

order to achieve sustainable management of Queen Charlotte Sound/Totaranui generally and Waikawa Bay specifically.

238. The history demonstrates that:
- (a) Te Atiawa has lost much of its direct physical relationship with foreshore CMA resources of Queen Charlotte Sound/Totaranui;
 - (b) Waikawa Bay became the *locus* of Te Atiawa settlement after European;
 - (c) Even in Waikawa Bay there has been significant adverse impact on Te Atiawa's traditional interests in, and relationship with, natural resources on the foreshore and seabed of the head of the Bay as a result of development.
239. What remains by way of natural resources and relationship is weakened by what has occurred in the past and in part at least contrary to the principles of the Treaty according to the Waitangi Tribunal. No one pretends that the already existing marina development has not had a massive impact both on the quality of the natural resources of the delta of Waikawa Bay but also consequentially on the relationship between those resources and Te Atiawa. The fact that the resources are compromised and that the relationship is now more tenuous is not in our opinion, a reason to give protection of what remains less importance, but rather more importance. Having given up or lost so much, the voice of Te Atiawa demands greater weight in the conversation about sustainable management of Waikawa Bay than it has in the past. This is a means of fulfilling the principle of reciprocity and the principle of mutual benefit.
240. Under s.7(a) we are required to have particular regard to kaitiakitanga. Kaitiakitanga is defined in the Act as "the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship."
241. There is no doubt that Te Atiawa are kaitiaki of Waikawa Bay. They have exercised kaitiakitanga post-European settlement, (bearing in mind the

changes and structures in ownership and management of the CMA over that time) in the following ways:

- (a) Sustainable harvesting;
- (b) Opposition to ongoing reclamations and changes in the physical environment affecting natural operations of ecosystems;
- (c) Participation in plan making processes so that the ethic of stewardship according to Te Ao Māori is considered;
- (d) Seeking redress from the Crown in order to improve the marine environment of Waikawa Bay.

Further, as human and economic resources allow we can also expect Te Atiawa to exercise kaitiakitanga through iwi management plans under the RMA.

- 242. Having particular regard to kaitiakitanga in this context means paying special regard to Te Atiawa's view about the appropriate manner in which natural and physical resources of Waikawa Bay should be husbanded.
- 243. Section 6(e) states that it is a matter of national importance to recognise and provide for: "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waihitapu and other taonga." This does not accord a right of 'veto' to Te Atiawa.
- 244. We are required to make findings based on the evidence as to the nature of that relationship and the effects on that relationship.⁸⁴ We have done that. We consider that it is necessary to recognise and provide for that matter of national importance by choosing that policy framework available to us that best recognises the importance of ensuring no further adverse effects by marina development on that part of the CMA at the head of the Bay.
- 245. We have weighed all of the matters and considered all environmental risks and benefits. While there is some merit in concentrating marina activity in a single node in Marlborough Sounds in Waikawa Bay, the benefits are not

⁸⁴ *Chief Executive of Ministry of Agriculture and Forestry v. Waikato Regional Council* EnvC no. A133/06 and *Outstanding Landscape Protection Society Incorporated v. Hastings District Council* EnvC no. W24/07.

outweighed by the considerations in s.6(e), 7(a) and 8. Our judgment is therefore that option B (the plan as it stands) best achieves the overall purpose of the Act. Consequently we reject that dimension of PC 21 that seeks to further or additionally enable marina development in MEA (A) and MEA (B).

Mooring Management Bylaw

246. We are required to make decisions on the MMB including the modifications we consider necessary.
247. The consultation by Marlborough District Council before proposing MMB was wide ranging. The background to that consultation and its components was explained to us by Mr May. He is a director of Sounds Projects Limited, a project management consultancy based in Picton. His role was that of a Moorings Facilitator to directly consult with all Waikawa mooring applicants for resource consents regarding the introduction of MMA's. Development of the MMA's was by a working group and its criteria for allocation were:
- (a) Allocate a mooring site for each Waikawa Bay mooring application;
 - (b) Minimise relocation distances, as far as practicable;
 - (c) Achieve improved navigation in and out of Waikawa Marina, Waikawa Bay jetty and the Waikawa Bay Residents Association Boat Launch Ramp;
 - (d) Provide for mooring of Waka adjacent to the Arapawa Māori Rowing Club;
 - (e) Improve amenity for swimmers and other water users around the coastal margin;
 - (f) Achieve efficient use of water space;

- (g) Ensure provision is made for alternative locations for those 30 plus moorings located in the existing marina zone in the event they have to move;
 - (h) Allow a maximum of 20% overlap for mooring swing circles;
 - (i) Utilise space efficient tackle on moorings in water greater than 7m in depth.⁸⁵
248. Mr May's consultation was extensive and only 3% of respondents in the survey between December 2009 and July 2010 indicated that they did not accept the moorings allocated to them. This was a spectacular result.
249. The proposed Bylaw was notified and submissions received. There were not many submissions and the most focussed and helpful was that by MBMA. MBMA's concerns were on:
- (a) The breadth of powers of the Mooring Manager;
 - (b) The fact that the management plan wasn't incorporated within the Bylaw;
 - (c) The terms of any licence were not included within the Bylaw;
 - (d) The fees may escalate unnecessarily;
 - (e) There was no express provision for subleasing or transfer.
250. We consider the underlying concerns in the submission of MBMA were well founded.
251. Discretion in the Bylaw is inevitable and the Moorings Manager is in principle the appropriate repository of that discretion. In any law there is a tension between the need for flexibility and the need for certainty. As was stated in another context in a judgment of the House of Lords:⁸⁶

But hard and fast rules should have no place when deciding questions of practical convenience. There is a place for guidelines,

⁸⁵ See May SOE para 14.

⁸⁶ *Hoker Corporation Pty Limited v. Hornsby Shire Council* (1996) 130 LGRA 438 at 441; also *Reg v. Wicks* [1998] AC 92.

Decision – Waikawa Bay PC 21

and for prima facie rules, or residual rules. But circumstances in individual cases vary infinitely. If variance is the governing factor, then at some point in the system there should be space for discretionary power, to be exercised having regard to all of the circumstances.

252. We consider that the resolution of that issue is achieved by making provision for an objection to the Council or a committee of Council on any decision of the mooring manager. The Council represents the community and is a sufficient appellate jurisdiction for this type of administrative matter.
253. The power to transfer and sublease licences is also appropriate. There is significant investment associated with a mooring and the ability to sell a bundle of rights attaching to the use of that mooring incentivises the investment made by a mooring owner. Awareness of the competition for space and the market value of such spatial occupation led us to consider alternatives methods of allocation, such as coastal tendering, both of MMA and of space within such areas, but we are in agreement with the views of submitters that this would be a difficult mechanism to employ in this context with probably high transaction costs.
254. In relation to fees, we pointed out to MBMA s.150 LGA 2002 that reads:

150 Fees may be prescribed by bylaw

- (1) A local authority may prescribe fees or charges payable for a certificate, authority, approval, permit, or consent from, or inspection by, the local authority in respect of a matter provided for—
- (a) in a bylaw made under this Act; or
 - (b) under any other enactment, if the relevant provision does not—
 - (i) authorise the local authority to charge a fee; or
 - (ii) provide that the certificate, authority, approval, permit, consent, or inspection is to be given or made free of charge.

- (2) A bylaw may provide for the refund, remission, or waiver of a fee in specified situations or in situations determined by the local authority.
- (3) Fees provided for in subsection (1) must be prescribed either—
 - (a) in bylaws; or
 - (b) using the special consultative procedure set out in section 83.
- (4) The fees prescribed under subsection (1) must not provide for the local authority to recover more than the reasonable costs incurred by the local authority for the matter for which the fee is charged.
- (5) The local authority must ensure that copies of all bylaws made under subsection (1) or subsection (3) are available for public inspection free of charge at the public office of the local authority during ordinary office hours.
- (6) This section does not apply to charges for goods, services, or amenities provided by the local authority in reliance on the general power under section 12.

