M135-15-21

MARLBOROUGH SOUNDS RESOURCE MANAGEMENT PLAN

Plan Change 21

Officer's Report

Waikawa Bay:

Mooring Management Areas and Marina Zone Extension

Prepared by Tony Quickfall

Contents

1. Introduction

Background
On February 24th 2010, Port Marlborough Limited (PML) lodged a private plan change (plan change 21) with Council. An outline of the process to date is as follows:

Pre-application consultation	2007-10
Lodged with Council	February 24th 2010
Council resolution to accept as a private plan change	May 13th 2010[1]
Modifications to the plan change made at the request of Council	June 2010
	June 2010
Public notification	17th June 2010
Submissions close	26th July 2010
Extension granted on request to Te Atiawa submissions et al–	9th August 2010
Further submissions advertised	16th September 2010
Further submissions extension granted (Te Atiawa)	Close 7th October 2010
Further submissions close	30 September 2010

A related bylaw (setting out a management regime for the swing moorings) was notified concurrently and followed a similar statutory timeframe, with the exception of further submissions which are not part of the bylaw process.

Existing moorings

Waikawa Bay currently contains over 200 moorings which are not lawfully established. A blanket resource consent has been sought for 180 of these moorings. This application has been heard, and a decision on the applications was deferred pending the outcome of Plan Change 21. The resource consent application is currently "live".

Although plan change 21 must be processed as a stand-alone plan change, the outcome of plan change 21 will influence the resource consent application. If the resource consent application were to be granted, then the mooring management areas would be ineffective, since the application for the moorings seeks they be consented in their existing locations. This would constrain any future expansion of the marina and any development of the Marina Zone extension.

This report is therefore based on Plan Change 21 being a standalone process, and an assumption that if the mooring management areas proposed under plan change 21 are adopted, the live resource consent application for 180 swing moorings would be either withdrawn or rejected.

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[1] The Environmental Policy Committee at their meeting of the 19 April 2010 recommended:

1. That pursuant to clause 25(2)(b) of the First Schedule to the Resource Management Act 1991 Council accept the private plan change request by Port Marlborough New Zealand Limited for the Marlborough Sounds Resource Management Plan.
2. That it be acknowledged that any proposal for a bylaw will be subject to a separate Council process under the Local Government Act 2002.

Minute E.09/10.469. The Full Council at their meeting of the 13 May 2010 ratified the recommendations of the Environmental Policy Committee. Minute C.09/10.526.

Plan Change 21

Plan Change 21 amends the Marlborough Sounds Resource Management Plan with the following effect:

Volume One

Amendments to chapter 9 (Coastal Marine) explanation, objectives and policies, and methods of implementation.

Volume Two

- Amended definition for "marina".
- Marina Zone - changes to the Marina Zone permitted activities, conditions for permitted activities, discretionary activities and notification requirements, and assessment criteria
- Coastal Marina Zones One and Two – changes to the permitted activities, conditions for permitted activities, limited discretionary activities and notification requirements, discretionary activities, assessment criteria and non-complying activities.
- The key changes are:

- Removal of structures and car parking areas becomes a permitted activity within the Marina Zone;
- Marina structures (jetties, reclamations, breakwaters etc) would be a discretionary activity in the Marina Zone (new zone and existing zone) which could be applied for without public notification (unless they are restricted coastal activities);
- Moorings located within Waikawa Bay and outside the Mooring Management Areas which are not consented prior to the rule becoming operative are non-complying.

Planning Maps

- Extend the existing Marina Zone on map 62 and 100, to the north.
- Introduce three new overlays for Mooring Management Areas and one new overlay for a Waka Mooring Management Area on maps 61, 62, 99, and 100.

The Council resolved to process plan change 21 as a private plan change rather than adopt it as its own.

This Report

This report has been prepared for the hearings committee by Council's planning consultant. The report includes several annexures from various experts (presented as supplementary expert reports under section s42A of the RMA), who have responded within their field of expertise to specific issues raised by submitters. The annexures are:

A: landscape
B: traffic
C: beach erosion
D: navigation and safety

The report summarises and discusses the issues raised in the submissions, and recommends modifications to the plan change taking into account the reports from the experts.

Structure of Report

The report is formatted by topic, with topics containing the following format:

1. Introduction
2. Discussion (Issues Raised)
3. Recommendations

Recommended amendments form the last section of the report.

This report must be read in conjunction with the summary of submissions and the submissions.

