's Counsel, Saunders & Co

Mr. R Fitzgerald, Director of the Applicant

Mr. D Petrie, Applicant's Traffic Engineer, Traffic Design Group

Mr. R Langbridge, Landscape Architect

Mr. R Evans, Chartered Professional Engineer, Smart Alliances Limited

Mr. P Williams, Resource Management Consultant, Smart Alliances Limited

Submitters

Mr. S Wynne-Jones, Department of Conservation

Mr. Hunt, Gascoigne Wicks on behalf of the New Zealand Marine Farming Association

Mr. G Coates on behalf of the New Zealand Marine Farming Association

Mr. S Wilkes, Abel Properties Limited, on behalf of the New Zealand Marine Farming Association

Mrs J Paul, Port Marlborough New Zealand Limited

Mr. S Acton-Adams, Nelson Ranger Fishing Company Limited.

Mr. K Roush

Mr. J Penney

Mrs. I Ross

Mr. R Kirkwood

Mrs. R Kirkwood

Mrs. M Wedge

Mr. L Hinton

Mr. Jorgensen, on behalf of the Port Underwood Association Incorporated

16. A summary of each Submitter's position is at Appendix C.

Legal Framework in which Application is Required to be Considered

17. A territorial authority's statutory obligations in considering a plan change are set out in Section 74 of the Act and the First Schedule to the Act. Those obligations are:

- *To act in accordance with:*
 - Section 31 of the Act.
 - Part 2 of the Act.
 - Any direction given under Section 25A(2) of the Act. **[Not applicable].**
 - Section 32 of the Act.
 - Any relevant regulations. **[None specifically applicable].**
- *To have regard to:*
 - Any proposed regional policy statement.
 - Any proposed regional plan in the region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4 of the Act.
 - Any management strategies, if any, prepared under other legislation. **[Not applicable].**
 - Any regulations relating to ensuring sustainability or the conservation, management or sustainability of fisheries resources (including those relating to non-commercial Maori customary fishing). **[None specifically applicable].**
 - The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

- To take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority to the extent relevant to the plan change. **[None specifically applicable].**
- To recognise any management plan, if any, for a foreshore and seabed reserve. **[None specifically applicable].**
- Not to have regard to trade competition.
- To allow the Applicant to appear before the Hearings Committee.
- To make a decision which either declines the Plan Change, approves the Plan Change, or approves the Plan Change with modifications.
- To give reasons for its decision.

SECTION 74(1) – TO ACT IN ACCORDANCE WITH

18. Section 74(1) requires the Council to act in accordance with certain statutory provisions. The relevant provisions are Section 31, Section 32 and Part II of the Act.
19. Section 31 sets out the broad functions of a territorial authority such as Council in undertaking resource management functions within its region. In considering the Application, the Committee considered, in terms of Section 31:
 - How and to what extent does the Application achieve *integrated management of the effects of the use, development or protection of land and associated natural and physical resources* in terms of Section 31(a).
 - How are actual or potential effects of the use to which the land would be put if the Application were granted and in particular to what extent are natural hazards in the subject area avoided or mitigated in terms of Section 31(b)(i).
 - Does the Application give rise to issues of hazardous substances or contamination in terms of Section 31(b)(ii).
 - To what extent does the Application affect indigenous biological diversity in terms of Section 31(b)(iii).

- To what extent does the Application generate noise issues which are required to be mitigated in terms of Section 31(1)(d).
 - To what extent does the Application have effects in relation to the surface of water in rivers and lakes in terms of Section 31(1)(f).
20. The primary duty under Section 31, to achieve integrated management of effects, has been held by the Environment Court to include a duty on the part of the territorial authority to consider issues of reverse sensitivity in formulating its resource management plan. The Committee also considered issues of reverse sensitivity arising from the Application.
21. Section 32 is headed *Consideration of Alternatives, Benefits and Costs*. Broadly, Section 32 requires an analysis of the extent to which a proposal is consistent with the purposes of the Act and whether the proposal is the most effective means of achieving the purposes of the Act.
22. Section 32 requires Council:
- To evaluate whether the proposal is the most appropriate means of achieving the objectives of the plan.
 - To evaluate whether the proposal assists the Council in carrying out its functions in order to achieve the purpose of the Act.
 - To evaluate whether the proposal is consistent with Part II of the Act.
 - To evaluate whether the proposal is consistent with and achieves the objectives and policies of the plan.