255. We have expressly provided that fees will be set using the special consultative procedure in the Local Government Act 2002 and have given an indication of the type of costs intended to be recovered. We have made extensive amendments to the MMB as notified. In Appendix 7 is the Bylaw we recommend together with a tracked change version.

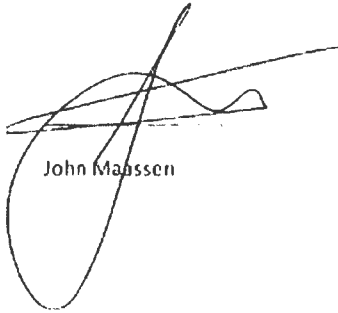
Overall outcome

256. We approve the dimension of PC 21 that provides a new mooring management regime in Waikawa Bay with the consequence that:

- (a) We approve the new definitions of 'waka' and 'Waikawa Bay' contained in Appendix 6;
 - (b) We approve the changes to Volume 1 – Chapter 9 – Coastal Marine proposed by PC 21 with the modifications in Appendix 6;
 - (c) Approve the changes to Chapter 35 Coastal Marine Zones 1 and 2 in the Plan as provided in Appendix 6;
 - (d) Approve a new schedule in Appendix J as modified in Appendix 6;
 - (e) Approve map changes proposed in PC 21 showing the MMA's areas and waka MMA as shown in Appendix 6.
257. We consider the MMB as amended in Appendix 7 is appropriate and consider it should be made by MDC;
258. We decline that dimension of PC 21 that further or additionally enables marina development in MEA (A) and MEA (B) with the consequence that:
- (i) We reject the changes in Appendix 5 to Chapter 10, urban environments;
 - (ii) We reject the changes to Chapter 34 marina zone in Appendix 5;
 - (iii) We reject the change to planning maps in Appendix 5 showing MEA (A) or any change to existing notations in respect of MEA (B).

This is a unanimous decision

Dated 5 May 2011



John Maassen



Edward Ellison



Hamish Rennie

Appendix 1

Party	Represented by	Witness & Expertise
PMNZ	Mr Beatson & Ms Robertson (Mr Gault appeared also as counsel in lieu of Mr Beatson not being available in early stages of hearing)	Ms Bronwyn Faulkner, landscape architect Mr Buddy Mikaere, cultural impact expert Mr Copeland, economist Dr Frank Boffa, landscape architect Ms Faulkner, landscape architect Ms Harriet Fraser, transportation engineer Mr Ian McNabb, chief executive of PMNZ Mr John Kyle, planner Mr John Leman, engineer & marina expert Ms Louise Robertson, planner (listed twice) Mr Malcolm Hunt, acoustic engineer Mr Matiu Park, ecologist Mr Robert Greenaway, recreational planner Ms Rosemary Prenderville, project manager Mr Ross Sneddon, ecologist Mr Toby May, project consultant
Te Atiawa	Ms Grey	Ropata Taylor, expert on Te Atiawa Sue Buchanan, lay witness Ms Linda Ohia, expert on Te Atiawa Ms Robin Metzger, lay witness Mr Barry Holder, lay witness Ms Linda Martin, lay witness Mr Buna Riwaka, lay witness Ms Trish Little, lay witness Mr Gary Buchanan, lay witness Ms Vennessa Ede, lay witness Ms Rita Powick, chief executive of the Te Atiawa Trust Mr Peter Beech, lay witness Ms Diane St Claire, lay witness Mr Ngatata Love, cultural expert Sir Paul Reeves, cultural expert Ms Sharon Gemmel, history expert Mr Bentham Ohia, cultural expert Mr Mark Batchelor, planning witness
Minister of Conservation	Mr Witte	Dr Lionel Solly, planning witness
MBMA	Paul Williams	Mr Williams, planner
Waikawa Ratepayers Association	Brian King	Mr King, lay witness
Hirim Taylor	Self	Self *

Steven Walladge	Self	Self
Guardian of the Sounds	Mr Beech	Mr Beech
Andrew Scott	Self	Self
Waikawa Marine Trust Berth Entitlement Holders	Des Boyce & Scott Wilson	Mr Boyce & Mr Wilson
Kevin & Margaret Cosgrove	Self	Self *
Neil Campbell	Self	Self
June Cloudesley	Self	Self *
Roger Cloudesley	Self	Self *
Noel & Jenny Cohen	Self	Self *
Alan Perano	Self	Self
John & Kerry Scheerhoorn	Self	Self
Sarah & Robert Maskill	Self	Self *
Deborah Henderson	Self	Self *
R J Colbert	Self	Self *
Mark & Cathy Horgan	Self	Self *
Rex & Diana Hebly	Self	Self *
Michael Rothwell	Self	Self
DA & LM Stone	Self	Self
Brenda Kearns	Self	Self *
John Walker	Self	Self *
Robert Soutar & Francis Stuart	Self	Self *
R J Culbert & Submitters	Self, with and on behalf of others	Mr Hiram Taylor
		Kevin & Mark Cosgrove
		J & K Cloudesley
		Noel & Jennie Cohen
		Sarah & Rob Maskill
		Deborah Henderson
		Robert John Culbert
		Mark & Kathy Horgan
		Rex & Diana Hebly
		Brenda Kearns
		John Walker
		Robert Souter & Francis Stuart
Marlborough District Council	Mr Tony Quickfall	S42 Officers Report
	Rachel Dunningham	Lawyer / advice re Plan Change 21 for Commissioners

Appendix 2



Figure 1

Waikawa Bay - Plan Change Application - Landscape and Natural Character Assessment - Addendum
 Prepared for Port Marlborough, April 2010

Proposed Plan Change and Lo



Figure 1A

Map 1: Customary Resources: Waikawa Bay

Key: Existed Pre-Marina: Black text Present Day: Highlighted Text: Non-existent or very limited, Black text: significantly reduced resources in both quantity and quality

