

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

EnvC-CHC-2020-

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

IN THE MATTER of an appeal under Clause 14, Schedule 1 of the RMA

BETWEEN **BELEVE LIMITED** a duly incorporated company having its registered office at WK Advisors and Accountants Limited, 2 Alfred Street, Mayfield, Blenheim, 7201, New Zealand, **RJ DAVIDSON FAMILY TRUST** and **TREBLE TREE HOLDINGS LIMITED** a duly incorporated company having its registered office at Lifestyle Accounting, 155 Milton Street, Nelson, New Zealand

Appellants

(Continued next page)

**NOTICE OF APPEAL
Dated this 8th day of May 2020**

Next Event Date:

Judicial Officer:

**GASCOIGNE WICKS
LAWYERS
BLENHEIM**

Solicitors: Amanda L Hills and Quentin A M
Davies
(qdavies@gwlaw.co.nz | ahills@gwlaw.co.nz)

Appellants' Solicitor
79 High Street
PO Box 2
BLENHEIM 7240
Tel: 03 578 4229
Fax: 03 578 4080

AND

MARLBOROUGH DISTRICT COUNCIL

Respondent

Notice of Appeal to Environment Court against decision on a proposed Plan

Clause 14(1) of Schedule 1, Resource Management Act 1991 (the Act)

To: The Registrar
Environment Court
Christchurch

Name of Appellants and Decision Maker

- 1 Beleve Limited (“Beleve”), RJ Davidson Trust (“RJ Davidson”) and Treble Tree Holdings Limited (“Treble Tree”) appeal against part of the decision of the Marlborough District Council (“MDC”) on the proposed Marlborough Environment Plan (“proposed Plan”).
- 2 Beleve, RJ Davidson and Treble Tree made a submission on the proposed Plan.

Trade Competition

- 3 Beleve, RJ Davidson and Treble Tree are not trade competitors for the purposes of s 308D of the Act.

Date of Decision appealed against

- 4 The reasons for the decision were released from 21 February 2020, with the tracked changes decision version of the Plan being released on 3 March 2020.

Date on which Notice of Decision was received by Appellants

- 5 Beleve, RJ Davidson and Treble Tree received notice of the decision on 21 February and 3 March 2020.

The Decision

- 6 The parts of the decision that Beleve, RJ Davidson and Treble Tree are appealing are:

Landscape and Coastal Natural Character

- 7 The extent and methodology of mapping of Outstanding Natural Landscape (ONL) and Coastal Natural Character (NC) in Landscape Maps 4 and 5, and Coastal Natural Character Rating Maps 3 and 4, of Volume 4 of the proposed Plan.
- 8 The methodology and content in the Landscape Schedule of Values at Appendix 1 of Volume 3 of the proposed Plan, in particular the lack of

recognition of marine farms as part of the existing environment of the Marlborough Sounds.

- 9 The methodology and content in the Coastal Natural Character Schedule of Values at Appendix 2 of Volume 3 of the proposed Plan, in particular the lack of recognition of marine farms as part of the existing environment of the Marlborough Sounds.
- 10 The Significance Criteria in Appendix 4 of Volume 3 of the proposed Plan.

Reasons for the Appeal

- 11 While Beleve, RJ Davidson and Treble Tree are generally supportive of the proposed Plan provisions, Beleve, RJ Davidson and Treble Tree consider that some change is required to ensure that the proposed Plan:
- (a) Promotes the purpose of the Act, being the sustainable management of resources (section 5);
 - (b) Is not contrary to Part 2 and other provisions of the Act;
 - (c) Is not contrary to the New Zealand Coastal Policy Statement 2010;
 - (d) Is not contrary to other relevant planning documents; and
 - (e) Will meet the reasonably foreseeable needs of future generations.
- 12 In particular, and without limiting the generality of the above paragraph, with regards to landscape and natural character:
- (a) The evaluation must be at the appropriate geographic scale treating landscape, feature or natural character areas as a whole.
 - (b) Outstanding Natural Landscapes and Features (“ONL and ONF”) boundaries and the corresponding boundaries for natural character should be legible and coherent to the community.
 - (c) There should be a correlation between the ONL and ONF mapping in Volume 4 and the landscapes identified at Map 2, Appendix 1 of Volume 3 of the proposed Plan.
 - (d) An assessment of biophysical attributes is the appropriate starting point for assessment.
 - (e) The scheduling of landscapes, features and natural character needs to go beyond broad generic descriptions of values if a schedule is to serve its intended purpose in assisting consent application processes. The

proposed Plan needs to provide as much certainty as possible on what is being protected and why. The proposed Plan fails to achieve Policy 4.3.3.