[See *Eldamos Investments Limited v Gisborne DC* EnvC W047/05].

Decision Clause 29(4)

23. The Council has decided to decline the Application.

Reasons for Decision

Generally

24. Before reaching this decision, the Committee carefully reviewed the written materials presented in support of the Application and the submissions made in the course of the Hearing. Following its consideration of the written materials and oral presentations made to it, the Committee was of the view that the proposal to rezone the land was inconsistent with the provisions and principles set out in Sections 31 and 32 of the Act and was, in addition, inconsistent with Part II of the Act. The particular reasons for its decision are set out below.

Particularly

25. In terms of Section 31(a) of the Act, the Council believes that the Application does not achieve the integrated management of the use and development of land or protect the land and its associated natural resources. The Application essentially seeks to allow intensive residential activity to be undertaken on what has historically and is presently rural land. The fundamental reasons why the land was rurally zoned have not changed. Historical subdivision has affected the economic basis upon which the land can be farmed but has not affected the fundamental reasons why the land is most appropriately rurally zoned in terms of its amenity, physical features and the infrastructure and services which are available in Oyster Bay.
26. The Application seeks to use the existing Sounds Residential Zone as a basis for considering the residential development aspirations of the Applicant but in the Council's view the land is not appropriately zoned Sounds Residential. The option of creating a new zone for residential development that creates allotment sizes somewhere between Sounds Residential and Rural was considered and one submitter suggested an 8 hectare standard be considered. This is not a new issue and one that Council will consider as it reviews the Plan and the Regional Policy Statement. However, it is not something which can be accomplished in the context of this Application.
27. In terms of Section 31(b)(i) and generally under Part II of the Act, the Council believes that the level of density and scale of proposal that could be created by the subdivision of 26 hectares (being +/- 40 lots based on a minimum allotment size of 4000m²) would be highly probable to have adverse effects on:
- Life supporting capacity of soil and water

- Water quality in the coastal marine area
 - Safety and efficiency of transport (land and marine)
 - Reverse sensitivity to the existing permitted primary production activities and in particular forestry and aquaculture
 - Natural character of the wider Port Underwood community and environs
28. Council believes that the current zoning of the Subject Land best achieves the integrated management of the use and development of the land (in terms of Section 31) and the sustainable management of the Subject Land in terms of Part II of the Act. Zoning is used within the Plan as a tool to manage the undertaking of particular activities in particular environments. The zoning of land in terms of the Plan should and does reflect the predominant and appropriate land uses of land within certain environments. In the Rural Zone it is unsurprising to find that rural activities, including farming, are able to take place without a resource consent. These activities are considered to be sustainable given the nature of the environment and the services available to the particular land. Conversely, it is unsurprising that intensive residential activity requires a resource consent.
29. The Committee has been asked to consider whether the Subject Land is better zoned Sounds Residential. The Committee is not satisfied this is appropriate or sustainable. The Committee felt that it had to be absolutely certain the Subject Land and the surrounding environment could adequately absorb residential development of the nature and extent which would likely result if the Application were granted.
30. The Committee did not reach the required level of certainty. What concerned the Committee the most in this respect was the ability of the Subject Land and environment to service the residential activity, particularly in respect to on-site waste water management methods. The Committee had particular regard to Plan Change 7 which became operative in April 2006 and which was prepared in response to the potential for both existing and new on-site waste management systems to adversely affect the Marlborough Sounds environment. The Committee had particular regard to Objectives 14.4.1.1 and 14.5.1.1 which state:

14.1.1.1 To ensure that new on-site wastewater management systems are designed, located and installed to effectively treat and contain all domestic wastewater on-site.

