

# Proposed Marlborough Environment Plan

## Report and Recommendation Variation 1A: Finfish Farming

**Hearing dates:** 9 – 11 and 15 – 18 November 2021

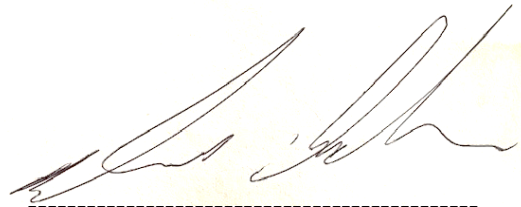
**Commissioners:** Trevor Hook  
David Oddie  
Shonagh Kenderdine  
Rawiri Faulkner  
Sharon McGarry

**Date of report:** 28 April 2023



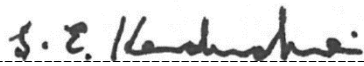
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Trevor Hook (Chairperson)



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David Oddie



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Shonagh Kenderdine



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Rawiri Faulkner



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Sharon McGarry

Dated this 28<sup>th</sup> day of April 2023

## Introduction to Report and Recommendation

### Delegation

1. Pursuant to the Resource Management Act 1991 (**RMA**), the Marlborough District Council's (**the Council**) Planning, Finance and Community Committee delegated<sup>1</sup> the necessary powers and functions to the Hearing Panel to hear submissions and make decisions on Proposed Marlborough Environment Plan (**PMEP**) Variation 1: Marine Farming and Variation 1A: Finfish Farming. The Committee resolved to appoint a hearings panel comprising one councillor, Councillor David Oddie, and four independent commissioners, Mr Trevor Hook, Mrs Shonagh Kenderdine, Mr Rawiri Faulkner and Ms Sharon McGarry. The Committee appointed Commissioner Hook as Chair of the Hearing Panel.
2. This is the report and recommendation of the appointed Hearing Panel ('the Panel') to the Council for Variation 1A.
3. The nature of the delegation has influenced the way the Panel has responded to submissions to Variation 1A. This matter is traversed later in the report.

### Hearing Panel Minutes

4. Before the hearing and following the adjournment, the Panel issued a number of minutes addressing procedural matters and requesting further information on substantive matters. A record of these minutes and responses received were made available via the Council's website in a timely manner. Where necessary the Panel references the responses to some of these minutes. The Panel thanks the parties for their prompt responses and their efforts after the adjournment to provide the information requested.

### Purpose of Variations

5. Variation 1 and 1A were publicly notified on 2 December 2020. The purpose of Variation 1 and 1A is to insert objectives, policies, rules and methods into the PMEP to sustainably manage effects of marine farming and finfish farming within the coastal marine area (**CMA**) of the Marlborough Region to **give effect** to the objectives and policies of the New Zealand Coastal Policy Statement 2010 (**NZCPS**) and Part 2 of the RMA.
6. This Variations are part of the Council's strategic planning required under Policy 7 and Policy 8 of the NZCPS to identify areas where marine farming activities are inappropriate and where

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<sup>1</sup> At a meeting held on 18 March 2021, under Section 34A of the RMA. At this date, Mr Oddie, in his role as a Marlborough District Council Councillor, was appointed to the Hearings Panel. Councillor Oddie did not seek re-election at the 2022 local government elections. At its meeting on 22 September 2022, the Council appointed Mr Oddie as an Independent Commissioner to the Panel to enable him to complete the process of making a decision on Variation 1 with the remainder of the Hearings Panel.

values identified in the PMEP are under threat or at significant risk from adverse cumulative effects. Variation 1 and 1A are to give effect to NZCPS Policy 8 which requires recognition of the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities; and gives certainty to the community and the marine farming industry that appropriate marine farming activity can continue for the life of the PMEP. We have focused our decisions on the outcomes to be achieved and what is sought to be recognised and provided for, and the values that must be protected and preserved under the provisions of the NZCPS.

7. Objective 3 of the NZCPS requires the Panel to take into account the principles of Te Tiriti o Waitangi/Treaty of Waitangi and recognise the role of Marlborough's Tangata Whenua as kaitiaki.
8. The Panel also acknowledges the need to integrate Variation 1 and 1A with the provisions of the PMEP.