- (f) The policies and other methods should identify parameters within which change could occur, and where change is anticipated specify the extent to which change may occur in the schedules.

Relief Sought

- 13 The Appellants seek the following relief:
- (a) Amendments to the relevant rules and map as set out in **Schedule A** to this notice; and
 - (b) Any necessary consequential amendments; or
 - (c) Other equivalent relief.
- 14 The Appellants agree to participate in mediation or other alternative dispute resolution of the proceeding.

Attached Documents

- 15 The following documents are **attached** to this notice:
- (a) **Schedule A** as referred to above;
 - (b) A copy Beleve, RJ Davidson and Treble Tree submissions (**Schedule B**);
 - (c) A copy of the relevant parts of the decision (**Schedule C**); and
 - (d) A copy of persons to be served with this notice (**Schedule D**).
- 16 A copy of this notice will be lodged electronically with the Environment Court and the Marlborough District Council in accordance with the updated and amended directions in the Court's Minute of 15 April 2020. The Appellants note that the requirements to serve a copy of this notice on other parties and provide a list of names to the Registrar have been waived.



Amanda L Hills and Quentin A M Davies
Solicitors for the Appellant

Address for service of the Appellant

Gascoigne Wicks, 79 High Street, Blenheim 7201.

Telephone: 03 578 4229

E-mail: ahills@gwlaw.co.nz | edeason@gwlaw.co.nz | shammerson@gwlaw.co.nz

Contact persons: A L Hills, Solicitor; E Deason, Solicitor; Sharyn Hammerson, Secretary

Advice to recipients of copy of notice of appeal*How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Note to appellant

You may appeal only if—

you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and

in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

SCHEDULE A – Relief Sought

- Base text is the Decisions Version, with Hearing Panel’s recommendations accepted to remove tracking.
- Where the Appellant seeks additional text, this is shown in underline.
- Where the Appellant seeks to delete text, this is shown in ~~strikethrough~~.
- Relief sought is indicative. Relief sought includes alternative wording or approach which achieves similar goals.

Decisions Version	Relevant part of provision	Relief sought
Landscape Map 4, Volume 4	Mapping	Amend the ONL mapping of Beatrix Bay/Te Puraka and Tuhitarata Bay in accordance with submissions relating to methodology; and The MEP should expressly recognise that marine farms do not adversely impact the values that lead to that classification.
Landscape Map 5, Volume 4	Mapping	Amend the ONL mapping of Beatrix Bay/Te Puraka and Tuhitarata Bay in accordance with submissions relating to methodology; and The MEP should expressly recognise that marine farms do not adversely impact the values that lead to that classification.
Coastal Natural Character Rating Map 3, Volume 4	Mapping	Amend the mapping of High natural character of Beatrix Bay/Te Puraka, Tuhitarata Bay and Oyster Bay in accordance with submissions relating to methodology; and The MEP should expressly recognise that marine farms do not adversely impact the values that lead to that classification.
Coastal Natural Character Rating Map 4, Volume 4	Mapping	Amend the mapping of High natural character of Beatrix Bay/Te Puraka, and Tuhitarata Bay in accordance with submissions relating to methodology; and The MEP should expressly recognise that marine farms do not adversely impact the values that lead to that classification.
Appendix 1, Volume 3	Methodology of appendix/values tables	Amend to recognise that marine farms are part of the existing environment of the Marlborough Sounds. In addition to broad appeal relating to methodology, for each area where there is an existing marine farm, include an express statement to the following effect (following the approach in the Auckland Unitary Plan at Chapter L, Schedule 7): <u><i>“Some bays contain existing marine farms, but this does not compromise [relevant area’s name] current natural values.”</i></u>
Appendix 2, Volume 3	Methodology of appendix/values tables	Amend to recognise that marine farms are part of the existing environment of the Marlborough Sounds. In addition to broad appeal relating to methodology, for each area where there is an existing marine farm, include an express statement to the following effect (following the approach in the Auckland Unitary Plan at Chapter L, Schedule 8):

Decisions Version	Relevant part of provision	Relief sought
		<u><i>“Some bays contain existing marine farms, but this does not compromise [relevant area’s name] current natural values.”</i></u>
Appendix 4, Volume 3	Text of appendix	Delete appendix in its entirety.