14.5.1.1 *To ensure that the management of domestic wastewater, associated with residential subdivision and development, does not adversely affect the surrounding environment.*

31. The Committee could not be satisfied that, if residential activity of the scale proposed resulted, domestic wastewater generated in the households would be effectively treated or contained. The Committee believed that any on-site system failure would create significantly adverse effects on the Oyster Bay environment. Plan Change 7 highlights the concern of established Marlborough Sounds communities from inadequate domestic waste water disposal and the consequent health risks to those communities.
32. In an overall sense, therefore, the evidence does not persuade the Committee that what is proposed is sustainable in terms of Section 5 of Part II of the Act. There are reasons additional to those set out above for this conclusion.

Flood Risk

- (a) Flood risk would remain even if the Applicant's proposed mitigation works were undertaken.

Wastewater Disposal

- (b) The proposed wastewater disposal fields would likely adversely affect life supporting capacity of soil and water. In particular, there insufficient evidence tabled at the hearing to satisfy the Committee, that when weighing up its observations of soil saturation against the potential number of on-site wastewater management systems, with natural drainage towards the streams, the potential for contamination of the streams and thus the marine environment could not be avoided or mitigated. Overall the environmental risk was simply too high.

[Note: In this regard, the Hearings Committee noted that the site and soil evaluation investigation on site conditions and constraints (ref Abacus Design, Site and Soil Evaluation Report, January 2006) was undertaken at the driest time of the year and did not reflect the saturated ground conditions that were observed in July. Although the Hearings Committee had regard to the fact that the proposed application rate of treated wastewater to the designated application

areas was low, it still felt that there was an unacceptable risk of on-site system failure given the soil conditions that exist over at least the winter months.]

- (c) The Applicant's proposal to install a reticulated wastewater system did not provide a solution to the problem because of intermittent use. The Committee was also concerned that the controlled standards for subdivision where a reticulated supply is provided would increase the density of development at the site, further perpetuating the issues of disposal.

Traffic – Roading and Marine

- (d) The Council is sensitive to the complaints that Marlborough Roads receives regarding road safety of Port Underwood Road with respect to the conflict between the heavy vehicle movements from logging and mussel trucks and light vehicles. If the land were rezoned to allow for residential development there would be additional traffic generated and Council is not satisfied that increased residential traffic could safely co-exist with logging trucks and the commercial traffic from farming, including marine farming, activities.

The Committee is not satisfied that the existing boat launching infrastructure and berthing facilities could cope with the inevitable increase if the Application were granted.

Reverse sensitivity

- (e) The Hearings Committee considered that to some extent the environment has already been compromised by the existing residential activity taking place and the mussel farming taking place in Oyster Bay but that those industries would be affected by reverse sensitivity arising from intensive residential activity.

Water supply

- (f) A limited water supply is available under a previously granted resource consent issued to take water supply on the southern stream. The solution proposed by the Applicant is for water to be supplemented by rainwater runoff from the roof areas. The Hearings Committee is not convinced that there is adequate certainty to supply all of the existing and new allotments from the water take approved plus the rainwater system.

Response to Submitters

- (g) There were some specific comments made in the submissions that the Committee did not necessarily agree with. These have been addressed specifically to each submitter and where appropriate are noted in Appendix C. The Council would like to note some particular responses to some of the submissions in this Document.
- (i) New Zealand Marine Farming Association tabled information to support a request for new provisions be included in the Plan. The Council has no jurisdiction to consider a request for additions to the Plan in the context of determining this Application.
- (ii) At the hearing the Applicant suggested that the Council had *advised* that there is mooring space available within Oyster Bay. Whether or not there is space available within the coastal marine area has not been assessed. The Coastal Marine Area in Oyster Bay is populated with existing moorings for what seem to be for commercial fishing vessels, associated with the commercial wharf facility. There may be a conflict with the available space and the desire of future land owners wanting space for mooring for recreational vessels.
- (iii) The NZ Fire Service Commission comments relating to fire fighting need to be addressed as District Issues in the review of the Code of Practice for Subdivision and Land Development and the Regional Policy Statement.
- (iv) The Ngati Rarua Iwi Trust raised an issue over lack of consultation. The Committee is aware that the Applicant consulted directly after notification to the extent Ngati Rarua has withdrawn its right to be heard on the basis that its issues could be dealt with through future resource consent applications.

