

**RESOURCE MANAGEMENT
ACT 1991**

**Decisions on Individual
Submissions to
Plan Change 53**

**Ref: W045-15-53 - Plan Change 53 -
Allocation of Authorisations**

This document contains the decisions made by the Marlborough District Council on the individual submission and further submissions to Plan Change 53 – Allocation of Authorisations, a plan change to the Wairau/ Awatere Resource Management Plan. Included as part of this decision is the amended Schedule of Changes.

DECISION DATE:

25 February 2010



Decisions made under delegation (Minute C.09/10.10) from the Marlborough District Council by Sub-Committee members:

C.R. Bowers

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Councillor C R Bowers (Chair)

P J S Jerram

.....

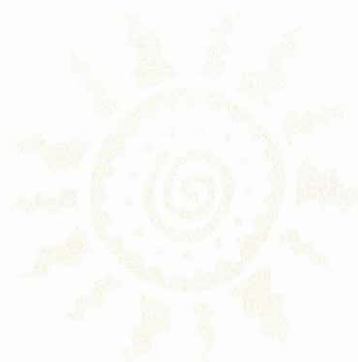
Councillor P J S Jerram

E I Davidson

.....

Councillor E I Davidson

Dated this *25th* day of *February* 2010





WAIRAU/AWATERE RESOURCE MANAGEMENT PLAN

**Plan Change 53
Allocation of Authorisations**

Schedule of Changes Only

Notified 12 March 2009



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Schedule of Changes

Where text is proposed to be added to the Wairau/Awatere Resource Management Plan (the Plan) through this Plan change, it has been shown as blue underlined. Where the changes are shown as either red underlined or ~~red struck~~ through these are amendments arising from the decisions. Where the text is shown between [] the text has been included to provide information to the reader and does not form part of this plan change.

The Wairau/Awatere Resource Management Plan is amended in accordance with the following schedule:

Volume One - Chapter 9 - Coastal Marine

Add new Section 9.1.2

9.1.2 Aquaculture Management

A reform of the legislation covering the management of marine farming - the Aquaculture Reform 2004 - came into effect on 1 January 2005. The aim of the reform was to create a more integrated aquaculture management regime, with a balance between enabling economic development, looking after the environment, settling the Crown's Treaty obligations to Maori, and responding to community concerns. As a result of this reform, marine farming is now mostly covered by the Resource Management Act, with one process for planning where marine farms should go and for granting consents for them to occupy coastal space. Areas for new marine farming (Aquaculture Management Areas - AMA's) need to be identified in the Plan, and coastal permits for marine farms within AMA's are issued by the Council. The Ministry of Fisheries contributes to the Plan process by testing for any undue adverse effects on commercial, customary or recreational fisheries prior to an AMA being approved in the Plan. Space within AMA's is also to be allocated to iwi to settle Maori claims to commercial marine farming.

The Act states that aquaculture activities (marine farming) can only take place within areas identified in the Plan as AMA's. Marine farming is prohibited outside AMA's. Council has the main role in managing marine farming in the Wairau/ Awatere plan area. Providing for marine farming within AMA's enables effects on the community, environment and economy to be managed in an integrated way through the Plan preparation processes, before individual applications for marine farms are considered. The cumulative effects of several marine farms in one area can also be considered.

The Ministry of Fisheries (MFish) continues to play a significant role in the creation of AMA's. Before starting on the public notification processes for including a new AMA in the Plan, Council must request MFish to undertake an assessment as to

whether the proposed AMA would have an “undue adverse effect” on commercial, customary or recreational fishing. Areas within the proposed AMA that would unduly affect customary or recreational fishing will be removed from the proposal prior to notification. Any areas that would unduly affect commercial fishing will be identified in the Plan and anyone wanting to establish a marine farm in those parts of the AMA must first reach an agreement with the affected quota holders before they can apply for a resource consent.

Part of the Aquaculture Reform 2004 included the settlement of Treaty of Waitangi commercial aquaculture claims through the Maori Commercial Aquaculture Claims Settlement Act 2004. These provisions are intended to settle all Maori claims to commercial marine farming interests since September 1992. Iwi are provided with an allocation of area for marine farming equivalent to 20% of marine farming spaces allocated since 1992 and 20% of new marine farming space. This is partly met through the allocation to iwi of some of the new space that comes available through the creation of AMA’s. This is intended to ensure iwi have access to coastal marine space to develop their marine farming interests, and to allow the marine farming industry to develop without risks from ongoing Treaty claims.