Further submissions were received from the following three parties:

- Port Marlborough New Zealand Ltd (referred to as "Port Marlborough").
- Marlborough Berth and Mooring Association ("MBMA")
- Te Atiawa Manawhenua Kit e Tau Ihu Trust ("Te Atiawa")

Plan amendments
The recommended amendments to the proposed plan change are shown with new highlighted text underlined, and deleted text highlighted indicated with a ~~strikethrough~~.

Weighting of submission numbers
Under the Resource Management Act, submissions on plan changes are decided on the merits of the submissions and the reasons for the changes sought. In accordance with Environment Court practice, recommended decisions in this report are based on the merits of each submission and the issues raised. Recommendations are not based on the number of submissions on each specific point.

Submitter references
In this report, reference to submissions adopt the format of:

submitter: submission number

For example "24:118" means submitter number 24, submission point 118.

Submission and further submissions
Unless otherwise stated, "submissions" refers to all submissions, including both original submissions and further submissions.

Scope
Plan Change 21 seeks to:

- extend the Marina Zone to the North West;
- make amendments to the provisions of both the Marina Zone and the Coastal Marine Zone in respect of Marinas and swing moorings;
- amend the public notification provisions for marina activities and swing moorings so that public notification is not required for marina activities and so that neither public notification nor affected party approvals are required for new swing moorings within the mooring management areas
- create new mooring management areas to replace un-consented moorings in both the North West and North East Marina extensions.

In analysing submissions, I note that many submitters have concerns about the undeveloped North East Marina extension (an existing Marina Zone) as well as the proposed zone extension. I consider that these submissions are within the scope of the plan change, since the plan

change proposes amendments effecting both areas However, some submissions also seek new mooring management areas in locations which have not been proposed. For reasons set out in my report, I do not consider these submissions are within scope of the plan change as it was notified.

I also consider that submissions relating to effects arising from existing Marina development are not within scope of plan change 21.

2. Issues Raised

Issue A) Consultation

One hundred and nine submissions[2] oppose the plan change on the grounds of inadequate consultation. Of these submissions, one hundred and seven relate to consultation with iwi (Te Atiawa) and / or the rowing club, and seek the plan change be withdrawn or rejected.

Two further submissions were received on these submissions. One from Te Atiawa Manawhenua Ki Te Tau Ihu Trust (referred to hereafter as "Te Atiawa") in support, and one from Port Marlborough NZ Ltd in opposition.

Of the two non-iwi submissions suggesting inadequate consultation, one is from the Guardians of the Sounds (12:450), seeking rejection of the plan change on the grounds that Port Marlborough have not adhered to the protocol expected by RMA section 6). The other is from Waikawa Trust Berth Entitlement Holders (14:408), on the basis the Trust was not identified as an affected party and not consulted, seeking to document the Trust and Berth Entitlement Holders as affected parties in the plan change.

Discussion:

Background - Resource Management Act plan change consultation process
Consultation requirements for a private plan change are set out in the first schedule to the RMA. Clause 29(1) of the first schedule reads as follows:

Except as provided in subcaluses (1A) to (9), Part 1, with all necessary modifications, shall apply to any plan or change requested under this Part and accepted under clause 25(2)(b).

The effect of this clause, is that when a private plan change is accepted for processing (as in this case), then all the procedural requirements of the first schedule apply "with all necessary modifications". My reading of this is that references in the first schedule process to "local authority" are replaced with "plan change requestor". In other words, apart from a few exceptions, my understanding of the private plan change process is that it follows essentially the same process (including consultation requirements) as for a council plan change. Although the RMA is unclear, I understand that may be some legal obligation on Councils to consult in respect of private plan changes.

In terms of consultation, the only mandatory requirement for consultation prior to notification is set out in clause 3 and 3B, as follows. I have inserted the words in brackets [ ] where relevant as my understanding of how the Act intents the process to apply to a private plan change i.e. "with all necessary modifications":

3 Consultation
(1) During the preparation of a proposed policy statement or plan [change], the local authority [plan change requestor] concerned shall consult:
a) the Minister for the Environment; and
b) those other Ministers of the Crown who may be affected by the policy statement or plan [change]; and
c) local authorities who may be so affected; and

[2] Submitter numbers 12; 14; 45; 46; 47; 48; 49; 50; 51; 52; 53; 54; 55; 56; 57; 58; 59; 60; 61; 62; 63; 66; 65; 67; 68; 70; 71; 72; 73; 74; 75; 76; 77; 78; 79; 80; 81; 82; 83; 84; 85; 86; 87; 88; 90; 91; 92; 93; 94; 95; 96; 97; 99; 101; 102; 103; 104; 105; 108; 109; 110; 111; 112; 113; 114; 115; 116; 117; 118; 119; 120; 121; 122; 123; 124; 125; 126; 127; 128; 130; 133; 134; 135; 136; 137; 138; 139; 140; 141; 142; 143; 144; 145; 147; 148; 149; 150; 151; 152; 153; 154; 155; 156; 157; 158; 159; 164; 166; 167;

d) the tangata whenua of the area who may be so affected through iwi authorities; and

e) the board of the any foreshore and seabed reserve in the area.