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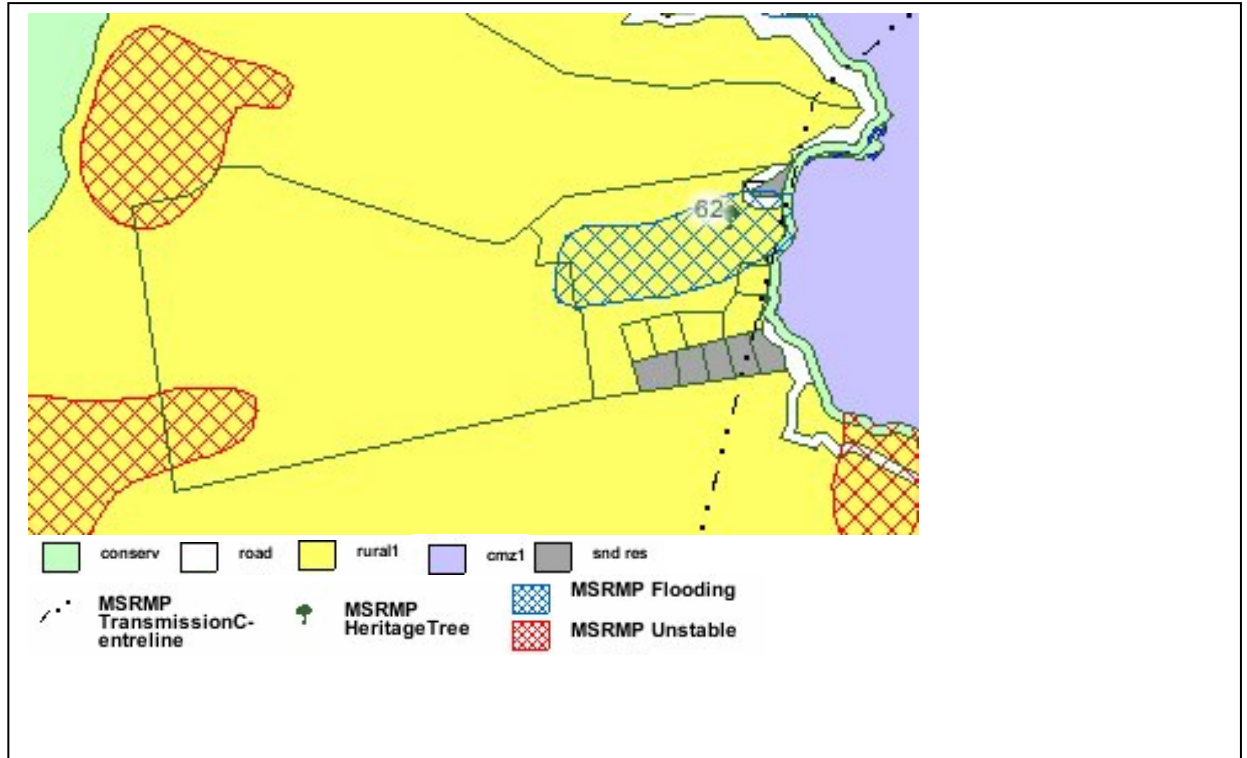
APPENDIX A
CHRONOLOGY OF RELEVANT DATES