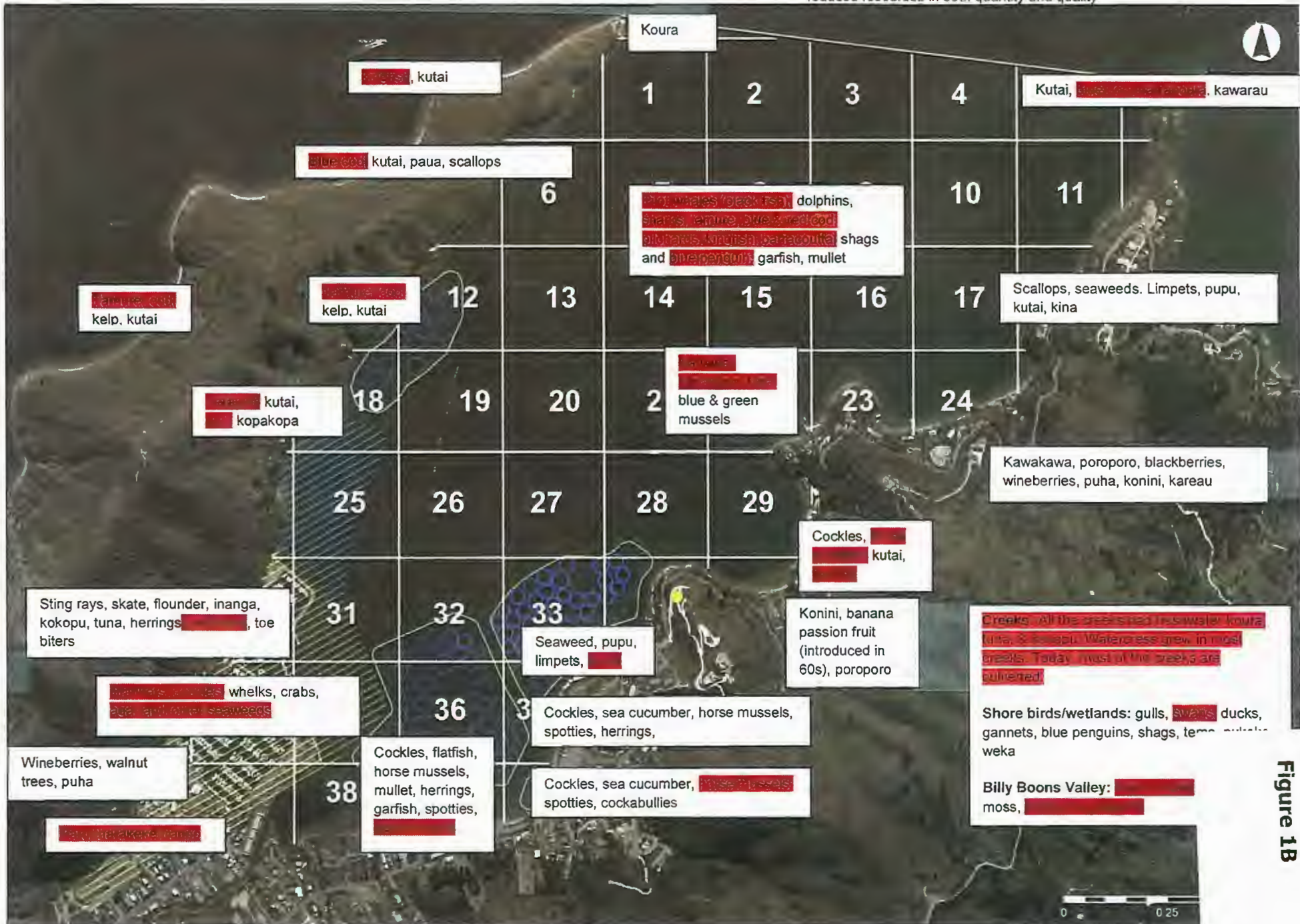
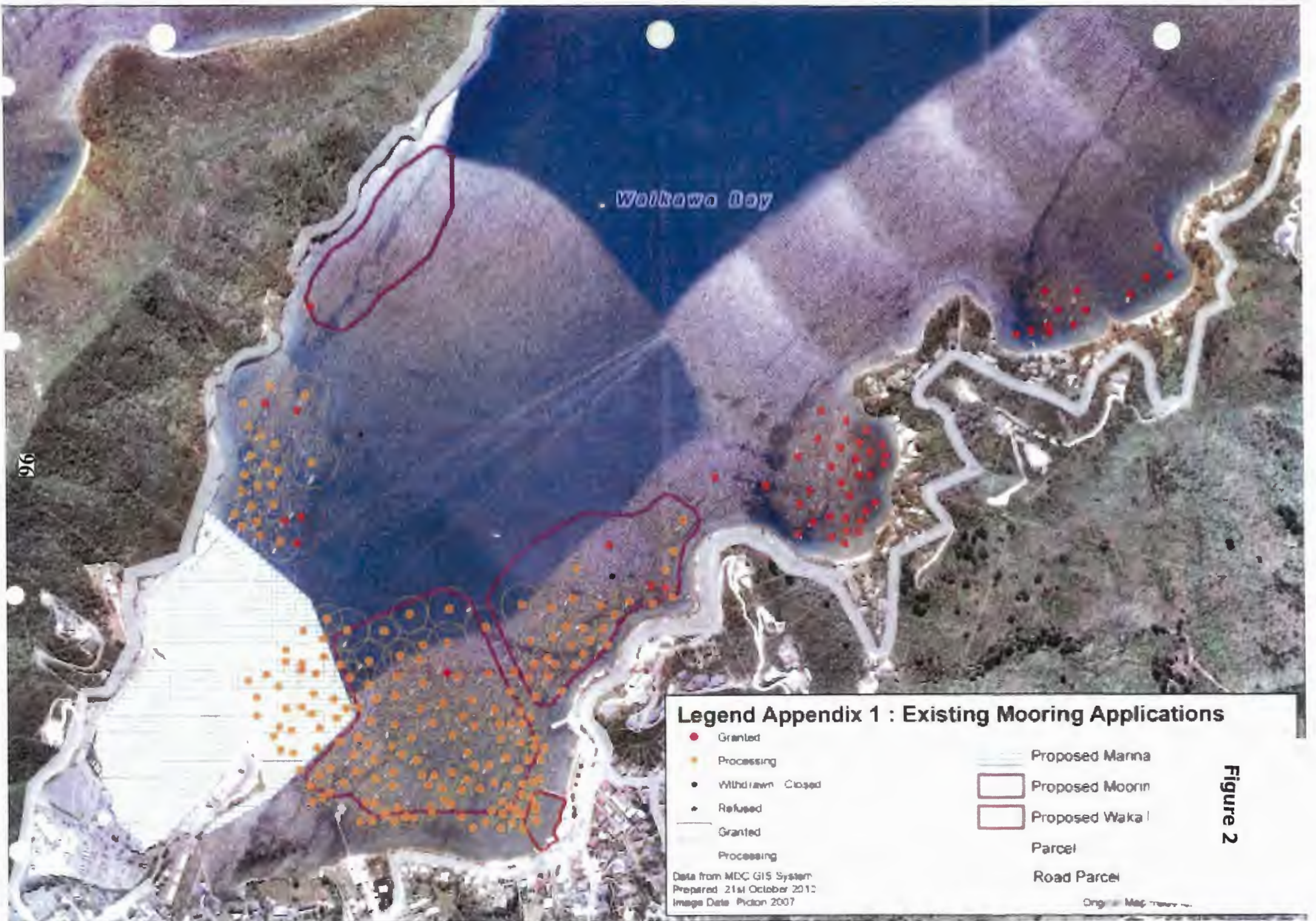


