- *Ample capacity on the road network to accommodate the additional traffic generated by the possible future development of a further 250 wet-births within the existing Marina Zone, together with a potential increase of 20 swing-mooring sites within the proposed Mooring Management Areas. With the exception of a few (20) additional swing-mooring sites likely to eventuate, the proposal will effectively be parking neutral.*

- *No parking for swing moorings at the northern end of the Marina might result some frustration for some swing-mooring users. So long as parking and access is made available to these swing-mooring users, there will little (if any) potential adverse effects.*

- *It is understood that parking and access will be provided as part of any new Marina development but it is unclear whether this has been guaranteed or whether this is simply a gentleman's agreement.*

- *The appropriate mechanism to mitigate and manage construction effects is through the resource consent process e.g. temporary traffic management plan could be introduced (or imposed) as a condition of consent.*

- *General support for the proposed Plan Change from a traffic perspective and agree with the findings presented by TDG, but subject to a guaranteed parking solution associated with the north-western most Mooring Management Area.*

Traffic review - recommendations

1. *Parking and access could be secured through an easement (or other agreement) separate to this Plan Change. This would provide those swing-mooring holders some practical and readily accessible parking facilities. This would be simplest solution and would not require any changes to the rules in the Marlborough Sounds Resource Management Plan.*

2. *If Council were to take a view that dedicated parking is required for swing-mooring sites then this could (for example) be included as an additional 'specific condition' to Rule 35.1.2. This could specify a parking rate which is similar to Marina activities (as defined in Rule 34.1.1.2.3). Alternatively, swing-moorings (as identified in Coastal Marine Zone One) could instead be listed as a limited discretionary activity in Rule 35.3 with Council discretion being limited to parking matters.*

The traffic review highlights a possible issue with the provision of parking for swing moorings. Although no submitter have specifically raised this issue, it is within the general scope of submitters who have raised concerns with lack of parking. The key issues as I see them are as follows:

- Parking is permitted and is currently required in the Marina Zone (rule 34.1.1.2) for marina berths only.

- The marina extension will displace moorings. Although Port Marlborough indicate an intention to provide mooring parks, "intention" cannot be enforced and provides much less certainty than a requirement.
- The marina extension does have the potential to affect mooring holders if no parking, or inadequate parking is provided.

I agree with the traffic review that provision or mooring car parks is unclear and needs to be addressed. I agree this could be provided through an easement as part of the consent process, and recommend this as an assessment matter for the marina extensions. This would also give effect to section 6(d) of the RMA (maintenance and enhancement of public access along the coastal marine area as a matter of national importance).

I do consider that mooring car parks should be a requirement for marina development. Port Marlborough have indicated this as an intention, and it would give effect to submitters' concerns as well as providing greater certainty for mooring holders. The traffic review recommends mooring car parks as a specific parking requirement within the Coastal Marine Zone, or including parking as a matter of discretion. I understand the rationale for this, since the moorings are located within the Coastal Marine zone. However, in terms of a section 32 analysis, this approach would not be effective or appropriate, since parking cannot be practically provided within the Coastal Marine Zone. The only area for practically providing car parks for swing moorings is "land side" of the Coastal Marina Zone i.e. the Marina extension. In my view, the need for mooring car parks is intimately linked by the marina extension, which in turn is triggered by rules within the Marina Zone.

For these reasons, I recommend a parking requirement for mooring car parks being added to the Marina Zone, rather than the Coastal Marina Zone. I also recommend that the requirement for parking is limited to nearby (proximate) moorings, to avoid an unintended consequence of requiring mooring parking in the Marina which would be more appropriately provided along Waikawa Road. I consider these changes to be within the scope of submissions, and that they meet the requirements of section 32.

Recommendation 9: I recommend the following amendments:

1. Include, as a new specific assessment matter for marina development, "provision for public access and vehicle access for mooring holders".

2. Add a new parking requirement to 34.1.1.2.3 for the North West Marina extension of 1 space per 2 swing mooring spaces) all moorings located within the Mooring Management Area to the North of the North West marina extension.

3. Add a new parking requirement to 34.1.1.2.3 for the North East Marina extension of 1 space per 2 swing mooring spaces for all moorings located in the adjoining Mooring Management Area and within 100 metres to the south east of the marina, and within 300 metres to the North East of the marina.