(2) A local authority [plan change requestor] may consult anyone else during the preparation of the proposed policy statement n or plan [change].

3B Consultation with iwi authorities

For the purposes of clause 3(1)(d), a local authority [plan change requestor] is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under section 35A [Council duty to keep records about Hapu or iwi], if the local authority [plan change requestor]:

1. *considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and*
2. *establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and*
3. *consults with those iwi authorities; and*
4. *enables those iwi authorities to identify resource management issues of concern to them; and*
5. *indicates how those issues have been or are to be addressed.*

The Marlborough District Council website records the following iwi as tangata whenua of the Marlborough district:

- Ngai Tahu
- Ngati Apa
- Ngati Koata
- Ngati Kuia
- Ngati Rarua
- Ngati Toa
- Rangitane
- Te Atiawa

Council staff have advised that the following iwi, not identified on the website, are also included on the Council's list of iwi:

- Te Runanga o Kaikoura
- Te Puni Kokiri
- Tapata Hapu Trust

The Council list has contact addresses are given for each of these iwi. Although not explicitly stated, it appears to me that that these iwi are the "iwi authorities" for the purposes of section 35A of the RMA.

Consultation process undertaken. My assessment is limited to statutory consultation requirements rather than best practice. I cannot comment on whether best practice consultation as undertaken since my only involvement in the consultation process was recommending that both Port Marlborough and Marlborough District Council consult with clause 3 statutory consultees.

The legal issue of who has obligation to consult (plan change requestor, Council or both) is outside my expertise so I have limited by discussion to the process rather than who has obligation to consult.

The consultation process undertaken by Port Marlborough is outlined in Appendix J of the plan change documents. General consultation included two open days with the general public, which involved writing to all landowners in Waikawa Bay advising them of the open days.

Appendix J identifies that specific consultation with iwi was carried out "primarily with Te Atiawa". Port Marlborough has confirmed that consultation was also undertaken with Rangitane during 2007 and 2008. This consultation included direct discussions between Port Marlborough representatives (through a subsidiary company which existed at that time, Sounds Property Holdings Ltd) and with Rangitane representatives. All this consultation was initiated and led by Port Marlborough.

Te Atiawa submitters have indicated that there was no consultation, or that consultation was inadequate. The further submission lodged by Te Atiawa also advises the following:

- Port Marlborough did not provide an outline of the steps, requested by Te Atiawa, which would address the concerns and needs of Te Atiawa.
- Port Marlborough "refused to undertake a proper cultural impact assessment and selected a person other than one identified by Te Atiawa.

It is evident from the record of consultation in Appendix J that Port Marlborough did consult Te Atiawa. The consultation outlined in Appendix J also records that Port Marlborough and the Council jointly wrote to all clause 3 statutory consultees prior to notification, advising of the plan change and inviting comment and feedback prior to notification. I can confirm this as I was involved in recommending this approach. I can confirm that Te Atiawa were invited to comment on the final draft plan change prior to notification. I understand there was a limited time for a response to be received due to a postal failure, but despite this, no comments on the plan change, or indeed no response, was received from Te Atiawa prior to notification.

According to Appendix J, Te Atiawa, as manawhenua iwi of the Sounds, had reasonable opportunity for input into the plan change process during preparation, to make their concerns known, and to provide feedback within the capacity of iwi to do so. I consider it is important to recognise that consultation doesn't mean that agreement has to be reached. The RMA provides for consultation which results in differences of opinion and disagreement.

As indicated, I was not present for an of the consultation (other than statutory consultee letters), so cannot comment on best practice. However, in my opinion, as evidenced by Appendix J, iwi consultation undertaken by Port Marlborough meets the minimum consultation requirements set out in the First Schedule to the RMA. I also consider that Council has discharged any statutory duties it has to consult with statutory parties. I do not consider there are any grounds for withdrawing or rejecting the plan change on the grounds of inadequate consultation.