Schedule B: Submissions of Beleve Limited, RJ Davidson Family Trust and Treble Tree Holdings Limited

Submission on the Proposed Marlborough Environment Plan



Submissions close 1 September 2016

ISO 9001
Document Number:
EAF0005-C11726

1. Submitter Details

Full Name	BELEVE LIMITED v R.S. Davidson Family Trust		
Organisation (if applicable)			
Contact Person (if applicable)	RD Sutherland		
Postal Address	P.O. Box 751		
	BLENHEIM		
		Post Code	7240
Contact Details	Email Address:	palms ltd@xtra.co.nz	
	Phone: [Daytime]	03 5781733	Phone: [Mobile] 027 220 7299
Address for Service			
(if different from above)			
		Post Code	
Signature (of submitter or person authorised to sign on behalf of submitter)	RD Sutherland	Date	26-8-2016

Subject to the Resource Management Act 1991 (RMA), all information contained in a submission including the name and address of the submitter, will be made publicly available. Submitters have the right to access and correct personal information.

2. Trade Competition

Could you gain an advantage in trade competition in making this submission? Yes No

If you answered yes, please note that there are restrictions on your ability to make a submission. Refer to Clause 6(4) of the First Schedule of the RMA for further information.

3. Council Hearing

Do you wish to be heard in support of your submission? Yes No

If you answered 'Yes' to being heard, would you be prepared to consider presenting a joint case with others who have made a similar submission? Yes No

4. Return Submission to:

Attention Planning Technician
Marlborough District Council
PO Box 443
Blenheim 7240

Fax: 03 520 7496

Email: mep@marlborough.govt.nz

For Office Use
Submission No:

RECEIVED

26 AUG 2016

MARLBOROUGH
DISTRICT COUNCIL

5. The specific parts of the Proposed Plan (Volume, Chapter and Provision No.) the submission relates to are as follows:

Volume 4 Plans - Overlay - Landscape - Plan 4
- Overlay - Coastal Natural Character - Plan 4

Continue on a separate sheet if necessary

6. My submission is: (state the nature of your submission whether you support or oppose (in full or in part) specific provisions)

The illustration of outstanding natural landscape and high Natural Character in Tuhiarata Bay is opposed. The plan should recognize that aquaculture is part of the existing landscape. The presence of marine farms should be expressly recognized as it pertains to the area and site 8623

The submission by the Marine Farming Association is supported in its entirety.