Issue J) Objectives and Policies

Discussion:

Policy 1.1

Seven submitters[7] oppose the plan change on the grounds it is in conflict with policy 1.1 of objective 9.2.1 (Coastal Marina Zone). These are supported in part by Te Atiawa's further

[7] Submitter numbers 46; 53; 59; 62; 63; 74; 80

submission, and opposed in part by Port Marlborough.

Plan change 21 does not propose any changes to this policy. Policy 1.1 reads as follows:

Avoid, remedy and mitigate the adverse effects of use and development or resources in the coastal marina area on any of the following:

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.

The term "avoid, remedy and mitigate" is not typical of these kinds of policies, which usually use "avoid, remedy or mitigate". Taken literally, this policy means that all effects should not only be mitigated but also avoided in the first place. The implication of a literal interpretation is that no development could ever occur anywhere within the Coastal Marine Zone because all effects are to be avoided, and all development would effectively be prohibited. I do not believe this was the intent of this policy. The explanation, reasons, discretionary activity status for activities in the Coastal Marine Zone, and Council's interpretation of the policy (issuing consents for many forms of development in the Coastal Marine Zone), all point to the use of the word "and" being a drafting error.

I acknowledge that, at face value, the plan change is inconsistent with policy 1.1. because effects cannot be avoided. However, I do not consider this to be justification for rejecting the plan change, since effects can be mitigated.

Objective 3 and policies 3.1 and 3.2

The Minister for Conservation seeks to retain objective 3, and to amend policies 3.1 and 3.2 to read as follows. Te Atiawa and Port Marlborough both oppose in part.

Amend Policy 3.1 as follows:

"Avoid the proliferation of the marina development within the coastal marine area by focusing such development within the Marina Zone."

Amend Policy 3.2 as follows:

"Enable the construction, maintenance and operation of marinas within Marina Zones, whilst ensuring that such activities make efficient use of natural and physical resources and avoid, remedy or mitigate any adverse effects on:

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 of marine ecosystems;
f) Natural character of the coastal environment;
g) Navigational safety;
h) Other activities, including those on land;
i) Land transport infrastructure and road safety;
j) Public access to and along the coast;
k) Public health and safety;
l) Recreational values; and

m) Water quality."

I agree that the suggested amendments to policy 3.1 provide clearer focus on marinas as compared with all development, and will be more effective in implementing objective 3.

The submitter has sought two main changes to policy 3.2: firstly new reference to "efficient use of natural and physical resources", and secondly to list those matters on which effects are to be avoided, remedied or mitigated.

In my view, the consideration of efficient use of natural and physical resources is an appropriate addition. Although the policy is enabling, considering efficient use better aligns the policy with the purpose and principles of the RMA.

However, I do not consider it necessary to list the specific range of values. As worded, policy 3.2 is about managing effects on "the environment". By definition, "environment" includes all those matters listed in the submitter's list, and in fact goes wider because it is the whole environment, not just those matters listed by the submitter. In addition, the list of matters is so wide, and so inclusive, so as to not provide any real guidance for resource consent officers. Accordingly, I recommend the suggested changes be accepted in part.

Proposed Policy 9.2.1.1.8
"*Ensure the moorings within Waikawa Bay are allocated in an efficient and co-coordinated manner*"
Three submitters (53; 59; 80) oppose on the grounds that this policy should already be in effect regardless of the plan change. Te Atiawa supports these in part, while Port Marlborough opposes in part.

I agree entirely with the submissions, however, this is no existing policy on efficient allocation of moorings, which is why this has been proposed. It should be retained.

Proposed policy 9.2.1.9
"*Avoid moorings in Waikawa Bay outside the Mooring Management Areas and Waka Mooring Management Areas, except where: moorings are 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.*"
Three submitters (53; 59; 80) oppose this, on the grounds that the policy will not address the indirect effects of an increase in moorings, including noise pollution, discharges and increased boat traffic. Te Atiawa supports these in part, while Port Marlborough opposes in part.