Event	Date
Application received	6 October 2005
Environment Committee	20 October 2005
Further Information Requested	3 November 2005
Further Information Provided	23 February 2006
Council Meeting – Accepted application under clause 25(2)(b) of the First Schedule RMA	6 April 2006
Consultation clause 3 First Schedule RMA	11 May 2006 – 12 June 2006
Extension of timeframe for notification to 6 December 2006	3 August 2006
Notification clause 5 First Schedule	30 November 2006 (closing date 19 January 2007)
Notification of a Summary of Submissions	15 February 2007 (closing date 23 March 2007)
Establishment of Hearings Committee	Council meeting 5 April 2007 (Decision to defer) Council meeting 17 May 2007
Hearing Notices sent	22 May 2007
Hearings Report sent	13 July 2007
Hearing	24 and 25 July 2007

APPENDIX B

EXTRACTED FROM ZONING MAPS

VOLUME 3 MARLBOROUGH SOUNDS RESOURCE MANAGEMENT PLAN



APPENDIX C
SUMMARY OF EACH SUBMITTER'S POSITION

Applicants

- **Mr. P James** presented his opening submission on behalf of the Applicant. He clarified that when the Marlborough Sounds Resource Management Plan became operative the allotments described in his statement were provided for in a rolled over provision of the Plan.

- **Mr. R Fitzgerald** then presented his statement in support of his application. He clarified that the total area of land of his property was 43.6 hectares. He directed the Committee's attention to a diagram of a preliminary subdivision layout which depicted proposed allotment layout, house sites, stormwater flow direction, creeks and soak pits.

Mr. Fitzgerald clarified that the system for the collecting of stormwater from the roofs of houses was supplementary to the stormwater collected in storage tanks.

Mr. Fitzgerald noted that the use of the boat ramp described in his submission in paragraph 22 had decreased by about fifty percent. He thought this was due to the increased cost of fuel and the distance people had to travel to the bay to use the ramp. He confirmed the access road described in the Application would be sealed.

Mr. Fitzgerald confirmed that the area was exposed to strong south easterly winds in the winter months and north westerly winds from August onwards. If in the event the Application was granted any earthworks would need to be undertaken during the months of January to early winter. He advised that the bay accommodated a number of moorings, but the use of trailer boats was more common. During a recent wind event a barge had been shifted on its mooring.

- **Mr. D Petrie** then presented his evidence on behalf of the Applicant. He suspected that Port Underwood Road may have had its status upgraded to that of a "collector road" due to the increased traffic generated by the forestry activity in the area.

Mr. Petrie clarified that the larger sections above Mr. Thompson's home would be able to accommodate at least one off street residential car parking space. This was an obligation in terms of the Marlborough Sounds Resource Management Plan.

Mr. Petrie clarified that the traffic counter technology generally did not count cyclists. He confirmed that the emphasis in his evidence was based on traffic travelling from Picton to the proposed subdivision. He believed that the majority of the increased traffic pressure would only be on the section he described in his evidence. He believed the road had the capacity to cope with the traffic increase bearing in mind the historical use of the road as the main route to Picton. He recommended from a safety point of view that his suggested measures to improve road safety to Port Underwood Road should be implemented regardless of whether the plan change application was granted. Mr. Williams confirmed that in the event that consent was granted the applicant had an expectation that improvements to the Port Underwood Road would be required.

- **Mr. R Langbridge** presented his evidence on behalf of the Applicant. He was of the opinion that, in terms of proposed allotments 11 to 14, development should be contained to the lower elevations on these sites and away from the higher visibility slopes.

Mr. Langbridge was of the opinion that, should development occur, the ability of the residences to be viewed from the bay would be modified by the differing angles and by the foremost residences blocking the visibility of those behind them. Had the site been steeper then more residences would be visible.