Iwi submissions. The only iwi to oppose the plan change on the grounds of inadequate consultation at Te Atiawa. I disagree with submitters that there has been a lack of consultation. Consultation feedback from Te Atiawa is documented in Appendix J, and this mirrors the iwi concerns expressed in submissions. I therefore consider that Te Atiawa's views were not misrepresented in Appendix J.

Arapawa Maori Rowing club. Submitters suggest there has been lack of consultation with the rowing club. In terms of statutory consultation requirements, the rowing club is not a statutory consultee, and there is no requirement under the RMA for the Port Company to have consulted with the club. Appendix J records discussions with club representatives during preparation of the Plan Change, along with a further discussion that sought to discuss the location of the proposed Waka Mooring Management Area. In my opinion, Port Marlborough has met the requirements of the RMA by undertaking this consultation voluntarily. Based on the documentation in Appendix J, I disagree there has been lack of consultation with the rowing club, and again note that RMA consultation is different from agreement .

Guardians of the Sounds (12:450). This submitter suggests that consultation with Te Atiawa has been inadequate. For reasons above, I disagree that Port Marlborough have not "adhered to the protocol expected by the RMA".

Guardians of the Sounds are themselves also not statutory consultees, and I consider that Port Marlborough have met or exceeded the statutory consultation requirements of the RMA.

Waikawa Berth Entitlement Holders (14:408). These submitters suggest the trust should have been consulted and seeks reference to the Trust in the plan change (as an affected party). Te Atiawa have lodged a further submission opposing this submission in part, on the grounds the submission does not seek withdrawal or rejection of the plan change.

Appendix J records there were two open days, along with targeted consultation to stakeholders. Those stakeholders record that consultation was invited with the Marlborough Berth and Mooring Association. There is no record of targeted consultation with the Waikawa Marina Trust or the Berth Entitlement Holders.

The RMA did not require consultation with these parties, since they are not listed as statutory consultees. Although they are not specifically listed in the stakeholder group, I consider that the general publicity around the open days and the invitation to the Marlborough Berth and Mooring Association could reasonably have been expected to have included existing berth holders in Waikawa Marina. I therefore do not agree that consultation was inadequate.

In terms of the relief sought, it is unusual to include a list of affected parties in a planning document. This is normally addressed at the time of development through resource consent process and through section 95E of the RMA. As the Waikawa Berth Entitlement Holders are just one of many potentially affected parties, I can see no reason for listing them in the plan change or departing from the usual process of determining affected parties through the consent process.

In summary, on my assessment, the statutory requirements for consultation have been met, if not exceeded. I note that the notification and submission process is itself a consultation process which provides the opportunity for direct input. All those parties opposed to the consultation process have taken part through their submissions. I do not agree that the submitters' concerns over consultation is a reasonable basis for rejecting the plan change.

Recommendation 1: no amendments to the plan change arising from these submissions.

Issue B) Definitions

Michael Rithwell (35:461) opposes the definition of "Waikawa Bay" on the basis that it includes Wharetukura Bay, and that Wharetukura Bay functions adequately through the resource consent process. He seeks deletion of reference to part of the definition which includes Wharetukura Bay.

The Minister of Conservation (8:445) opposes the definition of "Marina" on the basis it excludes certain structures and is inconsistent with the use of "marina" elsewhere in the Plan.

Te Atiawa lodged further submissions opposing both these submissions in part, on the grounds they do not seek withdrawal or rejection of the plan change.

Discussion:

The proposed definition for "Waikawa Bay" is intended to include all waters as described in the definition, including Wharetukura Bay. It is acknowledged that most moorings in this Wharetukura bay are consented.

"Waikawa Bay" - Effect of the proposed definition. The effect of including Wharetukura Bay within the definition for "Waikawa Bay" is as follows:

- Wharetukura Bay is zoned Coastal Marine 1 (no change)
- Existing consents would not be affected and consented moorings (and associated occupation) could continue until the consent expires.
- Renewals for existing consents (structures and occupation) would remain a discretionary activity

The only change introduced by plan change 21 is that applications for any new moorings change from discretionary to non-complying activity.

Council records (**Appendix 1**) show 32 consented moorings within Wharetukura Bay. There is one unconsented mooring outside the Bay. These records also show a number of these moorings overlap, and there is limited navigable "free space" shown between the swing arcs.