I disagree. Proposed policy 1.9 includes the avoidance, remedying or mitigation of adverse effects on the environment so there is adequate scope for the effects noted by the submitters to be assessed through the consent process.

Existing policy 9.2.1.1.16
"*Consideration of other methods of marine farming having fewer effects than long line bi-valve farming in the future".*
Three submissions (Diane St Claire, 53:32; Julian Hollman, 59:55; and Leanne Roberts, 80;134) have incorrectly referenced policy 1.16 (which is <u>existing</u>) on the basis that the addition of "cultural uses" does not sufficiently address effects. Te Atiawa supports these in part, while Port Marlborough opposes in part.
These submissions should have referred to the proposed change to existing policy (renumbered) 1.14 which reads:
"*To enable a wide range of activities in appropriate places in the waters of the Sounds including marine farming, tourism, recreation <u>and cultural uses</u>.*"

I agree with the submitters that the addition of enabling "cultural uses" does not give priority to cultural activities over other commercial activities. However, it does not give any priority to

commercial activities either – rather commercial activities and cultural uses are given equal weight in this policy. The policy also refers to the coastal marine area, where many commercial and economic activities are permitted. Although cultural values are a section 6 RMA matter of national importance, the RMA does not give any priority to cultural uses over permitted commercial activities. Accordingly, I consider the change proposed provides a balance, and disagree with the submitters that commercial activities have been given higher priority through this amendment.

Policy 10.7.1.1, explanation and reasons
Brian King (33:459) requests that reference in the explanation to consolidation of marinas be amended to refer only to the North West marina zone. Te Atiawa and Port Marlborough oppose this in part. I have recommended that the North West zone be identified as the first stage in development, so this submission can be accepted in part to the extent that consequential amendments will be required to the explanation to clarify this.

Waikawa Ratepayers and Residents Assn (25:455) seek deletion in the explanation referring to "suitable locations". Te Atiawa and Port Marlborough oppose this in part. "General suitability" of the proposed marina extensions has been pre-empted by the plan change, but is also subject to a more detailed assessment process through resource consent. It is possible that parts of the marina zone may be found unsuitable during the consent process for development. Although I agree that "absolute suitability" has not been established, I consider this is a matter of semantics, especially as this is an explanation rather than an objective, policy, or rule. I do not consider the deletion sought by the submitter is warranted.

Chapter 6 MSRMP and principles of the Marlborough Regional Policy Statement (RPS)
Linda Ohia (129:285) opposes the plan change on the grounds it breaches the MSRMP (chapter 6) and principles 3.2.1 (a) and (b) and 3.4.1 (a) of the RPS. Te Atiawa supports this in part, while Port Marlborough opposes in part.

Chapter 6 of the MSRMP relates to Tangata Whenua and Heritage. The chapter contains a number of objectives and policies summarised as follows:

- Objective 6.1.2.1 Recognise and provide for the relationship of Marlborough's Maori with culture, traditions and taonga (section 6(e) RMA);
- Policy 1.1 Recognise and protect cultural sites of significance;
- Policy 1.2 Recognise tangata whenua values including mauri;
- Policy 1.3 Recognise tangata whenua as kaitiaki in the coastal marine area;
- Policy 1.4 Recognise and provide for continued coastal access and use of traditional coastal resources;
- Policy 1.5 Maintain and facilitate communication with iwi.

Methods of implementation are through resource consent processes and identification of protected sites.

Unlike a resource consent, there is no statutory test for a plan change breaching existing objectives and policies. Section 32 sets out the statutory basis for a plan change, and the plan assessments for a plan change are:

- Is the plan change the most appropriate way to achieve the purpose for the RMA?
- Having regard to effectiveness and efficiency, are the proposed methods (in this case a zone extension) the "most appropriate" for achieving the Plan's objectives?

The plan change does not permit automatic extension of the marina, but requires any new marina development to go through a discretionary resource consent process. I consider this to be the most appropriate means of achieving the purpose of the RMA as well as achieving the

objectives and policies, since it allows a detailed assessment of effects at the time of development based on a specific proposal. I believe the plan change meets the section 32 requirements.