Continue on a separate sheet if necessary

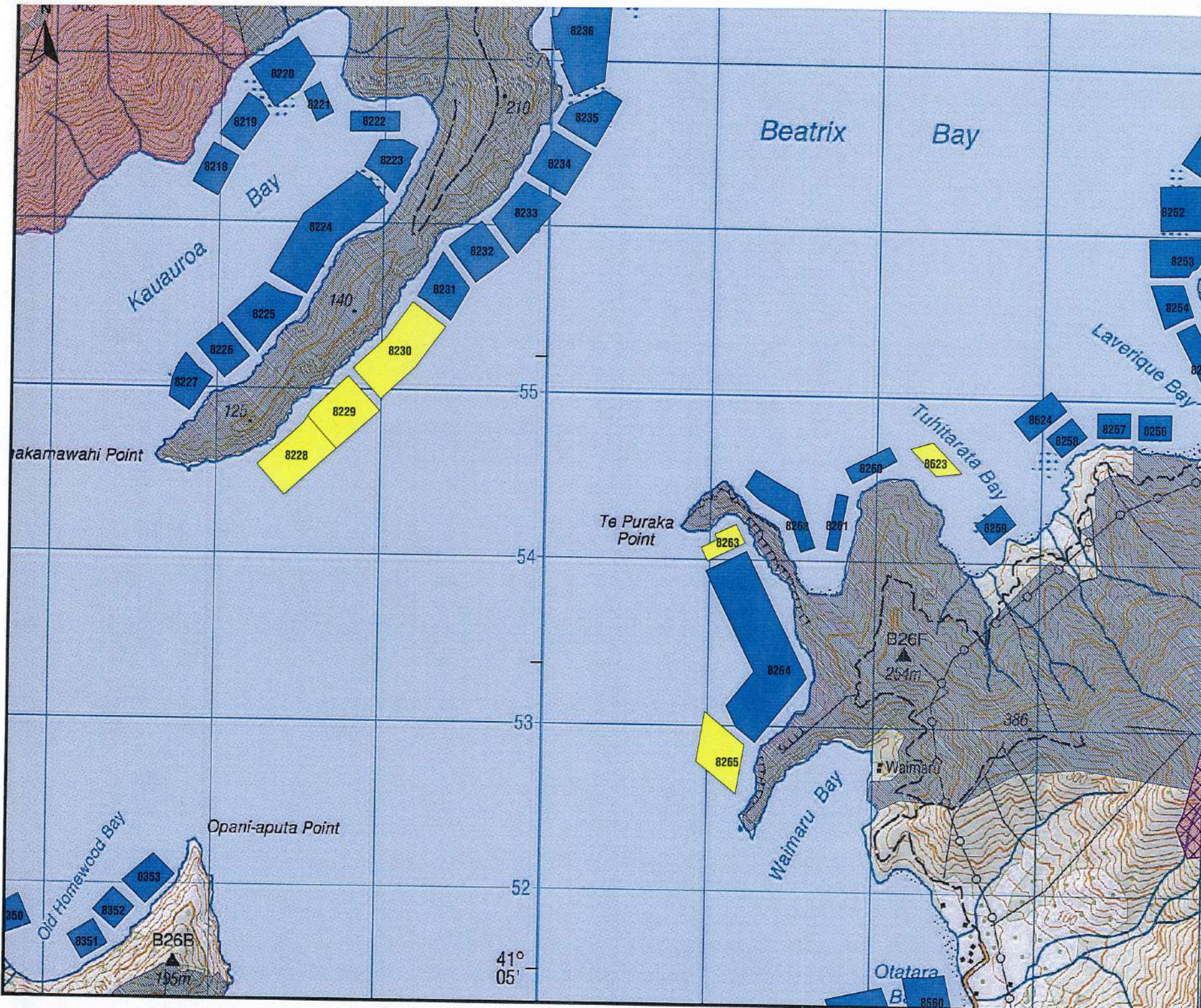
7. The decision I seek from Council is: (where amendments are sought, provide details of what changes you would like to see)

Modify the plan and recognize the presence of aquaculture in the zone.

Continue on a separate sheet if necessary

Marlborough Sounds Marine Farms and Proposed Marlborough Environment Plan

Coastal Natural Character



- KEY**
- Granted Marine Farm
 - Client Marine Farm
 - Outstanding Natural Character
 - Very High Natural Character
 - High Natural Character

MEP data supplied by Marlborough District Council.
 Marine Farm data sourced from MDC Open Data (July 2016).
 Topo Map data from LINZ Data.

Produced by Draughting Plus Ltd from Marine Farm Data supplied by Marlborough District Council.
 The accompanying material has been released by Council from its information repositories as they exist as at June 2016. Council does not accept any responsibility for the initial and ongoing accuracy of the material. It is the responsibility of the recipient to make such checks as the recipient considers appropriate to ensure accuracy.