It appears that Wharetukura Bay is at capacity in terms of swing moorings, and there is no capacity for additional moorings to be accommodated within the bay. Given this, my assessment is that:

- No existing consented moorings holders in Wharekutura Bay will be disadvantaged by including Wharetukura Bay within the definition of "Waikawa Bay".
- Non-complying activity status is appropriate for any new mooring applications outside the Mooring Management Areas to ensure the Moorings Management Areas are effective.
- There is no planning justification for supporting the amended definition as sought by Mr. Rithwell.

"Marina" Turning to the definition of "marina", the Minister of Conservation has sought a new definition. The effect of the proposed definition (without modification) is as follows. Within the Marina Zone:

- Car parking and use of car parks associated with permitted Marina activities is permitted.
- Marinas, defined as structures to enclose an area of water for the primary purpose of providing boat/ship accommodation, is discretionary / restricted coastal activity.
- Structures which might also include a secondary purpose (e.g. buildings and facilities) are also discretionary.

The effect of the submitter's proposed modifications are as follows. Within the Marina Zone:

- Marina structures are discretionary.
- Areas used for car parking (for any purpose) and associated facilities and servicing is discretionary.

Under both definitions, marina facilities and associated activities are included in list of permitted activities.

The submitter has not sought removal of car parking areas from the list of permitted activities. The amended definition would create a conflict since car parking areas are proposed as permitted, but, under the amended definition, would also become discretionary.

I disagree that the proposed plan change definition does not include the enclosing of water space within the outer enclosure i.e. "enclosures within enclosures". I believe the proposed definition applies to all enclosures within the Marina.

I agree with the submitter that the proposed definition excludes land based facilities, however I note that these are provided for under the list of permitted activities. I do not consider there is any need to include land based facilities with the definition for marina, as that this would cause some conflicts with the list of permitted activities. This is further complicated by the proposed replacement definition reference to "may" include land based facilities. Use of the word "may" creates uncertainty as to the relationship of "Marina" facilities with the list of permitted activities.

I also note that "comprehensively designed" is not certain. The submitter is referring here to an integrated development which include all the components identified in the definition. I therefore consider "integrated" is a more appropriate term which provides greater certainty than "comprehensively designed". .

I agree that "marina" as used elsewhere in the plan refers to a wider comprehensive area. The submitter's proposed modifications more accurately describe the marina facility, with the exception of the references to associated facilities which creates conflicts and reference to "comprehensively designed".

Recommendation 2: I recommend no changes to the definition for "Waikawa Bay" . I recommend that the proposed definition for "Marina" be amended as follows:

Means an integrated ~~comprehensively designed~~ facility for the accommodation of boats, comprising berths, pontoons, piers and boat launching ramp(s), and any associated reclamations, breakwaters, and/or wave protection barriers. ~~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.~~

Issue C) General

A number of general submissions were received on various issues.

Discussion:

Intensity and use of Waikawa Bay and navigation and safety.
Arapawa Maori Rowing Club (162:377), DK & RV Riwaka (161:469), Diane St Claire (53:35), Geoffrey & Maria MacDonald (10:404), Julian Hollman (59:57), Michael & Vanessa Ede (98:191), Morris Te White Love (69:97 and 135:303), and Peter Thomas (31:440) variously oppose on the basis of intensity of activity, adverse effects, development in general including costs on existing owners, or navigation and safety conflicts. These submitters seek the plan change be rejected or withdrawn. Te Atiawa lodged a further submission supporting these submissions in part. Marlborough Berth and Mooring Association ("MBMA") opposes these submissions. MBMA also opposes any submission that "explicitly or by inference refer to an intensity or number of moorings in Waikawa Bay".

Maurice Winstone & Jill Field (2:390) support growth and seek that any further expansions be notified (to affected parties). Te Atiawa lodged a further submission opposing this submission in part in that it does not seek withdrawal or rejection of the plan change.

Many of these submitters appear to have concerns with the existing marina development which has already occurred. I have not assessed the effects arising from the existing marina development, so cannot comment whether there are existing effects. Any such effects already exist, and do not form part of the assessment of effects arising from the plan change. As such, any concerns about existing development and existing effects can only be addressed through administration of existing rules and through monitoring.

In terms of additional development, the Mooring Management Areas (MMA) will rationalise existing moorings in the bay. The effect of the MMAs will be relocation of some moorings and an "easier pathway" for the lawful establishment of moorings located within the MMAs. The MMAs will also provide a disincentive for new moorings located outside a MMA. There may be some increase in intensity within the MMAs, with reduced distances between moorings. However in some cases, distances between existing overlapping moorings will increase. Overall, I do not agree that the MMAs will increase intensity of moorings (use) within Waikawa Bay, since as I understand it, the MMAs do not provide for any real increase in the existing number of moorings in Waikawa Bay.