The RPS contains a number of "principles" in addition to objectives and policies. Principles are described in the RPS as follows:

This part of this Regional Policy Statement discusses matters that have been developed into a number of general principles which are the philosophy and values which underlie the content of this Statement. They differ from objectives in that they are an attitude of the Council rather than an achievable target with supporting policies and methods.

The principles referred to the submission are as follows:

3.2.1 PRINCIPLES

(a) Recognise the concept of kaitiakitanga and the Treaty of Waitangi.

(b) Incorporate where appropriate, the aspirations, heritage and values of the iwi of Marlborough into resource management decision making.

3.4.1 PRINCIPLES

(a) Resolve conflict in a clear and proper manner.

Section 75 of the RMA says a district plan must "give effect" to any regional policy statement. Section 66 of the RMA requires that a regional plan must "give effect" to any regional policy statement. The MSRMP is a combined district and regional plan so must "give effect" to the RPS. The statutory assessment is whether the plan change "gives effect to" the RPS, rather than if it "breaches" any parts of the RPS.

Principles 3.2.1 and 3.4.1 are implemented through chapter 6 of the MSRMP. These will be given effect to, in terms of sections 66 and 75 of the RMA, by the plan change which proposes a resource consent process for future marina development. They are also given effect to by the minor amendments to the plan relating to "cultural uses" and by my recommended amendments relating to kaitiaki.

Bylaw process

Finally, Michael Rithwell (35:463) submits that the proposed bylaw adds another level of bureaucracy and seeks management of the moorings through resource consent. Te Atiawa and Port Marlborough oppose this in part, while MBMA opposes in full..

Proposed rules 35.1.2 and 35.3 set out the bylaw process (as proposed) and the alternative consent process if the bylaw is not promulgated. The key differences are as follows:

	Advantages	Disadvantages
Bylaw for MMAs	• No resource consent required • Far more certainty • Considerably reduced process costs (issue of mooring license) • Issue of license and on-going management by specialist mooring manager • Enables efficient use of space	• Unknown costs of moorings licences • Unknown costs of annual fees • Loss of asset.
Resource consents for MMAs	• Process already established and familiar • More response to the environmental changes. • Asset – can be bought and sold • Greater certainty for the term of the consent • Considerably cheaper once consent is granted • Processing and management by specialist staff.	• Limited discretionary resource consent required • Uncertain process (consent can be declined – case by case basis) • Potentially higher process costs

On my analysis, I consider there are more advantages under the bylaw regime, and that this should be a preferable for moorings holders. I recommend no changes.

Recommendation 10:

1. Amend policy 10.7.1.1 3.1 to read: "*Avoid the proliferation of marina development within the coastal marine area by focussing such development within the Marina Zone ~~as a first priority~~*"

2. Amend policy 10.7.1.1.3.2 3.2 to read: "*Enable the construction, maintenance and operation of marinas within Marina Zones, whilst ensuring that such activities make efficient use of natural and physical resources and whilst ensuring that any adverse effects on the environment are avoided, remedied or mitigated.*"

3. Amend 10.7.1.1 to refer to staged development with the North West extension as stage 1 (consequential amendment to recommendation 3).

Issue K) Whole Plan Change

Discussion:

Five submitters[8] oppose the plan change in general, and seek it is rejected or withdrawn. Te Atiawa supports these in part while Port Marlborough opposes them. One submitter seeks another meeting with iwi. I have recommended acceptance of the plan change. I cannot recommend a further meeting with iwi as part of the statutory process for hearing submissions, however, this does not preclude Port Marlborough meeting with iwi at any time.

Eight submitters[9] support the plan change and seek it be accepted. Te Atiawa opposes these submissions in part, while Port Marlborough supports them. One of these submitters seeks accept with amendments. These submissions can be accepted, since I have recommended to accept the plan change, with some amendments, for reasons set out in my report.

Recommendation 11: Accept the plan change (with amendments as per other recommendations).

Issue L) Planning Maps

Two submitters (35 & 34) have sought deletion of the line on the planning maps denoting the outer boundary of "Waikawa Bay". One submitter supports the area identified as "marina extension zone". Te Atiawa opposes these in part. MBMA also opposes these submissions.