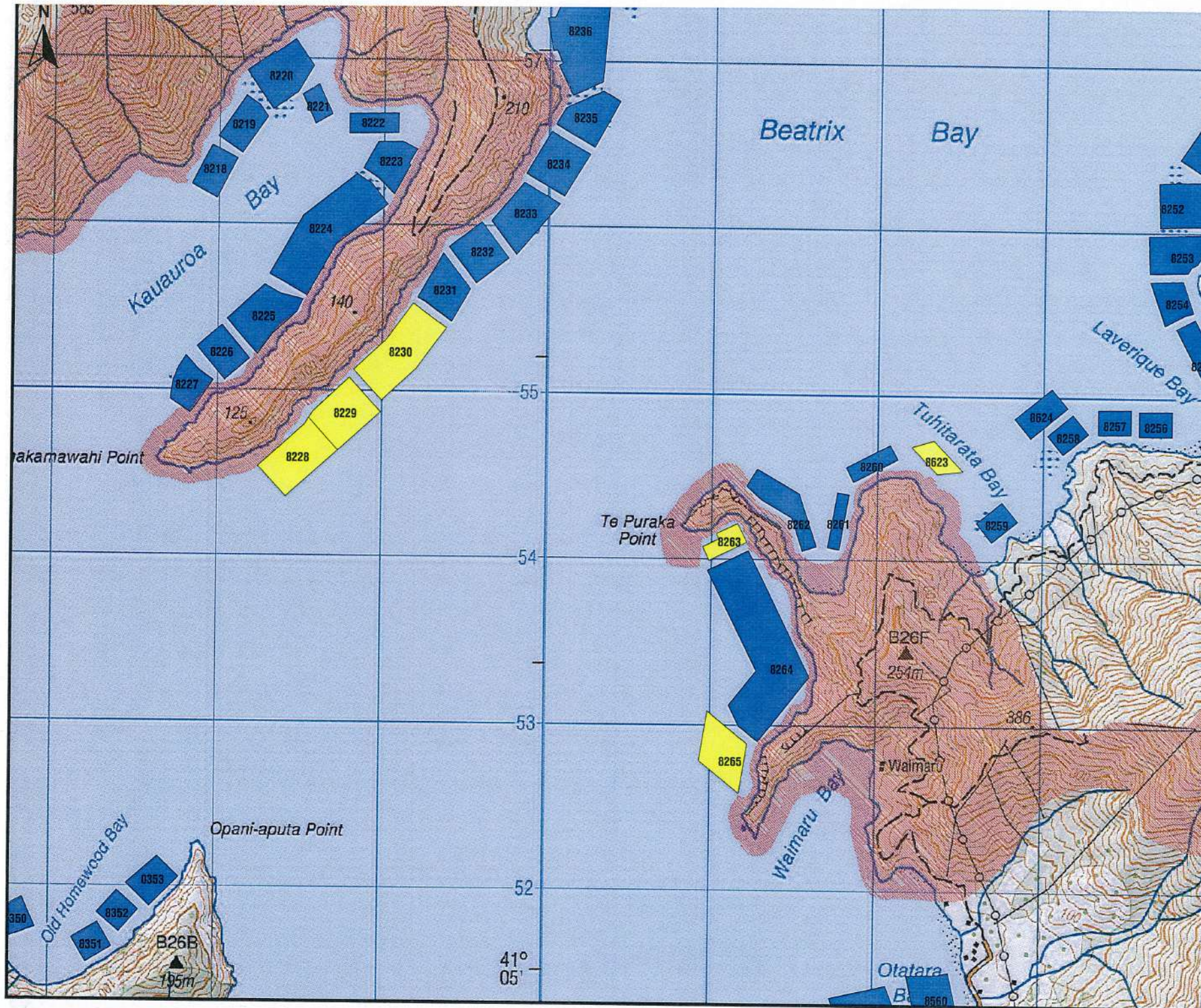


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Prepared: 11th August 2016

Marlborough Sounds Marine Farms and Proposed Marlborough Environment Plan

Outstanding Natural Landscape



- KEY**
- Granted Marine Farm
 - Client Marine Farm
 - Outstanding Natural Landscape

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Scale 1:30,000

Prepared: 11th August 2016

Submission on the Proposed Marlborough Environment Plan



Submissions close 1 September 2016

ISO 9001
Document Number:
EAF0005-C11726

1. Submitter Details

Full Name	TREBLE TREE HOLDINGS LIMITED		
Organisation (if applicable)			
Contact Person (if applicable)	R. D. SUTHERLAND		
Postal Address	P.O. Box 751		
	BLENHEIM		
		Post Code	
Contact Details	Email Address:	palmsltd@xtra.co.nz	
	Phone: [Daytime]	03 5781733	Phone: [Mobile] 027 220 7299
Address for Service			
(if different from above)			
		Post Code	7240
Signature (of submitter or person authorised to sign on behalf of submitter)	R D Sutherland		Date 26-8-2016

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2. Trade Competition

Could you gain an advantage in trade competition in making this submission? Yes No

If you answered yes, please note that there are restrictions on your ability to make a submission. Refer to Clause 6(4) of the First Schedule of the RMA for further information.