- **Mr. R Evans** then presented his evidence in support of the Applicant. He clarified that proposed works would incorporate an upgrade to the culverts to allow for sediment and debris to pass through rather than cause it to build up. He directed the Committee's attention to the Connell Wagner report and to aerial photographs references SK105 and SK106 which showed that the majority of the area was at level 1 flood risk with some level 2 and 3 risk areas. He believed that an upgrade to the creeks and culverts could reduce the level 2 risk areas to a level 1 risk. The level 2 risk was still considered to be an acceptable level of risk for a rural property. He pointed to a portion of the creek that travelled through proposed Lot 42 which had been identified at a Level 2 risk but noted that the culverts had been removed from this stream to mitigate this.

Mr. Evans acknowledged that the modelling of potential flood risk was based on historical data in that statistical data enabled the prediction of flood patterns in rainfall events but there was difficulty in predicting event patterns resulting from the effects of global warming.

Mr. Williams advised that the standards set for flood protection would be set at resource consent for subdivision stage and not at the current plan change level.

Mr. Evans clarified the greater water allocations set down in paragraph 5.3 for the existing allotments were in deference to the fact that these were existing allotments.

Further to paragraph 6.5 Mr. Evans advised that the Submerged Aerated treatment systems were not proven to cope with intermittent loads occurring with holiday home situations. Instead the Packed Bed Reactor had proven to be more successful and resulted in a reduction of odour. The systems were dependent on power supply.

Mr. Williams added that the intention was to divert the stormwater runoff off to the grass swales thus allowing the land to dry out.

Responding to the matter of the effects of wind Mr. Evans expected the area to be in the upper end of the wind zones but that engineering standard had been developed to cope with this. In regards to the allotments 11-14 there were building sites available that were outside of the high visibility areas identified in Mr. Langbridge's evidence. The matter of cost would typically prevent property owners from developing residences on the higher slopes.

He asserted that with the larger allotment sizes of 4000 square metres the effluent disposal fields could be accommodated without impacting on adjacent properties. He believed that a community system was practicable where there were smaller allotment sizes but with this proposal individual treatment systems could be accommodated.

Mr. Evans advised that a community water scheme was not practicable without an adequate water storage and treatment facility which could in turn require significant engineering. His preferred option was for individual roof water supplies with the back up of a stream supply. Individual management meant that each property owner took responsibility for his own supply. Mr. Williams noted also that with community water schemes operated under a body corporate were susceptible to management issues.

- **Mr. Williams** presented his evidence on behalf of the Applicant. He noted that there had been ambiguity in the Resource Management Act 1991 as to how to proceed with a private plan change application and noted the efforts of all parties involved in the present Application. Further to paragraph 7.8, Mr. Williams confirmed that there is the potential for adjacent forestry blocks to be replanted. This could have impact

for Lots 26 to 28 but he confirmed that there would be sufficient separation distances between the forestry and the residential dwellings.

Submitters

- **Mr. S Wynne-Jones** then presented a submission on behalf of the Director-General of Conservation, **Department of Conservation**.

- **Mr. Hunt** began the submission on behalf of the **New Zealand Marine Farming Association**.

The Committee invited Mr. Hunt to comment on the use of covenants which would signal to future owners the potential effects on the environment generated by industrial activities in the area. Mr. Hunt responded that in his experience he considered it a useful tool to flag to potential buyers that marine farms were present. It avoided the problems of someone purchasing in the area and then deciding that the presence of the marine farm was objectionable. Additionally it did not preclude the purchasers from their statutory rights, rather it clarified the legitimate expectations that the purchasers may have.

Mr. Hunt clarified the issue of reverse sensitivity still related to the presence of the marine farms regardless that the CMZ2 was located on the opposite side of the bay. He asserted that this was an opportunity to address the potential for conflict before it became an issue.

- **Mr. G Coates** then continued the submission on behalf of the Marine Farming Association. Additionally he noted that he did not consider the use of covenants to be practicable in all instances and those issues of conflict had an impact when the consents required renewal.

Mr. Coates clarified that in referring to infrastructure (paragraph 15) he was discussing all the facilities required that created a commercial wharf facility. He expressed the concern that the wharf facility could not stand much more public usage and that in the future there may be the indication that the marine farmers were no longer welcome.