Discussion:

As previously noted, the line on the map was intended to avoid any ambiguity in describing the

[8] Opposing ssubmitter numbers ; 13; 89; 106; 107; 133;
[9] Supporting submitter numbers 1; 3; 6; 7; 9; 19; 25; 44;

extent of Waikawa Bay. Although the written definition for "Waikawa Bay" is clear, I consider this line will avoid any potential ambiguity or misinterpretation of definition. I consider this to be important because of the different activity status for new moorings outside the MMAs but within the Waikawa Bay line (non-complying), and new moorings located outside the Waikawa bay line which are discretionary.

Recommendation 12: Retain the line demarcating Waikawa Bay.

Issue M) Rules – Coastal Marine Zone

Discussion:

Diane St Clair (53:443), Julian Hollman (59:444) and Leanne Roberts (80:137) seek to delete 35.3 Limited Discretionary Activities altogether. Te Atiawa supports these in part, while Port Marlborough opposes in part.

Rule 35.3 provides an alternative regime for management moorings through a limited discretionary resource consent process, in the event that the bylaw is not promulgated. I consider that rule 35.3 needs to be included, since it is not yet certain whether the bylaw will be promulgated. This also provides a fall-back position of the bylaw is promulgated but for some reason is withdrawn.

The Minister of Conservation (8:448) has sought various formatting amendments to achieve consistency. This is opposed in part by Te Atiawa and Port Marlborough.

I agree that 35.1.2 and 35.3 should be consistent in their format. However, rather than changing 35.3 to be consistent, 35.1.2 could be simplified in the same format as 35.3. A further consistency simplification with the scope of the relief sought is to combine the waka MMA rule with the general MMA rule to avoid duplication. This submission can be accepted in part, to the extent that rule 35.1.2 and 35.3 should be amended to give effect to the submission seeing consistent format. Consequential amendments should be made to consolidate the waka MMA rule into the general rule.

Neil Campbell (17:442) and Waikawa Ratepayers and Residents Association (25:457) seek to remove the exemption for notification and affected party approval from rule 35.3.2.1.2. Waikawa Residents Association also seeks amendment to 35.3.2.1.1(d) (note, this is incorrectly summarised as 35.2.1.1(d)). Te Atiawa and Port Marlborough oppose these in part.

It is within the scope of a rule (under the RMA) to specify in a plan, instances when a resource consent need not be notified or written approvals obtained. This is usually done where effects are minor, other parties are unlikely to be affected and for procedural efficiency.

The notification and affected party exemptions in rule 35.3.2.1.2 relates to applications for swing moorings within MMAs. Given that the purpose of MMAs is to facilitate swing moorings, and given that the effects of moorings themselves are minimal, I consider it is appropriate to make an exemption for public notification. The MMAs create an expectation of moorings being located in these areas, and providing for public notification would, in my view, result in unnecessary procedure where there is an expected and anticipated outcome (mooring).

Turning to affected parties, the MMAs are a tool for allocating a limited amount of coastal space. With different moorings holders competing or the same limited space, some moorings holders may be affected by others (e.g. proximity between moorings and availability of space). Providing for moorings to be consented without affected party approvals, or without limited notification on affected parties, could deny the ability of potentially or actually affected parties to participate.

In addition, affected party approvals are not automatic, but must themselves follow a process set out in the RMA. For these reasons, I consider there should be provision for Council to require written approvals where there are affected parties, and provision to allow limited notification.

Changing the proposed exemption from the mandatory "will" to a discretionary "may" provides for this, while reinforcing that approvals can be waived if no one is affected. As a consequential amendment, a new policy should be incorporated into Chapter 9: Coastal Marine to provide additional guidance on identifying affected parties for limited discretionary swing mooring applications. The policy should provide guidance that affected parties would generally be limited to adjoining mooring holders. As a further consequential amendment, I recommend removing specific reference to the RMA affected party section in the event of the section numbering in the RMA changing. "Resource Management Act" should also be specified to avoid any misinterpretation.

Rule 35.3.2.1.1(d) limits Council's exercise of discretion for swing mooring applications to be able to comply with the Coastal Marina Zone noise standard. I am unclear why noise has been included as a limit of discretion, since it is unlikely that swing moorings and occupation would give rise to excessive noise and since any breach of the noise standards will require a separate resource consent in any case. However, no submitter has sought deletion of this rule. The change sought by the Waikawa Residents Association says the same thing as the proposed rule, so no changes are required.