#### **The Context for Variation 1A**

9. As set out in the relevant Section 32 Report and in the Section 42A Report of Mr Hawes, the preparation of Variation 1A followed a different process to Variation 1. Variation 1A was influenced by the proposal by the Minister of Primary Industries (the Minister) to amend the provisions of the Marlborough Sounds Resource Management Plan to relocate salmon farms in the Marlborough Sounds.<sup>2</sup>
10. After hearing the submissions, the Marlborough Sounds Salmon Farm Relocation Advisory Panel recommended to the Minister that the existing salmon farms at Waihinau, Otanerau and Ruakaka be relocated to Tio Point, Horseshoe Bay and Richmond Bay. By comparing these recommendations with the notified provisions of Variation 1A, the Panel can see that, in spatial terms at least, the influence of the relocation process was significant.
11. Limited consultation was undertaken on Variation 1A. Likely that was because of the similarity in outcome with the earlier relocation process and took into account the consultation that had already occurred as part of that process. The consultation in the relocation process included the opportunity to make submissions, the public hearing of submissions and the meeting of expert witnesses.

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<sup>2</sup> This proposal was made under Section 360A of the RMA. Full details on the relocation process can be found in the Section 42A Report of Mr Hawes or at [www.mpi.govt.nz/consultations/marlborough-salmon-relocation](http://www.mpi.govt.nz/consultations/marlborough-salmon-relocation).

### **RMA Section 42A Reports**

12. The Panel had the benefit of several reports prepared under Section 42A of the RMA for both Variation 1 and 1A:
13. The Section 42A reports most relevant to this recommendation are:
  - (a) *'Variation 1: Marine Farming and Variation 1A: Finfish farming to the Proposed Marlborough Environment Plan - Development of Variation 1 and 1A - Section 42A Hearings Report'* (dated 8 October 2021) prepared by Pere Hawes, Manager, Environmental Policy, Marlborough District Council; and
  - (b) *'Variation 1A: Finfish Farming – Report on Submissions and Further Submissions to the Proposed Marlborough Environment Plan – Section 42A Hearings Report'* (dated 8 October 2021) prepared by Helen Marr, Debbie Donaldson and Lily Campbell, Kahu Consultants; and
  - (c) *'Variation 1A: Finfish Farming to the Proposed Marlborough Environment Plan – End of Hearing Report'* (dated 8 February 2022) prepared by Helen Marr, Debbie Donaldson and Lily Campbell, Kahu Consultants;

### **Engagement and consultation with Marlborough's Tangata Whenua Iwi**

14. The substantive decision for Variation 1 sets out the background to engagement with Marlborough's Tangata Whenua Iwi. The Council approached the iwi authorities to participate in the plan development of Variation 1 and 1A. Te Ohu Kaimoana Trust Limited ('Te Ohu Kaimoana') were also approached for comment and feedback.
15. Submissions from Ngāi Tahu, Ngāti Apa ki te Rā Tō Charitable Trust, Koata Limited, Te Rūnanga o Toa Rangatira and Te Ātiawa Manawhenua Ki Te Tau Ihu Trust sought Variation 1 and 1A be put on hold, not proceed or be withdrawn. Concerns were expressed that the Council had not discharged its statutory consultation duties and that the requirements of Schedule 1 of the RMA had not been met.
16. Te Ohu Kaimoana submitted the list of consultees in the Section 32 report omitted Ngāti Tama (through the Ngāti Tama ki te Waipounamu Trust), Ngāi Tahu, Te Runanga o Toa Rangatira Incorporated and Ngāti Rarua Iwi Trust as Iwi Aquaculture Organisations established under the Settlement Act.
17. The Panel issued Minute 21 (dated 14 December 2021) seeking further input from Marlborough's Tangata Whenua Iwi on a process which would enable the statutory obligations or consultation in relation to Variation 1A (Finfish) to be fulfilled.

18. In response to Minute 21, Ngāi Tahu, Ngāi Tahu Seafood Limited<sup>3</sup> stated that from a pragmatic point of view, the package of amendments sought through the hearings would provide an interim solution to Variation 1 and sought the Panel proceed to a decision. Te Ohu Kaimoana sought a more collaborative approach be established with iwi.
19. Te Rūnanga o Toa Rangatira<sup>4</sup> stated Variation 1 and 1A should both be withdrawn because the Council had not performed their Mana Whenua engagement duties and Variation 1 cannot be separated. The response requested the Council restart the process to enable iwi to formulate the way they would like to be engaged by the Council to work together on the provisions. It noted the Section 32 analysis had not assessed how their kaitiaki role would be impacted by Variation 1.