The only new increase in intensity of use / development arises from the proposed new extension of the Marina Zone. At full development this will give rise to an additional 250 (proposed) water berths in Marina Zone. I agree this represents an increase in activity and development. However, as identified in the independent expert assessments (refer attachments), the Marina Zone extension is able to occur without significant adverse effects, in particular navigation and safety and visual amenity. In addition, any new marina development (including both the existing North East undeveloped area accommodating 250 new berths, and the proposed new North West zone extension) will be subject to a discretionary resource consent process. This will enable Council to assess effects in full, based on detailed proposals.

Some submitters (161; 99; and 31) raise concerns about cost. I acknowledge there will be a cost in establishing moorings within the MMAs. However, there will also be a cost in lawfully establishing the moorings through the consent process, if there are no MMAs. I also accept that there will be real costs if the MMAs are adopted and the "live" application for moorings is withdrawn or rejected. In my view, costs associated with lawful establishment of unconsented moorings are not a significant adverse effect in RMA terms, and it is not unreasonable for mooring holders to anticipate some costs to be involved in lawfully establishing unconsented moorings. I also note the Navigation and Safety report (Attachment D) does not identify costs as an issue.

According to Council records there are lawfully established (consented) moorings in the North West Marina Zone (proposed extension) and no consented moorings in the North East extension. I believe costs are a factor if the consented moorings are displaced as a result of the marina extension. In these cases, there is likely to be negotiation between Port Marlborough and the consented mooring holders, and I am unable to speculate on the details of this negotiation. However, I do consider it would be reasonable for Port Marlborough to contribute to the cost of relocating consented moorings, where this is a direct result of the plan change. I recommend that effects on moorings holders who hold consent at the date of notification of the plan change are included as a new assessment matter for marina development. See recommendation 3

Existing zoning, foreshore and seabed

Island Moutere Family Trust (99:195) opposes on the basis of unknown implications / effects arising from the plan change and further Marina development, existing zoning and foreshore

and seabed legislation.

I do not consider the Foreshore and Seabed Act can form part of part of the plan change process. The legislation review is following a separate process and it is outside the scope of Plan Change 21.

In terms of unknown implications, I agree that it is not possible to predict all implications at a plan change level. That is why any marina development is subject to a discretionary resource consent process. Implications (effects) of the marina extension can be considered more thoroughly at the time of resource consent. However, at this plan change level, I am confident there is enough evidence in the plan change and associated expert reports to support the plan change.

DA and LM Stone (36:464) are concerned about restricted use of the foreshore and seek a wider unrestricted foreshore area. This submission is opposed in part by Te Atiawa on the basis it does not seek withdrawal or rejection of the plan change.

The proposal allows for a separation of approximately 30 metres between the narrowest parts of the MMAs and the foreshore (scaled off proposed changes, planning map 62). Taking into account that the MMA boundary represents swing arcs with space between boats, and is not a "solid wall", I consider this separation to be sufficient for enjoyment of recreation activities (swimming, kayaking and foreshore navigation) along the foreshore of the MMAs. The Navigation and Safety report (Attachment D) also does not recommend any increase in spacing. I accept that some existing water-based recreation opportunities within the Marina Zone extensions will be replaced by more limited recreational opportunities off the marina extension. My assessment based on the reports provided with the plan change is that the loss of the already limited recreational opportunity along the rocky western shoreline does not represent a significant adverse effect.

JM Carter & BH Fechney (7:399) seek to rescind the existing North East Marina Zone which has not yet been developed, in favour of the North Western proposed zone extension. This is supported in part by Te Atiawa on the basis the submitter seeks withdrawal or rejection of the plan change. I have covered this elsewhere in my report (Issue E), and recommended that the plan change is amended to require the North Western marina extension be developed and occupied before any development of the North Eastern extension.

RMA and process

Linda Ohia (129:286) opposes on the basis the plan change breaches sections 6(e), 7(a) and 8 of the RMA. Perano Subsea Technology (22:465) opposes Council and Port Marlborough management in general. Bentham Ohia (46:7) and Susan Buchanan (91:170) oppose on the basis that moorings owners have been "forced" into the change (these two submissions are opposed by MBMA). Te Atiawa Manawhnua Ki Te Tau Ihu Trust (95:182) oppose in the basis the plan change has not taken into account legislative or consultative obligations and that the existing consents ("under s355" RMA) need to be resolved. Waikawa Marae Trustees (107:218) oppose on the basis of increased rates and not within the purpose of the RMA. All these submitters seek the plan change be rejected. The submissions are supported in part by a Te Atiawa further submission.