Figure 1B



Figure 1C



Waikawa Bay

96

Legend Appendix 1 : Existing Mooring Applications

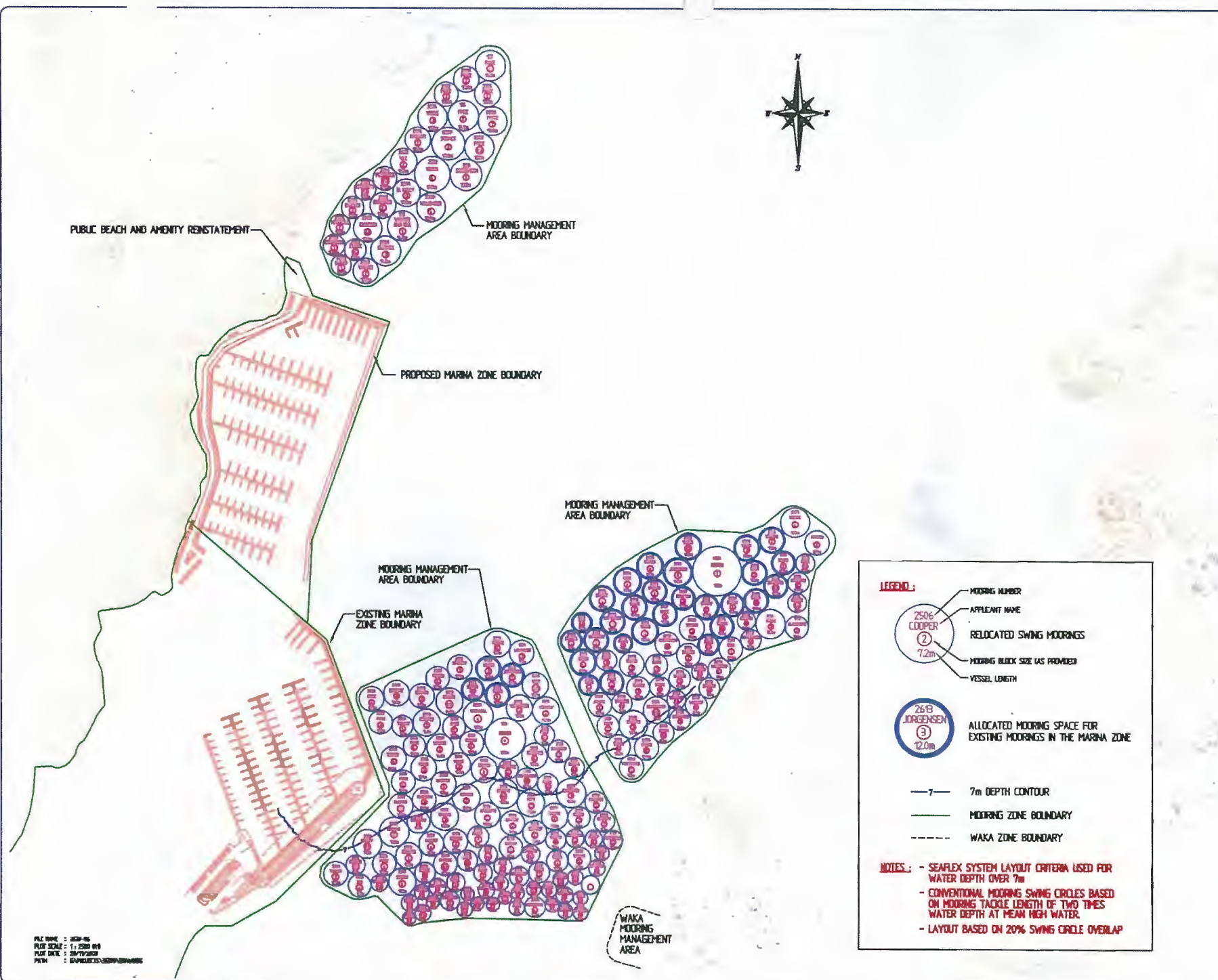
- Granted
- Processing
- Withdrawn / Closed
- Refused
- Granted
- Processing
- Proposed Manna Parcel
- Proposed Mooring
- Proposed Waka | Parcel
- Road Parcel

Data from MDC GIS System
 Prepared: 21st October 2012
 Image Date: Picton 2007

Org: MDC Teatū

Figure 2

10 June 2010



PLC NO. : 20P-05
 PLAN SCALE : 1:2500 00
 PLAN DATE : 28/11/2009
 PLAN : ENGINEERING/DESIGN/PLANS

LEGEND:

- MOORING NUMBER
- APPLICANT NAME
- RELOCATED SWING MOORINGS
- MOORING BLOCK SIZE AS PROVIDED
- VESSEL LENGTH
- ALLOCATED MOORING SPACE FOR EXISTING MOORINGS IN THE MARINA ZONE
- 7m DEPTH CONTOUR
- MOORING ZONE BOUNDARY
- WAKA ZONE BOUNDARY

NOTES:

- SEARLEX SYSTEM LAYOUT CRITERIA USED FOR WATER DEPTH OVER 7m
- CONVENTIONAL MOORING SWING CIRCLES BASED ON MOORING TACKLE LENGTH OF TWO TIMES WATER DEPTH AT MEAN HIGH WATER.
- LAYOUT BASED ON 20% SWING CIRCLE OVERLAP

No.	Date	Revised	By	For
D	20/06/10	REVISION: MOORING LAYOUT & SWING MOORING INFORMATION UPDATED	J.C.	
C	20/06/10	SWING 2005 AND 2006 BUFFER ZONE DELETED	J.C.	
B	20/06/10	BUFFER ZONE, MARINA ZONE BOUNDARY AND WAKA AREA REVISED	J.C.	
A	20/06/10	MARINA ZONE, BUFFER ZONE BOUNDARY AND DRAWING TITLE REVISED	J.C.	

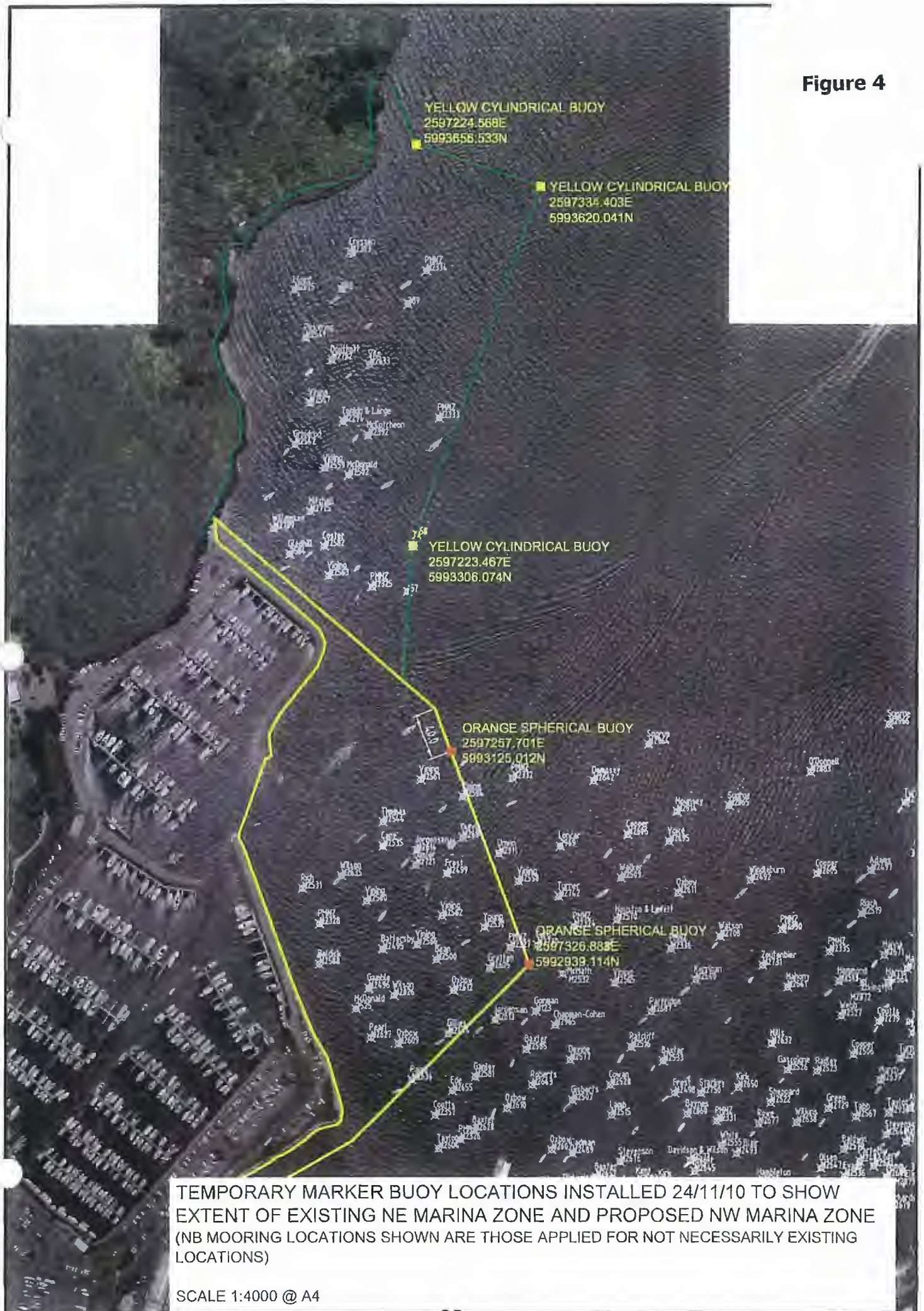
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the **PORT MARLBOROUGH NEW ZEALAND LTD.**