Existing lawfully established marine farms are deemed to be AMA’s, which means they do not need to be included in the Plan through a Plan Change. Marine farming permits and licences granted under previous Marine Farming and Fisheries legislation are generally deemed to be coastal permits.

When resource consents for a marine farm are about to expire, if the site is in an AMA, the existing marine farmer can make an application for a new marine farming consent for the same water space. The application from the existing marine farmer will be decided first, before any other application can be considered for that space.

Creating new AMA’s requires a Plan Change. There are three different processes available to undertake this:

- a Council-initiated Plan Change, where Council decides to undertake a plan change to establish an AMA in the coastal marine area,
- a standard Private Plan Change, where any person or organisation can request a change to the Plan to establish an AMA in the coastal marine area. and
- a Council Invited Private Plan Change (IPPC), which involves the Council inviting applications from the public to establish new AMA’s. The Council may identify areas of the coastal marine area which will be excluded from applications. These Plan Changes are processed in a similar manner to Private Plan Changes.

All these processes follow the consultation and public notification processes set out in the Act.

Removal or modification of existing AMA’s in the Plan, including deemed AMA’s, also involves a Plan Change process.

Once an AMA is created, 20-40% of authorisations (or the right to apply for a resource consent for marine farming) are allocated by the Council to a trustee to

resolve historic Treaty claims, and the remaining authorisations become publicly available.

Where AMA's have been created through a Council-initiated Plan Change, the remaining authorisations are allocated by public tender. Where an AMA has been created through the IPPC process the remaining authorisations are allocated to the person or organisation that requested the Plan Change. Where an AMA has been created through the Standard Plan Change process the Act specifies that the authorisations are allocated by public tender unless an alternative method of allocation is used. Once the authorisations have been allocated, the holders of the authorisations then need to apply for resource consents for marine farming.

Add new Sections 9.26-28

9.26 Issue

Allocation of ~~authorisations- the right to apply for a coastal permit for marine farming in Aquaculture Management Areas (AMA's)~~ in a manner that is effective, efficient and fair to all parties involved.

As explained in Section 9.1.2 of the Plan, there are three different processes for Plan Changes to include new AMA's in the Plan. With a Council-initiated Plan Change, authorisations are allocated by public tender. Where an AMA has been created through the IPPC process, authorisations are allocated to the person or organisation that requested the Plan Change. These methods are considered to be effective, efficient and fair to the parties involved.

Under the standard Private Plan Change process, any person or organisation can request a change to the Plan to establish an AMA in any part of the coastal marine area. These Private Plan Changes are processed in terms of Schedules 1, Part 2 and 1A of the Act. The time, resources and costs involved with evaluating new AMA's and providing for them in the Plan through a Plan Change process are considerable. With a standard Private Plan Change, these costs will be borne by the applicant. The Council recognises that people or organisations are not likely to make requests for new areas, unless they have some certainty that they will receive ~~authorisations- the right to apply for a coastal permit for marine farming~~ should the Plan Change succeed. While the Act states as a default that authorisations should be allocated by public tender, the Council acknowledges that public tendering does not give the Plan Change applicant sufficient certainty that they will receive ~~authorisations- the right to apply for a coastal permit for marine farming~~ within that new AMA.

In order to enable effective, efficient and fair use of a standard Private Plan Change approach for the consideration of new AMA's, the Council considers that the Plan should specify an alternative method of allocating ~~authorisations the right to apply for coastal permits for mare farming~~. The alternative ~~authorisation~~ allocation method adopted by the plan is considered to be fair and provide certainty to the Plan Change applicant.

In addition, the public tendering process assumes multiple applications for ~~authorisation of allocations~~. Public notification, calling for ~~authorisation applicants, is the default process in the Act~~. In circumstances where there can only be one applicant (the Private Plan Change applicant), this process of public notification for authorisations is considered unnecessarily time-consuming and costly. The Plan, therefore, adopts an alternative method which provides the right

to apply for coastal permits for marine farming directly to the operative Private Plan Change applicant. This method is considered to be more efficient and avoids unnecessary delays in the process.

9.27 Objectives and Policies

Objective 1 An effective, efficient and fair process for the allocation of authorisations— the right to apply for coastal permits for marine farming in Aquaculture Management Areas

Policy 1.1 Allocation of authorisations by way of public tendering for coastal space in AMA's created through Council Plan Changes.