- **Mr. S Wilkes** then presented the final section of the submission on behalf of the New Zealand Marine Farming Association.

Mr. James queried through the Chair that the amendments to the plan suggested by Mr. Wilkes were in fact an across the board plan amendment rather than a specific suggestion. He noted that the process for a plan change of that scale had not been followed. He queried also whether the Committee had jurisdiction in this matter.

- **Mr. Hunt** responded that it was not uncommon for the issues and resolutions that arise from a site specific matter to be applicable on a broader scale. He asserted that there was no suggestion that a broader review of the plan was required rather that it be recognised that there was more that can be done for the marine farming association as a whole.
- **Mrs. J Paul** of Port Marlborough Limited then presented a verbal submission in conjunction with the New Zealand Marine Farming association submission. She clarified that Port Marlborough held the lease and exclusive possession of the land occupied by the marine farming facilities. She added that if the issues could be resolved, it did not mean that Port Marlborough Limited was opposed to the proposed zone change. Whilst port Marlborough Limited could in theory prevent access by non commercial users, this was not a practical or desirable option.
 She explained that the launching ramp was not a source of income or maintained by the port company. She did, however, foresee future requirements for the upgrade of the ramp and retrieving pontoons. Such an upgrade had an anticipated cost of \$300,000.00.
 She compared the Oyster Bay Wharf facility to the Elaine Bay Community and marine farming facilities in that bay, the difference was that there is a company that operated adjacent to the wharf facilities. There was therefore an inbuilt security in this situation in that the company operatives monitored the activity on the wharf. There was no one to police the wharf facility in Oyster Bay however. The Oyster Bay launching ramp was installed by locals some years ago. Whilst Port Marlborough was not about to prevent public access, it did not want access to this facility blocked by other users. Mrs. Paul clarified that the wooden wharf was used time to time by the fishing industry and paid for by specific charges.
 In consideration of a bay wide floating pontoon solution, Mrs. Paul responded that the on site management issues would still need to be resolved.
- **Mr. S Acton-Adams** then presented a submission on behalf of Nelson Ranger Fishing. Submitter #2. Submission #3. Mr. Acton-Adams suggested that Council should take the initiative and undertaken water sample testing in this area.
- **Mr. K Roush** presenting a submission on behalf of himself and his wife. Submitter # 6. Submission # 4. He clarified his understanding of amenity values, these being proximity to water, sense of remoteness and quiet, accessibility to the water and fishing, being able to view penguin and orca and the overall emotional experience of the natural environment. He expressed concern at the diminishment of these amenities with the influx of people. He considered that the influx of people would be fine if able to manage the environment in that these attributes were not lost.

He clarified his reference to ad hoc development in that pockets of subdivision appeared to be not in keeping with the overall Marlborough Sounds Resource Management Plan.

He accepted that the area was a working landscape with the presence of forestry, although this was not a continuous process. He struggled with mussel farms that have been inappropriately located. He did however accept that the “gold rush” approach to mussel farming no longer occurred but maintained that the benefit to the local community was not always apparent.

- **Mr. Roush** suggested as an alternative to this coastal subdivision was to look to other existing subdivision that could accommodate further development. He queried the purpose of moving people into an area to the point where the quality of the area was lost.

Mr. Roush then presented a submission on behalf of A & M Still. Submitter #1. Submission #5.

Mr. Roush then presented a submission on behalf of P & A Kircher. Submitter #13. Submission #6.

- **Mr. J Penney** then presented a submission on behalf of the Penney Family Trust. Submitter #11. Submission # 7. He clarified that his objection was not to any further subdivision in Oyster Bay but to the size of the subdivision in this instance.

At this point in the hearing Mrs I Ross presented her submission. Submitter #24. Submission #8. She reiterated Mr. Roush’s comments on the special nature of the environment in Port Underwood, attributes that she had noted were already diminishing. Mrs Ross had owned her property for eighteen years but had yet to reside there permanently.