Figure 3

Figure 4



Appendix 3

<p>Proposed definition: <i>structure(s) such as finger jetties, pontoons, piers, and any associated reclamations and/or breakwaters, to enclose or semi-enclose an area of water for the primary purpose of providing boat/ ship accommodation</i></p>				
<p>Swing moorings</p>	<p>Not identified as a separate activity, so could be classified as non-complying (Rule 34.5). However, placement of a mooring block might fall within the scope of Rule 34.3.5 (limited discretionary activities), whilst “<i>occupation of space by commercial and other ships, including berthage</i>” and “<i>use of surfacewater by exclusive and non-exclusive activities</i>” are permitted activities under Rule 34.1.</p>	<p>Not identified as a separate activity, so could be classified as non-complying (but see notes to left).</p>	<p>Discretionary (Rule 35.4.2.8)</p>	<p>Permitted or limited discretionary within Mooring Management Areas</p> <p>Discretionary for moorings outside Waikawa Bay</p> <p>Discretionary for renewal of previously consented moorings in Waikawa Bay, if not in Mooring Management Area</p> <p>Non-complying for new moorings in Waikawa Bay if not in Mooring Management Area</p>

† Note: Activities that the Plan identifies as restricted coastal activities will effectively cease to have that status from 3 December, except where an application for a restricted coastal activity has already been notified. See Policy 29 of the New Zealand Coastal Policy Statement 2010.

Appendix 4

APPENDIX B

Proposed MSRMP Provisions

The following sets out the proposed changes to the MSRMP promoted by the Plan Change. Only those sections which are to be changed have been included, with the changes shown with underlining and strikethrough

DEFINITIONS

Provision	
<i>Definition: Marina</i>	<i>Means a natural or artificially enclosed or semi enclosed area of protected water containing moorings in the form of finger jetties, berths or similar structures.</i>
<i><u>Waka</u></i>	<i><u>Means a traditional Maori canoe, including replica vessels of similar design.</u></i>
<i><u>Waikawa Bay</u></i>	<i><u>Means that part of the coastal marine area to the south of the line extending from the Snout and Karaka Point, including that area within a Moorings Management Area.</u></i>

9.0 COASTAL MARINE

9.2 Issue

Restriction of public access to the coastal marine area due to the private occupation of water.

Occupation of coastal space involves the Council allocating or authorising the use of public resources for private benefit.

In some cases the use of resources sought is temporary or non-exclusive, generally associated with surfacewater activities such as shipping, recreational boating, swimming or with seabed disturbance activities such as dredging or dumping. In other cases the use of resources requires a degree of use which results in the exclusion of other persons or activities, for example: ports, marinas, marine farms and structures (jetties, swing moorings, boatsheds, and subaqueous cables). Such uses generally rely on a coastal location and to varying degrees, contribute to the wellbeing of individuals and the community in general. Further, the Act and the New Zealand Coastal Policy Statement both recognise that 'use' can be made of the coastal marine area resources and that this does involve occupation of coastal space for private benefit.

There are particular locations in the Marlborough Sounds where there is significant competition for coastal space for use as moorings. As demand for such private use of water space increases, the allocation of coastal marine space needs to be managed effectively and comprehensively to ensure that moorings are efficiently laid out, to avoid conflict with competing uses and users.

For these reasons, it is necessary and appropriate that activities or 'uses' which require a coastal location and which consequently involve the occupation of coastal space, are provided for in the Plan. In providing for these uses which require access to areas of, or the resources of, the coastal marine area, adverse cumulative and other environmental effects must be addressed. Namely the wider context of enabling the community to provide for its social, economic and cultural wellbeing, and preserving the natural character of the coastal environment.

The marine farm industry that has developed in the Marlborough Sounds is of significant value to the nation in terms of export earnings, and also to the region in terms of the employment and income flows that are derived from the industry. A substantial infrastructure involving processing facilities, ports, harvesting vessels and a multitude of other services has developed based on the marine farm industry and Sounds communities have been revitalised as a result of the development of the industry. All of that infrastructure is reliant upon marine farming which utilises the coastal marine area and the provisions of the Plan recognise that to maintain the strength of the industry, generally it is essential for resource consents to be able to be renewed to continue those marine farming activities.

The Plan recognises that in appropriate areas of the Sounds provision needs to be made respectively for conservation, residential/recreation interest and the

interest of important industries utilising Sounds resources such as marine farming, tourism, forestry and land-based farming.

In addition, ongoing research is constantly occurring as to other means of aquaculture production involving species other than the present predominant species of mussels and it is possible that some other species may involve lesser effects on the environment through having less visible surface structures. The current Plan provisions are based on the predominant bi-valve marine farm structures. It may become necessary for those provisions to be re-addressed by plan change.

The Marlborough Regional Policy Statement (Policies 7.2.10) highlights a number of key considerations for assessing proposals to occupy areas of coastal space. Essentially, public access and recreational use are identified as matters of prime importance for Marlborough. Any allocation for private benefit must not compromise these important values.

Further important values are highlighted by the Regional Policy Statement in order to guide the allocation of space for aquaculture, these include "...marine habitat sustainability, habitat protection, landscape protection, navigation and safety, and, compatibility with other adjoining activities" (Policy 7.2.10(d)). Tangata whenua values, including access to traditional coastal resources, is also an important consideration in the allocation of coastal space.

Being able to use and develop the public resources of the coastal marine area is a privilege. Often people expect this as of right, particularly if they own land adjacent to the coastal marine area.

9.2.1 Objectives and Policies

Objective 1	The accommodation of appropriate activities in the coastal marine area whilst avoiding, remedying or mitigating the adverse effects of those activities.
Policy 1.1	<p>Avoid, remedy and mitigate the adverse effects of use and development of resources in the coastal marine area on any of the following:</p> <ul style="list-style-type: none"> a) Conservation and ecological values; b) Cultural and iwi values; c) Heritage and amenity values; d) Landscape, seascape and aesthetic values; e) Marine habitats and sustainability; f) Natural character of the coastal environment; g) Navigational safety; h) Other activities, including those on land; i) Public access to and along the coast; j) Public health and safety; k) Recreation values; and l) Water quality.