Policy 1.2 Processes for ~~the obtaining allocation of authorisations for coastal space~~ the right to apply for coastal permits in AMA's that are effective, efficient and fair, and provide sufficient certainty for marine farmers to enable proposals for new AMA's and marine farms to be put forward for evaluation through standard and Council Invited Private Plan Changes.

Policy 1.3 Allocation of ~~authorisations—new coastal space~~ to iwi in accordance with the procedures established through the Aquaculture Reform 2004.

9.28 Methods of Implementation

Zoning Aquaculture management areas (AMA's) will be included in the Plan as Aquaculture Management Area Zones (AMA Zones).

Existing, lawfully established marine farms are deemed to be AMA's. ~~and will be included in the Plan in a special AMA Zone.~~

All new marine farms must be established in an AMA Zone following the granting of the necessary resource consents for coastal permits.

At some later date, Council may decide to propose new AMA Zones in the Plan by way of Council-initiated Plan Change or I P P C processes, as priorities and resources for Council determine.

New AMA Zones may be established in the Plan by way of requests for Private Plan Changes.

AMA Zones will be managed for aquaculture activities (marine farming).

Rules [To be notified in the Proposed Marlborough Resource Management Plan]

Authorisations Authorisations for available space within AMA Zones, which have
Right to apply been included in the Plan as a result of a Council-initiated Plan
for coastal Change, will be allocated by way of public tender.
permits for
marine farming

An alternative method is specified in the Plan for obtaining the right to apply ~~the allocation of authorisations~~ for available space within AMA Zones which have been included in the Plan as a result of a request for a standard Private Plan Change. In these circumstances, ~~authorisations~~ the right to apply for available space within AMA Zones will be offered to the first person whose Private Plan Change was complete and successfully resulted in an operative AMA Zone for that area of coastal marine area

Where the ~~authorisation~~ right to apply for available space or the resulting coastal permit for marine farming is not taken up or lapses, allocation will be by way of public tender.

Monitoring [To be notified in the Proposed Marlborough Resource Management Plan]

Renumber 9.26 to **9.29**, and undertake any consequential numbering amendments required.

Volume Two - Rules

Insert New Chapter 39A

39A Aquaculture Management Area Zone

39A.1 Preamble

This section of the Plan provides for the implementation of specific and general objectives and policies for aquaculture management areas as detailed in Volume One of the Plan. It also provides for the specific requirements for aquaculture management areas and aquaculture activities as set out in Part 7A of the Act.

Aquaculture management areas are included in this Plan as Aquaculture Management Area Zones. There are three processes available to include new Aquaculture Management Areas Zones in the Plan - a Council-initiated Plan Change; a standard Private Plan Change requested by any person or organization; and a Council Invited Private Plan Change (IPPC) where the Council invites applications to establish new AMA's.

Part 7A of the Act specifies the processes that must be followed by the Council for the establishment of aquaculture activities in the coastal marine area. Responsibilities of others, such as the Chief Executive of the Minister of Fisheries, the Minister of Conservation and the Trustee under Section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004, are also set out in this part of the Act. Chapter 39A of the Plan sets out those matters which must be contained in a Plan in order for resource consent applications for aquaculture to be considered for approval.

Volume One, Section 9.1.2, Aquaculture Management, describes the methods by which ~~authorisations- the right to apply for resource consents~~ for marine farming will be ~~allocated by the Council~~ obtained.

39A.2 General Rules

~~General Rule 39A2.1 shall not have effect until Plan Change 53 becomes operative.~~

~~General Rule 35A.2 shall have not effect until Plan Change 53 becomes operative and the reviewed objectives, policies and methods for aquaculture in the Proposed Marlborough Regional Policy Statement have been notified.~~

39A.2.1 Alternative Allocation Method for ~~Authorisations- the Right to Apply~~ for Available Water Space in Aquaculture Management Areas

These General Rules specify the method that ~~Council~~ will be used to ~~offer authorisations-~~ apply for coastal permits for marine farming in operative AMA Zones arising from standard Private Plan Change requests under Schedules 1, Part 2, and

1A of the Act. These General Rules do not apply to AMA Zones arising from Council Invited Private Plan Changes (I P P C).

39A.2.1.1 Circumstances under which the Alternative Allocation Method will apply

Rule 39A.2.1.2 shall be used ~~by Council~~ to ~~offer authorisations~~ ~~restrict~~ obtain the right to apply for coastal permits for marine farming in operative AMA Zones, where the AMA Zone, or the part of the AMA Zone, arose from a Private Plan Change under Schedules 1, Part 2, and 1A of the Act. Where Rule 39A.2.1.2 refers to a Private Plan Change, it is referring to the Private Plan Change which successfully resulted in the creation of the operative AMA Zone.