I do not agree that moorings owners are being "forced" into the plan change process. This is also the view of the Marlborough Berth and Mooring Association in their further submission. Consented moorings have been lawfully established, while unconsented mooring holders have other options (relinquish moorings, sell their moorings or obtain resource consent – currently on hold). I do accept that holders of unconsented moorings have limited options. My assessment is that instead of being disadvantaged, unconsented mooring holders (who make up most of the

moorings affected by the plan change) will benefit from the plan change in that they will have greater certainty that their moorings can be lawfully established. The main issue here is that these mooring holders have (understandably) come to expect continued use of their moorings, despite the moorings being unlawful.

Perano Subsea Technology's submission (submitter 22) relates to the management process and regime of both Council and Port Marlborough. I cannot comment on this submission since the points raised are not relevant to the plan change considerations.

I disagree that the plan change has not followed statutory processes, including consultation. I have reviewed the plan change process, and I am confident that the plan change has followed the RMA statutory requirements.

In terms of the principles of the Act (section 6(e), 7(a) and 8), this has been mostly addressed in the section 32 report. Section 6(e) relates to the requirement to "recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga". Section 7(a) relates to the requirement to have particular regard to "kaitiakitanga". Section 8 requires the taking into account the principles of the Treaty of Waitangi. As described in the Te Puna Kokiri website, the principles are broadly partnership, active protection, and redress.

The section 32 report records there are no known historic sites or sites of cultural significance in the areas affected by the rezoning or MMAs. Submitters have identified that mahinga kai is traditionally gathered from the whole of Waikawa Bay.

While I accept there are no known historic sites, I do not agree with the section 32 statement that there are "no sites of cultural significance" in the area of the proposed Marina Zone extension. Submissions have been received indicating that cultural harvest of mussels occurs within the wider bay, and I have no reason to doubt this. It is certainly my own experience that mussel collection can and does occur wherever there are mussels and they are accessible.

Accordingly, it is my opinion that the area of the proposed extension is of some cultural significant to iwi. However, in terms of the principles of the Act, I do not consider the loss of mahinga kai in the area of the new extension offends sections 6, 7 or 8. I draw on the Cawthron report (plan change Appendix E) which confirms that the overall proportion of the resource lost is small relative to the wider area. In other words, mahinga kai will remain available to enable cultural harvest to continue.

In terms of section 7, I disagree that the plan change will reduce the role of Te Atiawa as kaitiakitanga.

In terms of the principles (section 8, partnership), Port Marlborough have provided evidence in Appendix J of consultation, and apparent attempts to engage with iwi. I can only comment on this written documentation, as I was not party to any of these discussions. My observation is that the principle of partnership would be difficult to achieve where parties fundamentally disagree. I also consider the plan change promotes "active protection" under section 8 since any marina development will still be required to go through a discretionary resource consent process. The principle of redress is outside the scope of plan change 21.

Finally, one submitter (Te Atiawa Manawhenua Ki Te Tau Ihu Trust, 95:182) has suggested an existing application under section 355 RMA needs to be resolved before any changes are made. Section 355 relates to the vesting of reclaimed land, and provides for any person to apply to the Minister of Conservation for any reclaimed land, or land proposed to be reclaimed which is within the Coastal Marine Area to be vested in that person. I note that section 355 provides for the vesting of any land which has been reclaimed or is proposed to be reclaimed,

so section 355 has effect whether the marina is developed or not. This is a separate process, and is outside the scope of the plan change.

To summarise, many of these submission relate to the plan change process, rather than its content or effects. Subsequently I recommend no changes to the plan change arising from these submissions.

Cultural Impact Assessment

Marcia La Badie Simons (63:78),Melanie Simons (62:72), and Winston Simons (74:15) oppose on the basis that a cultural impact was not undertaken by a member of Te Atiawa. These submitters seek the plan change be rejected or withdrawn, and are supported in part by a Te Atiawa further submission.

I understand that a Cultural Impact Assessment (CIA) was commissioned by Port Marlborough, but that Te Atiawa objected to the author of this report. I note that no submitter has requested a CIA be undertaken, but have limited their submissions to noting their objection to the author of the CIA.