Policy 1.2	Adverse effects of subdivision, use or development in the coastal environment should as far as practicable be avoided. Where complete avoidance is not practicable, the adverse effects should be mitigated and provision made for remedying those effects to the extent practicable.
Policy 1.3	Exclusive occupation of the coastal marine area or occupation which effectively excludes the public will only be allowed to the extent reasonably necessary to carry out the activity.
Policy 1.4	Manage the effects of port and harbour activity by establishing a boundary around specific areas suitable and necessary for port activities in: <ul style="list-style-type: none"> • Picton (including Shakespeare Bay); and • Havelock.
Policy 1.5	Manage the effects of marina activity and future development by establishing a boundary around the marina areas at: <ul style="list-style-type: none"> • Picton; • Waikawa; and • Havelock.
Policy 1.6	Ensure recreational interests retain a dominant status over commercial activities that require occupation of coastal space and which preclude recreational use in Queen Charlotte Sound, including Tory Channel, but excluding Port and Marina Zones.
Policy 1.7	Avoid adverse effects from the occupation of coastal space in or around recognised casual mooring areas.
<u>Policy 1.8</u>	<u>Ensure that moorings within Waikawa Bay are allocated in an efficient and co-ordinated manner.</u>
<u>Policy 1.9</u>	<u>Avoid moorings in Waikawa Bay outside of the Mooring Management Areas, except where: moorings are for providing access to immediately adjoining properties; or are a renewal of currently consented moorings and provided adverse effects on the environment are avoided, remedied or mitigated.</u>
<u>Policy 1.10</u>	Avoid any adverse cumulative effects of foreshore structures by taking into account the existence of other suitable structures prior to erecting new ones.
<u>Policy 1.11</u>	Avoid foreshore structures in areas of recreational use where there is an adverse effect on recreation values.
<u>Policy 1.12</u>	Provide for defence purposes under the Defence Act 1990, provided adverse effects are avoided, remedied and mitigated.
<u>Policy 1.13</u>	Enable roading activities where adverse effects on the coastal environment can be avoided, remedied or mitigated, and provide for the protection of existing roads from coastal processes.

<u>Policy 1.14</u>	To enable a range of activities in appropriate places in the waters of the Sounds including marine farming, tourism, and recreation and cultural uses.
<u>Policy 1.15</u>	Enable the renewal as controlled activities of marine farms authorised by applications made prior to 1 August 1996 as controlled activities, apart from exceptions in Appendix D2 in the Plan.
<u>Policy 1.16</u>	Consideration of other methods of marine farming having lesser effects than long line bi-valve farming in the future.

By controlling the erection of structures and other activities (including marine farms) that use or occupy coastal space, the effects of these are able to be addressed. The extent of occupation and development needs to be controlled to ensure water space is efficiently allocated and to enable all users to obtain benefit from the coast and its waters.

Waikawa Bay is a finite coastal resource that is utilised by a range of cultural, recreational and commercial activities. Policy 9.2.1.1.6 seeks to ensure that recreational uses take precedent over commercial uses, which are provided for via the Marina Zone.

Policy 9.2.1.1.7 recognises that unconstrained casual mooring areas are important, and often crucial in terms of safety, for anchoring boats on a casual basis.

However, due to the high demand for moorings at Waikawa Bay, and the different uses competing for water space, the location of swing moorings there needs to be managed in a comprehensive way to enable the efficient use of this Bay for various users. The Mooring Management Areas provided in the Bay establish the locations where swing moorings are appropriately located. New moorings outside a defined Mooring Management Area are discouraged unless they are for the specific purpose of mooring vessels associated with land owners/residents adjacent to those mooring locations (Policies 9.2.1.1.8 and 9.2.1.1.9.

The Mooring Management Areas have been designed to enable safe manoeuvring of vessels between the shore, their berthage and the inner parts of the Bay. The Moorings Bylaw for Waikawa Bay works alongside the Mooring Management Areas providing for the moorings to be allocated and managed by the Council independent of the Marlborough Sounds Resource Management Plan.

One particular use is the cultural activity of mooring waka. Moorings within the Bay are limited to the Mooring Management Areas and the Waka Mooring Area as defined on the Planning Map.

The policies seek to provide guidance and control on the individual and cumulative adverse environmental effects of marine farms and structures and their use, particularly visual effects. The term 'structure' is defined by the Act as

any building, equipment, device or other facility made by people and which is fixed to land (ie; the foreshore or seabed) and includes any raft (section 2).

Separate provision for marine farm transfer sites is no longer appropriate as there is no consistent demand for any particular location or description of the effects of transferring marine farms. Accordingly, transferring a marine farm is treated as a new site where adverse effects can be considered.

Council acknowledges that management and allocation of fisheries resources is to be determined under the provisions of the Fisheries Act 1996 as opposed to the Act. However, Council can control the effects created by fishing as long as those controls are not imposed for a fisheries purposes eg; controls imposed for the protection of vulnerable, unique coastal substrate.

The importance of public access and recreational use is recognised in a number of the occupation policies above, (particularly 1.5) as required by the Marlborough Regional Policy Statement. Council sees the future wellbeing of Marlborough and particularly the Sounds area linked to an increase in the recreational use of coastal resources. It is therefore important to ensure that allocation for coastal space for private use does not occur at the expense of public access and recreation values. It is also important to remember that there are no inherent development rights within the coastal marine area.

Policy 9.2.1.1.2 reflects Policy 3.2.2 of the New Zealand Coastal Policy Statement, which provides a hierarchy whereby adverse effects should be avoided as far as practicable in the first instance, and where these effects cannot be avoided they must be mitigated and remedied to the fullest practicable extent. This is a general policy that applies throughout Chapter 9.

Policies which further address the environmental effects of activities occupying coastal space need to be considered in conjunction with those above. Refer to section 10.6: Port and Harbour Activities; Chapter 10.7: Marina Activity; Chapter 19: Water Transportation; and, the second issue in this chapter, section 9.3

9.2.2 Methods of Implementation

Zoning	<p>The coastal marine area is incorporated into two coastal marine zones (except for port and marina areas).</p> <p>The limits of the Coastal Marine Zones align with the boundary of the coastal marine area, being the: outer limits of the territorial sea; and line of mean high water springs and where the line crosses a river, as agreed between the Minister of Conservation and the Council in the Memorandum of Agreement dated 4 December 1995 or any subsequent amendment to that agreement.</p> <p>Rules have been incorporated to control activities and structures in these zones.</p>
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	<p>In Coastal Marine Zone 1 the Plan identifies those areas where marine farms are prohibited in accordance with Policies 9.2.1.1.1 and 9.2.1.1.6. These areas are identified as being where marine farming will have a significant adverse effect on navigational safety, recreational opportunities, natural character, ecological systems, or cultural, residential or amenity values.</p> <p>In addition to the two coastal marine zones the Plan identifies particular zones for the following activities:</p> <ul style="list-style-type: none"> • Port and harbour activity; and • Marina activity. <p>Such areas are managed for these activities.</p>
Rules	<p>Rules and resource consents generally provide for activities which require coastal space where the adverse effects of occupation are avoided, remedied or mitigated in terms of the assessment criteria and standards identified.</p> <p>Within Coastal Marine Zone 2 out to 50 metres from mean low water mark, and beyond 200 metres from mean low water mark, marine farms are non-complying activities. In those areas marine farming involving fin fish farming may be appropriate and it is recognised that consent may be granted by a resource consent application.</p> <p>Rules enable the use of the coastal marine area for defence purposes.</p>
Other Legislation	<p>The Council will use its powers and functions under harbour legislation to control navigational conflicts between surface water activities.</p> <p><u>Moorings in the Mooring Management Areas at Waikawa Bay will be managed through a management plan under a bylaw promulgated under the Local Government Act 2002.</u></p>
Liaison	<p>The Council will send notice of permissions for structures to the Hydrographic Office of the Royal NZ Navy, and the Maritime Safety Authority.</p>
Monitoring	<p>The Council will monitor the effects of permitted and consented activities in the coastal marine area to: determine the effectiveness of plan policies and rules; assess compliance with consent conditions; and promote sustainable management.</p>

Rules and zoning will provide certainty with respect to what can and cannot be done in the coastal marine area. In addition, they provide the environmental certainty and control which is needed in this sensitive area.

Policy 3.2.1 of the New Zealand Coastal Policy Statement requires plans to define the type of use and development that would be appropriate in the coastal environment. The policies and methods (ie, rules) provide guidance to resource users on this.