- **Mr. R Kirkwood and Mrs R Kirkwood** then presented their submission. Submitter #14. Submission #9. He clarified that there had been two or three instances where congestion at the boat ramp meant that mussel operators had to shift private trailers in order to gain access to the ramp.

Mr. Williams argued that all that was required in this hearing was to establish whether or not a subdivision was feasible. He referred to the level of detail contained in Mr. Kirkwood’s submission stating that this level of detailing was more appropriate to the resource consent application for subdivision in the event that the application for plan change 15 be granted.

Mrs Kirkwood clarified that the supply of water would be best coordinated from a distribution point but treated at each property.

Mrs Kirkwood then read the submission on behalf of Mr. D Taylor. Submitter #30. Submission #10.

- **Mrs M Wedge** then presented her submission. Submission #11.
Mr. L Hinton then presented a submission on behalf of Mr. R & Mrs M Saul. Submitter #25. Submission #12.
- **Mr. L Hinton** read a submission on behalf of Mr. T Dunn and the Dunn Family Trust. Submitter #16. Submission #13.
Mr. L Hinton then read a submission on behalf of Mr. J and Mrs A Ward. Submitter #29. Submission #14.
Mr. L Hinton finally presented a submission on behalf of himself and Ms. J Kennedy. Submitter #21. Submission #15. He noted his disagreement with paragraphs 22a and b of Mr. Fitzgerald's statement regarding solutions to the congestion of the Oyster Bay Wharf.
Further to his statement in paragraph 10 regarding undesirable precedent Mr. Hinton qualified this statement in terms of the application were granted, given that there are good reasons presented for not granting it then there would be many other applications for plan changes to follow.
Further to his statement in paragraph 3 Mr. Hinton referred to the Resource Management Act 1991, section 5 noting that because of the range of objections presented he felt it did not seem possible that the application could be approved.
- **Ms. Paton** clarified the provisions of the Marlborough Sounds Resource Management Plan for subdivision in the Rural 1 zone.
- **Mr. Hinton** cited amenity values, infrastructure concerns and changes to the landscape as reasons why the application for plan change should be declined. He personally thought it unreasonable to state that the threshold for subdivision in Port Underwood had been reached, however he stated also that it was unreasonable to put a village into the bay. He accepted that it was the scale of the proposal that was at issue.
- **Mr. E Jorgenson** then read a submission on behalf of Mr. G and Mrs G Beattie and Mr. N and Mrs D Saul. Submitters #10 and 34. Submission #16.
- **Mr. Jorgenson** then read a submission on behalf of the Port Underwood Association Incorporated. He expressed concern that if the plan change was granted then the association would have no ability to influence future applications for subdivision. He saw the issue being having an understanding of the Marlborough Sounds Resource Management Plan and maintaining the plan integrity. Rather than adding to the plan in an ad hoc fashion it would be better to address the plan as a whole when it comes

time to review it. He could not see any benefit to Port Underwood or to Marlborough as a whole from the proposed plan change.

A submission from Ms. Y Bosseva, Burton Consultants on behalf of **Transpower New Zealand Limited** was tabled in their absence. Submitter #22. Submission #18.

- **Mr. E B Williman**, Council's Rivers and Drainage Engineer provided a statement of evidence regarding the flood hazard at the site and the degree of river control works required to mitigate this. Submission #19.

Mr. Williman clarified that with the river control works there would be no increase in the amount of debris and sediment in the river outflow. He noted also that these events were of relatively short duration and without a prolonged deposition of material.

Mr. Williman was unable to offer any comments on the reduction in the available beach area as he had not undertaken any study on this issue

Mr. Williman further clarified that no covenant would be required in the event that a river control reserve was acquired by Marlborough District Council. If not a river control reserve then there would be access and permission problems. Currently there was no river control rating scheme in the Sounds.

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