### **Evaluation**

20. The Panel recognises that although clearly aligned, there were two separate consultation processes for Variation 1 and 1A. The Panel considers the consultation undertaken by the Council for Variation 1 was appropriate and engagement was with iwi authorities in accordance with Schedule 1 of the RMA.
21. It appears some of Marlborough's Tangata Whenua Iwi chose not to engage in consultation with the Council regarding Variation 1.
22. However, the Panel considers the consultation with Marlborough's Tangata Whenua Iwi on Variation 1A was inadequate.

### **Creation of a 'policy vacuum'**

23. In their end of hearing Section 42A report<sup>5</sup>, the authors identified 4 potential options moving forward to address the concerns raised in submissions. They considered that any responses to Minute 21 could be incorporated into option 3 (removal of Variation 1A spatial component) or option 4 (removal of Variation 1A spatial component and policy amendments)<sup>6</sup>
24. Option 2 set out their consideration of withdrawing Variation 1A. The authors advised the Panel that the removal of Variation 1A would create a 'policy vacuum' whereby potentially making finfish farming a prohibited activity. They further noted that withdrawing Variation 1A would

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<sup>3</sup> Memorandum of Counsel dated 13 June 2022.

<sup>4</sup> Letter dated 14 June 2022.

<sup>5</sup> *Variation 1A: Finfish Farming to the Proposed Marlborough Environment Plan – End of Hearing Report* (dated 8 February 2022) prepared by Helen Marr, Debbie Donaldson and Lily Campbell, Kahu Consultants

<sup>6</sup> *Variation 1A: Finfish Farming to the Proposed Marlborough Environment Plan – End of Hearing Report*, para 27

be inefficient and ineffective to achieve the purpose of the Act<sup>7</sup> and would create unnecessary uncertainty for existing finfish farms.

### ***Evaluation***

25. The Panel notes the concern of the Section 42A report authors regarding a potential policy vacuum due to the withdrawal of Variation 1A. However, the Panel consider that the existing objectives and policies of the PMP provide sufficient policy guidance to support decision making processes. In addition, National Environmental Standards for Marine Aquaculture (NES-MA) provides the regulatory framework for consenting existing finfish farms in the Marlborough Sounds.
26. Notwithstanding this finding, the Panel does agree that finfish specific provisions are desirable to assist the management of new and existing finfish farms. See below for the Panel's recommendations for a future process.

### **Technological and environmental change**

27. Some submitters noted that environmental changes created unique and distinctive challenges for finfish farming in the Marlborough Sounds environment. The most significant challenge being water temperature rise and the impact this has on finfish mortality rates.
28. There was also concern raised that the current finfish provisions in Variation 1A did not adequately provide for current and future technological advances. There had been significant advances since the review of the plan had begun, and the plan needed to be able to adapt to future technological advances.

### ***Evaluation***

29. The Panel considers more work is required to ensure the impact of climate change and future technology advances are adequately provided for in Variation 1A.

### **Collaborative approaches to the development of finfish provisions**

30. As noted above, several submitters requested the withdrawal of Variation 1A. Te Ohu Kaimoana, Te Rūnanga o Ngāi Tahu and other iwi submitters asked Council to establish a working group, which includes Marlborough's Tangata Whenua Iwi, to redraft the variations. Submitters sought meaningful engagement with Marlborough iwi and more work on accommodating iwi aspirations into the PMP. A number of Marlborough's Tangata Whenua Iwi sought a more collaborative approach to the development of finfish provisions<sup>8</sup>.

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<sup>7</sup> Variation 1A: *Finfish Farming to the Proposed Marlborough Environment Plan – End of Hearing Report*, para 32

<sup>8</sup> Variation 1A: *Finfish Farming to the Proposed Marlborough Environment Plan – End of Hearing Report*, para 31

***Evaluation***

31. As noted above, the Panel considers that consultation on Variation 1A was inadequate.
32. The Panel consider a more collaborative approach involving Marlborough's Tangata Whenua Iwi would be beneficial to the development of Variation 1A.
33. The Panel encourages Council to establish a working group consisting of Marlborough's Tangata Whenua Iwi and other key stakeholders to develop finfish farming provisions.

***Recommendation***

34. For the reasons set out in this report, the Panel recommends that Council formally withdraw Variation 1A.<sup>9</sup>

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<sup>9</sup> The Panel's delegation applies to the hearing of submissions and the making of a decision on Variations 1 and 1A only. The Panel does not have the delegated authority to withdraw Variation 1A under Clause 8D of the First Schedule.