39A.2.1.2 Alternative Allocation Method

Under the circumstances specified in Rule 39A.2.1.1, ~~Council will only offer authorisations by way of the following methods:-~~ the right to apply for coastal permits for marine farming will only be obtained by way of the following methods:-

39A.2.1.2.1 One Private Plan Change Request

The ~~available authorisations~~ right to apply for coastal permits for marine farming for an area in an AMA Zone arising from a single Private Plan Change ~~for an area in an AMA Zone~~ shall be ~~offered~~ ~~obtained by~~ to the person who requested the Private Plan Change.

39A.2.1.2.2 More than One Private Plan Change Request for the same area

Where more than one Private Plan Change request was made to Council for the same area of an AMA Zone, the ~~available authorizations-~~ right to apply for coastal permits for marine farming for the overlapping area shall be ~~offered restricted~~ ~~obtained by~~ ~~to~~ the person whose Private Plan Change request was the first to either:

- i. provide all required information, or
- ii. decline to provide further or additional information requested by the Council in writing and when the Council or the Environment Court determines that the requested information was not required to be provided.

And the private plan change successfully resulted in the creation of an operative AMA zone for that area. ~~Subject to Rule 39A.2.1.3 (which relates to reservations for commercial fishing), this right to apply for coastal permits for marine farming shall occur on the date on which the Private Plan Change becomes operative.~~

39A.2.1.2.3 The Right to Apply for Coastal Permits for Marine Farms not taken up Offer of Authorisation and/or Resource Consent for Authorised Space not taken up

Where an authorisation- the right to apply for a coastal permit for marine farming is held byhas been obtained by is offered to a person under Rules 39A.2.1.2.1 or 39A.2.1.2.2, and:

- i. — The offer for the authorisation is not taken up by that person; or
- ii. The right to apply for a coastal permit for marine farming by that person lapses; An authorisation is granted to that person but lapses; or
- iii. A coastal permit for marine farming is granted to that- the person for marine farming in the area covered by the authorisation, that has the right to apply, but it lapses;

authorisations within that area shall be offered by way of public tendering.

For the purposes of Rule 35A.2.1.2.3 i., “lapse” shall have the meaning specified in Section 165N of the Act, as if the right to apply for a coastal permit for marine farming was an authorisation.

39A.2.1.2.4 Offer of Authorisations following Cancellation or Expiry of Coastal Permits

When:

- i. the term of a coastal permit for marine farming expires and a new coastal permit is not granted to the existing permit holder; or
- ii. a coastal permit is cancelled under Section 126 of the Act;

authorisations within that area shall be if offered shall be by way of public tendering.

39A.2.1.3 Reservations Relating to Commercial Fishing

When an AMA Zone becomes operative and is subject to a reservation relating to commercial fishing, Sections 165G and 165J of the Act shall apply with all necessary modifications as if the right to apply for a coastal permit for marine farming was an authorisation.

39A2.1.4 Right to Apply for Coastal Permit does not Confer Right to Coastal Permit

The obtaining of a right to apply for a coastal permit for marine farming does not confer any right to the grant of a coastal permit in respect of the space that the right to apply relates to.

39A2.1.5 Right to Apply for Coastal Permit Transferable

The right to apply for a coastal permit for marine farming or any part of it may be transferred by its holder to any other person, but the transfer does not take effect

until written notice of it has been received by the Council. Rule 39A.2.1 applies to the person to whom the right to apply is transferred.

39A.3 **Activities - Permitted, Controlled, Limited Discretionary, Discretionary, Non-Complying and Prohibited - in the Aquaculture Management Area Zone**

[Rules, Conditions, Standards, Assessment Criteria - to be notified in the Proposed Marlborough Resource Management Plan]

39A.4 **Information Requirements for Private Plan Changes for Aquaculture Management Area Zones**

[Rules, Conditions, Standards, Assessment Criteria - to be notified in the Proposed Marlborough Resource Management Plan]

39A.5 **Planning Maps - Aquaculture Management Area Zones**

[Rules, Conditions, Standards, Assessment Criteria - to be notified in the Proposed Marlborough Resource Management Plan]

~~Note: the existing deemed Aquaculture Management Areas will be shown on future releases of the maps and may be done so without undertaking a plan change.~~