10. URBAN ENVIRONMENTS

10.7 Marina Activity

The enclosed waterways of the Marlborough Sounds offer many recreational boating opportunities to both residents of Marlborough and visitors to the area. ~~Commercial use of boats and other craft is also a significant feature of the district's who in turn sustains a range of support services within the District, including tourism, marine farming and fishing and repair and maintenance services. industries.~~ Many of the smaller recreational craft are stored on dry land and have no need for mooring or berthage. However, there are many vessels that need some form of mooring or berthage and the preference is often for a marina berth. Marinas provide increased safety, security and a range of support facilities such as sewage and rubbish disposal, freshwater, ~~and fuel supplies and repair and maintenance services.~~ They also make efficient use of water space in providing for longer term vessel storage.

~~Currently,~~ there are marinas at Picton, Waikawa, Portage and Havelock accommodating a variety of vessels supported by a range of boating industry activities. ~~The~~ ese ~~marinas~~ at Picton, Havelock and Waikawa are substantial complexes, marinas with extensive land based back-up facilities. These marinas are important bases providing landing, storage, and loading facilities for residents of the Sounds as well as providing an important access point to the Sounds for many vessel owners who are not Sounds residents. The Portage marina is comparatively small with limited land based facilities. All of the marinas are important features contributing to the amenity and attraction of the Marlborough Sounds, as well as generating significant economic activity.

There is an ongoing demand for marina berths within the Sounds, which generally exceeds the existing supply, consequently resulting in large waiting lists for berths. However, on occasion external influences, such as the state of the economy, may cause a reversal in this trend. Extension of the Waikawa marina has absorbed most of the current demand for berths in the Queen Charlotte Sound. Where such demand is long term additional marina capacity is likely to be needed, and new facilities may be required. Generally, the provision of additional marina capacity focuses on enhancing existing facilities, which are already well serviced and strategically located to urban areas, the transport network and to the principal areas of recreation and boating within the Sounds. As a general principle, it is preferred that existing Marina facilities are extended to cater to demand, rather than establishing new Marina facilities in areas that have not yet been subjected to such development.

10.7.1 ISSUES

Inadequate provision of land with amenities compatible with marina activity can result in lack of recreational opportunities and adverse effects on the environment of surrounding areas; and,

The need to manage the effects of marinas, and

The need to provide for new marinas and the extension of existing marinas.

The Sounds offer extensive opportunities for both commercial and recreational boating. With their strategic positioning in the Marlborough Sounds, both Picton and Havelock represent significant marine centres.

Marina activity is an integral part of the urban environment. In addition, marinas offer rationalise the use of coastal marine space by concentrating moorings. Marinas also concentrate adverse effects (such as antifouling and sewage discharges) to a single part of the coastal marine area, avoiding the need for such activity and effects throughout the coastal marine area. Good design and equipment, combined with appropriate controls can minimise the adverse effects within the marina itself.

10.7.1.1 OBJECTIVES AND POLICIES

Objective 3 <u>Enable the efficient development and operation of marinas and associated infrastructure within the Marina Zone.</u>	
Policy 3.1	<u>Avoid the proliferation of development within the coastal marine area by focusing development within the Marina Zone as a first priority.</u>
Policy 3.2	<u>Enable the construction, maintenance and operation of marina activities within Marina Zones, whilst ensuring any adverse effects on the environment are avoided, remedied or mitigated.</u>

The development of marina facilities should be managed in a way that avoids, remedies or mitigates the potential adverse effects on the urban environment and the quality of the coastal environment, such as alienation of public space and loss of habitat. The Marina Zone provides suitable locations for marina activities and establishing such facilities in the zone is preferred over an approach where a proliferation of marina development occurs elsewhere in the coastal marine area.

The expansion of existing marinas within the Marina Zone provides opportunities for the provision of additional berthage capacity in a manner that can avoid, remedy or mitigate adverse effects of such development and use on the natural character of the Sounds. In particular, there is ability to provide additional capacity in a location contiguous with the Waikawa Marina in a manner that is compatible with the existing character and amenity values of Waikawa Bay. Further consolidation of marinas at Waikawa, within the Marina Zone, assists in the avoidance of development sprawl into other, as yet undeveloped, bays within the Sounds.

It should be recognised that marina development also gives rise to efficiencies in the use of the coastal marine area and in the face of considerable demand for vessel storage space, can assist in avoiding the sprawl of coastal occupation demand.

10.7.1.2 Methods of Implementation

Zoning	The Marina Zone is identified on the planning maps within the following areas: <ul style="list-style-type: none"> • Picton; • Waikawa; and • Havelock.
Rules	Plan rules provide for marina activity and activities which rely on close location to a marina, subject to performance standards. Activities which are not necessary to support the marina operation will be considered on their merits. Plan rules may require, as conditions of consent to develop or alter structures, the payment of financial contributions towards landscape enhancement works in foreshore areas
Standards	Performance standards relating to discharges, noise, vehicle parking, public access, and advertising signs will be applied.
Other The	Council will liaise with marina operators in the provision of facilities for the disposal of sewage from boats.
Other The	Council will liaise with marina operators to ensure that antifouling activity is undertaken on land in a confined manner.
Information	The Council will provide information on facilities available for the collection and disposal of waste from boats.
Education	The Council will provide information and education on the best environmental practices with respect to boat maintenance.
National/Other	The Council will implement the Marine Pollution Regulations 1998 in relation to discharges from ships and offshore installations.

Recognised under Policy 7.1.20(c) of the Marlborough Regional Policy Statement, is the need to "...enable the safe and efficient use of marinas...". The Plan achieves this by zoning areas for marina activity in existing marina, and appropriate locations for further marina development.

Both the land and water areas of the existing marinas at Picton, Waikawa and Havelock are included in a Marina Zone. 'Coastal Marine Area' is included in this zone. Provision is made for the activities usually associated with marinas, boat storage and servicing, and boat launching.

The floating marina at Portage is of a much smaller scale than the other three marinas and has no comparable facilities. It is considered unnecessary to include the Portage marina in the Marina Zone. It will be managed using the resource consent provisions of the Act.

The Marina Zone incorporates land or structures, including those developed within the coastal marine area. It is of limited size. Given the limited size it is important that the land and water surface be dedicated to activities which rely on a marina location. These activities are therefore permitted activities. It would be an unsustainable use of the land and water space within the marinas to allow

activities to locate there which do not rely on such a location to operate. Such activities will therefore be considered as discretionary or non-complying activities.

The Plan does not identify any specific sites for further marina zones. The scale and complexity of the Marlborough Sounds together with the changing demands and design of marinas makes it impracticable to determine, in advance, appropriate locations for future marinas. Any such proposals will be considered either as applications for resource consent or as plan changes and will be assessed in terms of the relevant objectives, policies and standards of the Plan and the requirements of the Act.

The Plan is able to integrate the land and sea interface within marinas. The Marina Zone will encompass activities within the coastal marine area and on adjoining land. Marinas are important 'front doors' to the Sounds and it is important that their development is compatible with the overall townscape of the surrounding urban area and with the character of the coastal margin. Performance standards are included to address this relationship.

The Council as provider of reticulated sewage disposal facilities in the Plan area will seek to achieve a co-ordinated approach to the disposal of sewage waste from marina operations. The Council will liaise with marina operators, particularly in relation to developing and providing disposal facilities. Information and education will complement this to improve environmental practice in relation to waste disposal and boat maintenance.

34.0 MARINA ZONE

NOTE: Resource Management (Marine Pollution) Regulations 1988 introduced pursuant to sections 15A, 15B and 15C of the Act control discharges and dumping from ships. The regulations limit the nature and extent of discharges and dumping, in that part of the Marina Zone that is coastal marine area. The Council is responsible for administering and enforcing those regulations. A copy of the Resource Management (Marine Pollution) Regulations 1998 can be found in Appendix K.