Michael and Lianne Adams (37:432) oppose swing moorings outside the MMAs and within Waikawa Bay being a non-complying activity, and seek to reject the plan change. Te Aatiawa supports this in part, while Port Marlborough opposes in part and MBMA opposes in full.

The purpose of the MMAs is to rationalise management of moorings in Waikawa Bay. Waikawa Bay has proven popular for swing moorings, and there is potential for a further increase in moorings. At some point moorings in Waikawa Bay will reach capacity in terms of effects and navigation. The MMAs essentially establish this capacity. Non-complying status is not prohibitive, and still provides for new swing moorings in certain cases. I consider non-complying activity status to be appropriate for managing the limited capacity of Waikawa Bay to accommodate moorings.

Recommendation 13:

1. Delete rule 35.1.2.14

2. Replace rule 35.1.2.13 with the following:

35.1.2.13 Swing Moorings within the Mooring Management Areas

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

a) A lawfully established Bylaw is in place, and the Mooring has a current Mooring Licence to place and use the specified swing mooring issued by the person appointed under the relevant Bylaw to authorise Mooring Licenses

Note: If no relevant bylaw is in place, rule 35.3.2 applies.

3. Delete Rule 35.3.3

4. Amend Rule 35.3.2 as follows:

35.3.2 Where not provided as a permitted activity under Rule 35.1 and condition 35.1.2.13, the placement and use (including occupation) of swing moorings within a Mooring Management Area or Waka swing moorings within the Waka Mooring Management area.

5. Add "or waka mooring management area" to limit of discretion 35.3.2.1.1(a) and (c).

6. Delete rules 35.3.3.1; 35.3.3.1.1; and 35.3.3.1.2 and renumber accordingly.

7. Add a new policy (9.2.1, new policy 1.10) providing guidance on affected party approval for swing mooring consent applications.; .. renumber accordingly

8. Amend Rule 35.3.2.1.2 to read as follows:

Applications in accordance with Rule 35.3.2 will be considered without public notification ~~or~~ and may be considered without either the service of notice, or without the need to obtain written approval of affected persons in accordance with ~~section 95A of~~ the Resource Management Act.

Issue N) Rules – Marina Zone

Discussion:

34.4. public notification

A number of submitters[10] oppose the exemption for public notification in rule 34.4, where the effect would be that none of the discretionary activities listed could be publicly notified (unless they were restricted coastal activities). Te Atiawa supports in part those submissions seeking withdrawal or rejection of the plan change, and opposes in part those submissions not seeking withdrawal or rejection. Port Marlborough opposes these submissions in part.

This is a new addition, and it applies to all the activities listed, not just marina structures. The exemption from public notification includes the following activities:

- all discharges
- occupation of the coastal marine area
- hazardous facilities
- foreshore disturbance
- seabed reclamation
- essentially all structures

Restricted Coastal Activities which require notification are generally limited to the following:

- reclamation of foreshore and seabed exceeding 2ha, 300m in any direction, or which is an incremental reclamation connected to another reclamation which was commenced after 5 May 1994 and the sum would exceed 2ha or 300m
- structures impounding more than 8ha of the coastal marina area
- any structure extending less than 1km parallel or perpendicular to the mean high water springs
- storage of less than 50,000 litres of fuel
- disturbance of foreshore in any 12 months exceeding 300,000m^3, from areas

[10] Submitter numbers 11; 17; 25; 33; 53; 59; 69; 80; 98; 99;

exceeding 10ha, and no more than 10km in length
- depositing of substances in the CMA exceeding 50,000m3 in any 12 months period
- discharge of human sewage which has not passed through soil or wetland (note – discharge need not be treated)
- exclusion from the public of more than 10ha or more than 316m of foreshore, or occupation (but not public exclusion) of more than 50ha

Whether marina development is a restricted coastal activity depends on what exactly would be proposed. However, on my analysis, it is quite plausible that at least parts of the marina extension could be developed as a discretionary activity rather than a restricted coastal activity. Under this scenario, as proposed, there is no ability for public notification.