3. Council Hearing

Do you wish to be heard in support of your submission? Yes No

If you answered 'Yes' to being heard, would you be prepared to consider presenting a joint case with others who have made a similar submission? Yes No

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DISTRICT COUNCIL

5. The specific parts of the Proposed Plan (Volume, Chapter and Provision No.) the submission relates to are as follows:

Volume 4 Plans - Overlay - Landscapes Plan 4
- Overlay - Coastal Natural Character Plan 4

Continue on a separate sheet if necessary

6. My submission is: (state the nature of your submission whether you support or oppose (in full or in part) specific provisions)

That the illustration of outstanding natural landscape at Te Puke Point and high natural character ^{is found} recognise that aquaculture is part of the existing landscape. The presence of marine farms should be expressly recognised as it pertains to site 8263

The Submission by the Marine Farming Association is supported in its entirety

Continue on a separate sheet if necessary

7. The decision I seek from Council is: (where amendments are sought, provide details of what changes you would like to see)

Modify the plans and recognise the presence of aquaculture in the zone

Continue on a separate sheet if necessary

Marlborough Sounds Marine Farms and Proposed Marlborough Environment Plan

Outstanding Natural Landscape

KEY

- Granted Marine Farm
- Client Marine Farm
- Outstanding Natural Landscape

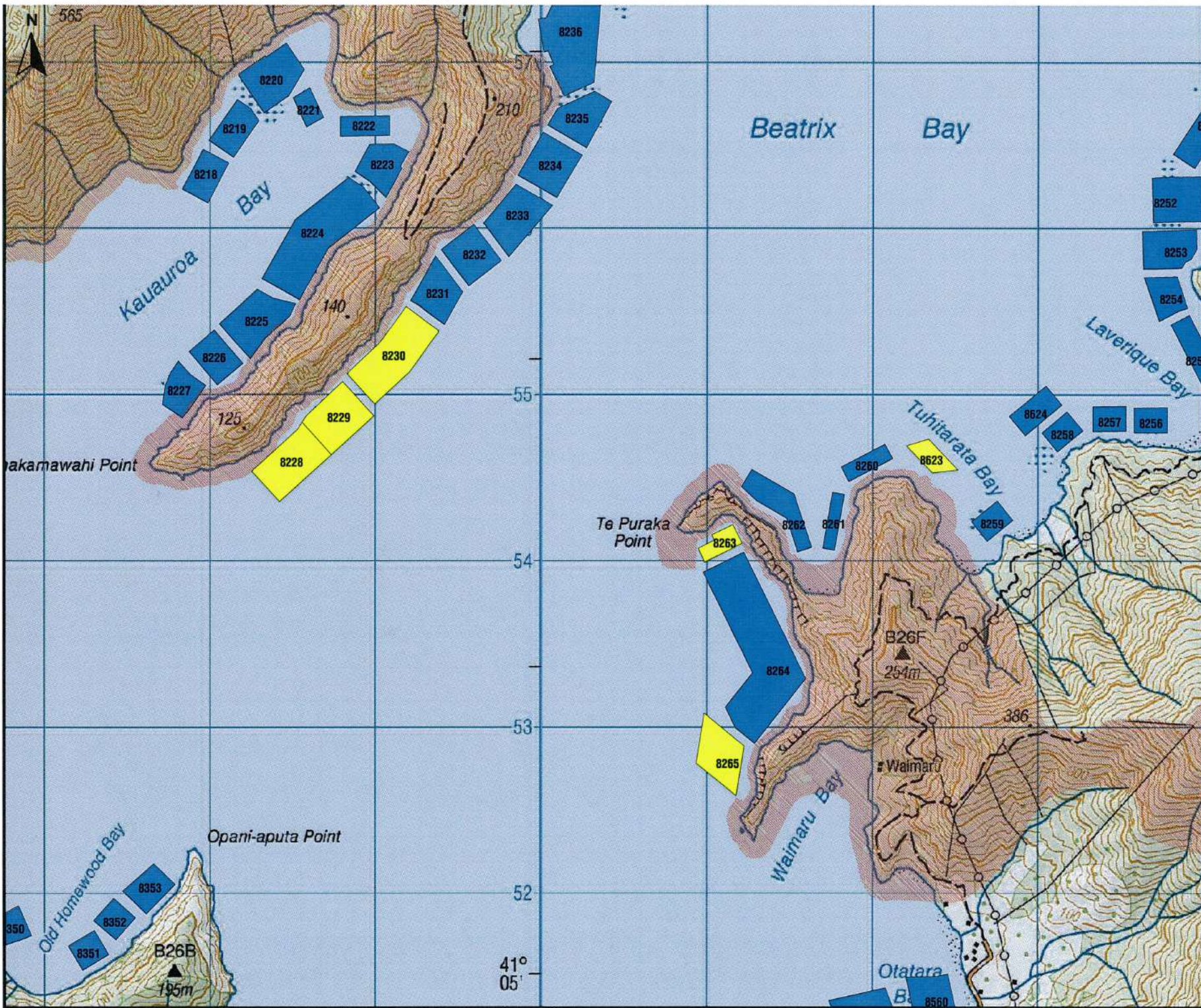
MEP data supplied by Marlborough District Council.
 Marine Farm data sourced from MDC Open Data (July 2016).
 Topo Map data from LINZ Data.