34.1 Permitted Activities

The following activities shall be permitted without a resource consent where together with any relevant definition they conform to the conditions for Permitted Activities as well as the general rules:

- Ship brokering, charter boat hire services, chandlery and sail making services;
- Boat related tourist activities and tourist operator services;
- Boat storage and ship launching;
- Clearance of stormwater outfalls;
- Clubrooms for marine recreation groups;
- Commercial activities ancillary and complementary to maritime activity;
- Drilling;
- Educational facilities;
- Effluent disposal, greywater, stormwater discharges from onshore activities;
- Hazardous facilities with an effects ratio no greater than 0.075;
- Land disturbance;
- Maintenance, repair, additions and alterations to lawful structures;
- Removal or demolition of structures;
- Occupation of space by commercial and other ships, including berthage;
- Parks, reserves;
- Residential activities ancillary to marina administration;
- Service stations;
- Taking coastal water;
- Use of surfacewater by exclusive and non-exclusive activities; and
- Ship ~~b~~ Building, repairing, fuelling and maintenance of ships;
- Car parking areas and the use of car parking areas for vehicle and trailer parking associated with permitted Marina Zone activities;

Conditions For Permitted Activities

34.1.2 Disturbance of Foreshore and Seabed, Including by the Normal Operation of Ships

34.1.2.X Removal or Demolition of Structures

Any removal or demolition of structures is a Permitted Activity provided that:

- a) The activity shall not involve any excavation of foreshore and/or seabed greater than 100m³ in volume; and
- b) The activity does not result in any discharge or deposition of contaminants into the coastal marine area.

34.4 Discretionary Activities and Where Appropriate Restricted Coastal Activities

Application must be made for a Discretionary Activity and where indicated a Restricted Coastal Activity for the following listed activities. Except for restricted coastal activities, applications made for discretionary activities will not require notification.

- **Activities listed as Permitted or Controlled Activities which do not comply with standards and/or conditions or with the provisions for minor non compliance dealt with as Limited Discretionary Activities;**
- **Any activity listed as a Permitted Activity and either adversely affecting or being affected by any hazard area identified on the Planning Maps as a hazardous area and/or listed in the Hazards Register;**
- **The construction and use of structures (such as finger jetties, pontoons, piers and any associated reclamations and/or breakwaters) to enclose or semi-enclose an area of water for the primary purpose of providing boat/ship accommodation.**
- **Discharges to the Coastal Marine Area;**
- **Discharges;**
- **Occupation of the coastal marine area;**
- **Hazardous facilities with an effects ratio greater than 0.075;**
- **Disturbance of foreshore and seabed, including removal of sand, shingle or shell or other material;**
- **New or extended seabed reclamation;**
- **Reclamations;**
- **Structures in the coastal marine area more or less parallel to mean high water springs;**
- **Structures in the coastal marine area oblique or perpendicular to mean high water springs;**
- **Structures in the coastal marine area used in the petroleum and chemical industry; and**

- Structures which impound or effectively contain the coastal marine area.

34.4.1 General Assessment Criteria

In addition to any specific standards set out in Rule 34.4.2 the General Assessment Criteria set out below shall be applied to Discretionary and Restricted Coastal Activities.

34.4.1.1.5 The likely effects of the proposal on:

34.4.1.1.5.4 Natural and physical resources so that any proposal:

- a) Complements any building or other feature constructed by people in the locality which contributes to the character of the locality;
- b) Maintains the future use potential of any renewable resource;
- c) Should not have an adverse effect on the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga or any historic place or archaeological site;
- d) Does not reduce water quality beyond a zone of reasonable mixing;
and
- e) Does not increase any risk from natural hazards;
- f) With regard to the expansion of marinas whether the development will result in the efficient use of natural and physical resources including existing infrastructure;
and
- g) Any positive effects that may be generated by the proposal, including the efficiency of storing vessels within purpose built and serviced marina facilities when compared with other forms of mooring.

35.0 COASTAL MARINE ZONES ONE AND TWO

NOTE: Resource Management (Marine Pollution) Regulations 1998 introduced pursuant to sections 15A, 15B and 15C of the Resource Management Act 1991 control discharges and dumping from ships. The regulations limit the nature and extent of discharges and dumping, in that part of Coastal Marine Zones 1 and 2 that is coastal marine area. The Council is responsible for administering and enforcing these regulations. A copy of the Resource Management (Marine Pollution) Regulations 1998 can be found in Appendix K.

35.1 Permitted Activities

The following activities shall be permitted without a resource consent where together with any relevant definition they conform to the conditions for Permitted Activities as well as the general rules:

- **Beach grooming and beach re-contouring;**
- **Burial of dead marine mammals;**
- **Clearance of stormwater outfalls;**
- **Discharges from ships;**
- **Erection and placement of public information signs;**
- **Erection or placement of temporary structures;**
- **Harvesting of marine farming produce from marine farms previously authorised by a current Coastal Permit (pursuant to the Resource Management Act 1991) or current Marine Farm Lease or Licence (pursuant to the Marine Farming Act 1971) applied for prior to 1 August 1996, including the taking and discharging of coastal water and discharge of biodegradable and organic waste matter;**
- **Any statutorily established scallop enhancement programme involving distribution of scallop spat to the seabed.**
- **Maintenance, repair, minor extensions, additions and alteration to structures;**
- **Disturbance of foreshore and seabed;**
- **Oil spill clean up in accordance with a national or regional oil spill contingency plan;**
- **Parks, reserves, marine reserves, taiapure, mahinga maataitai and maataitai reserves;**
- **Pest management carried out in accordance with a national or regional pest strategy;**
- **Placement, operation and maintenance of equipment used for monitoring purposes;**
- **Recreational activity;**
- **Removal or demolition of structures;**
- **River and stream mouth cutting;**
- **Stormwater discharge;**
- **Taking and discharge of coastal water;**
- **Taking and use of coastal water by ships;**
- **Use of surface water by ships**
- **Vegetation clearance;**

- The placement and use (including occupation and maintenance) of swing moorings within Mooring Management Areas;
- The placement and use (including occupation and maintenance) of swing moorings for Waka in a defined Waka Mooring Management Area.

Conditions for Permitted Activities

35.1.2 Specific Conditions

35.1.2.13 Swing Moorings within Mooring Management Areas

Placement, use (including occupation of the coastal marine area) and maintenance of swing moorings within a Mooring Management Area shall be a permitted activity subject to the following conditions:

- A Mooring Licence to place and use the specified swing mooring has been issued by the person appointed under the relevant Bylaw to authorise Mooring Licences.

35.1.2.XX Swing Moorings within Waka Mooring Management Areas

Placement, use (including occupation of the coastal marina area) and maintenance of swing moorings for Waka in Waka Mooring Management Areas shall be a permitted activity subject to the following conditions:

- A Mooring Licence to place and use the specified swing mooring has been issued by the person appointed under the relevant Bylaw to authorise Mooring Licences.

NOTE: The standards applying to moorings within a Mooring Management Area are controlled by bylaws and need to be complied with at the time any mooring is established.

35.4 Discretionary Activities and Where Applicable Restricted Coastal Activities

Application must be made for a Discretionary Activity and where indicated a Restricted Coastal Activity for the following:

- Any activity listed as a Permitted Activity and either adversely affecting or being affected by any hazard area identified on the Planning Maps as a hazardous area or listed in the Hazards Register;
- Activities listed as Permitted or Controlled Activities, which do not comply with the Standards specified for those activities, other than marine farms specified as Limited Discretionary Activities in Rule 35.3.1.
- Commercial activities;
- Discharge of human sewage;