I accept that Port Marlborough are seeking some certainty through the exemption or public notification. I also agree that the Marina Zone itself creates an expectation of future development. However, I do not agree that marina development is of a nature or scale which justifies an exemption from Council's ability to publicly notify. At its simplest level, the two marina extensions constitute the reclamation of seabed and foreshore and the enclosure of coastal marine area for exclusive occupation by berth holders. Although the public may still have access to jetties and breakwaters, this is not guaranteed. I am also advised it is Council policy to publicly notify all applications for coastal occupancy.

I consider that Council should have the ability to publicly notify the marina extensions through the normal RMA process.

In summary:

- I agree with the submitters seeking to reinstate the opportunity public notification for marina development.
- I do not agree with submitters seeking this as a basis for rejecting the plan change.
- I do not agree that activities should be automatically notified.
- I recommend a case-by-case approach to notification through the normal RMA process.
- Public notification is in accordance with Council policy.

Marinas

Several submitters have sought "marinas" be deleted from the list of discretionary activities. The Minister of Conservation (8:447) has also submitted there is no criteria or standards on what thresholds would trigger a marina to be a restricted coastal activity. Te Atiawa and Port Marlborough oppose these in part.

Restricted coastal activity thresholds are set out in rule 34.4.2 ("particular criteria and standards applicable to listed discretionary activities").

There is some duplication between the definition for "marina" (as proposed to be amended) and the list of discretionary activities including a range of structures. Although there appears to be some merit for removing the addition of "marinas" on the basis of duplication, this could lead to some uncertainty whether jetties etc. located within the main breakwaters are included within the list of structures. One interpretation of "structures" could be individual structure (e.g. jetties) rather than marinas developed as a comprehensive structure. I consider the new (amended) definition of "marina" removes any doubt as to what is included, and provides clarification, and it should be retained.

Finally, three submissions[11] seek the deletion of rule 34.4.1.1.5.4(f) (and (g) – erroneously omitted from the summary of submissions) on the basis that "efficient use" and "positive effects"

[11] Submitter numbers 53; 59; 80;

are subjective and it may be misinterpreted. These submissions are opposed in part by Port Marlborough and supported in part by Te Atiawa.

This rule sets out the following assessment criteria:

> *Likely effects on natural and physical resources so that any proposal:*
> *(f) Will result in the efficient use of natural and physical resources including existing infrastructure with regard to the expansion of marinas.*
> *(g) Is considered in terms of 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.*

The general pattern of the assessment criteria under rule 34.4.1 relates to adverse effects considerations. Including the proposed enabling assessment criteria is not consistent with the pattern and format of the criteria. In addition, since this is a list of assessment criteria, it is not limited to the matters set out – the assessment can include any matters not set out. Section 3 of the RMA also defines the meaning of effects as including positive effects, and section 7(b) requires regard to be had to efficient use and development. I also consider the wording of (f) is cumbersome and it requires some analysis to understand its meaning.

I do not consider that criteria (f) and (g) are necessary or add anything which cannot be considered in any case under the RMA, and for these reasons I agree with the submissions seeking to remove them.

Recommendation 14:

1. Delete the exemption from public notification in rule 34.4.
2. Retain the inclusion of "marina" in the list of activities in rule 34.4.
3. Delete assessment criteria 34.4.1.1.5.4(f) and (g).

Issue O) Section 32

Discussion:

The Minister of Conservation opposes the plan change in part on the basis that section 32 contains some omissions and unjustified assumptions. The submitter seeks to retain the plan change in its present form subject to decisions sought in their submission. Te Atiawa opposes this in part and Port Marlborough opposes the submission.

I would categorise the submitters' concerns with the section 32 report as technical drafting interpretation / style rather than being critical issues about substance and content. For example, I accept that the section 32 does not include an option of creating MMAs without extending the Marina Zone. This could have been included as an option for completeness, but it wouldn't have been an effective or the most appropriate option because it wouldn't address the long term resource management issue of marina accommodation within Waikawa Bay and competition for the allocation of limited water space.

Given that submissions from the Ministry have been recommended to be accepted in part, the opposition to the section 32 can be accepted in part as well.

Recommendation 15: No changes recommended