No CIA formed part of the plan change as lodged, a CIA was not required as further information, and no submitter has requested a CIA be undertaken. Although a CIA may have been helpful in assisting with the assessment of cultural aspects, there is sufficient information to enable an assessment of the cultural aspects of the plan change. On this basis, these submissions do not justify the plan change being declined, as sought.

General

Guardians of the Sounds (12:453) are opposed and seek rejection on several grounds. This submitter is supported in part by a further submission from Te Atiawa, and opposed by MBMA. The submission points (in italics) are discussed in turn as follows:

8 *No issues with swing moorings, boats to do not crash into each other.*
The submitter suggests there is no justification for the plan change on this basis. The Navigation and Safety report (Attachment D) identifies instances of boat conflict arising from overlap, as well as liability for Council on allowing overlapping moorings. The Marlborough Berth and Mooring Association also cite (in a further submission) instances of boats crashing into each other. I therefore disagree with the submitter on this point.

9 *Upgrades required of existing swing moorings should be paid for by Port Marlborough.*
It would be unreasonable to require Port Marlborough to pay for the cost of upgrading all existing moorings. I consider it is appropriate for owners of unlawfully established moorings to fund the cost of lawfully establishing their moorings, on a user pays basis, on the ground that these moorings are not consented. I note that Council has, to date, opted not to enforce the breach of plan rules.

Although financial compensation is a matter which is not part of Plan Change 21, I do consider that it would be appropriate for Port Marlborough to contribute to the cost of relocating any lawfully established moorings, where consent was obtained prior to the plan change being notified, and where consented moorings are required to be relocated to facilitate marina expansion. I have recommended this be included as an assessment matter.

10 *Plan change is a conspiracy between MDC and Port Marlborough as a way of eroding property rights.*
This issue does not relate to the plan change. From my involvement, Port Marlborough

has followed due process in terms of a privately initiated plan change, as any person is entitled to do under the RMA.

11 *Mooring management areas should be instigated by MDC as a bylaw or plan change and managed by the harbour master.*
Any person or entity is entitled to apply for a private plan change. In this case, Council decided this was best processed as a private change and they resolved to process the plan change as a private plan change.

Management of the MMAs forms part of the bylaw and is beyond the scope of the plan change.

12 *Line from Karaka Point to the Snout indicates a desire to manage and control the entire area.*
The line referred to was added on my recommendation, after I had assessed a draft of the plan change. This line was not proposed by Port Marlborough. I considered that although "Waikawa Bay" is defined, showing the extent of "Waikawa Bay" by way of a line on a map avoids any ambiguity about where the Waikawa bay rules applied to. This is particularly important since new moorings within Waikawa Bay (as defined in the plan change) but outside the MMAs are non-complying, whereas new moorings outside Waikawa Bay are discretionary.

I recommend no changes arising from this submission

Recommendation 3: For reasons set out above I recommend the following amendments are made to the plan change:

1. Amend rule 34.4.2 to require development and occupation of the North West marina extension before any development of the currently zoned North East marina extension, along with any the following consequential amendments.
   a) add a new Schedule 4 to Appendix J (schedule of specifically identified areas);
   b) title schedule 4 "Waikawa Marina Extension – Indicative Outline Development Plan";
   c) insert the Indicative Layout Plan prepared by International Marina Consultants (plan 3537-06) as Schedule 4;
   d) Label the North West extension as "Area A" and the North East extension as "Area B".
2. Delete the exemption in 34.4 and require affected party approvals for any resource consent process relating to the development of the marina.
3. Include effects on moorings holders who hold consent at the date of notification of the plan change as a new assessment matter for marina development.

Issue D) General - Amenity & Visual

Twenty nine submitters[3] opposed the plan change on the grounds of adverse visual effects, amenity (including noise and light spill) and character. Of these, 25 sought the plan change be withdrawn or rejected (supported in part by a further submission or Te Atiawa to the extend they seek withdrawn or rejection of the plan change), and four (23; 31; 24; 25) sought development of the marina only in the north west extension and that the north east extension (already zoned Marina but not yet developed) be "unzoned" (my wording). These four submissions are opposed in part by a further submission from Te Atiawa.

[3] Submitter numbers 4; 10; 12; 16; 18; 20; 21; 23; 24; 25; 26; 27; 29; 28; 30; 31; 38; 39; 43; 46; 53; 59; 62; 63; 74; 80; 107; 146; 162;