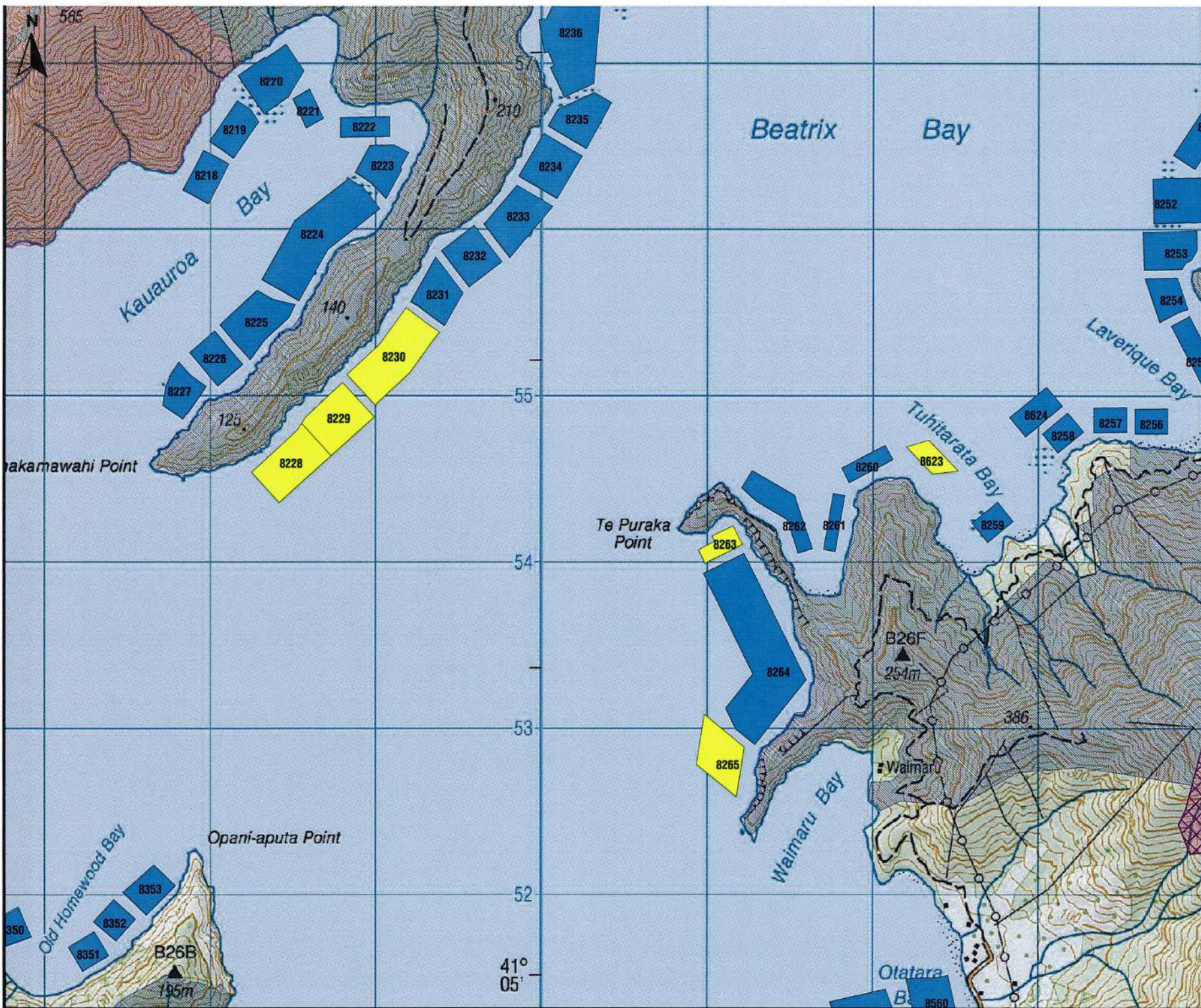
Produced by Draughting Plus Ltd from Marine Farm Data supplied by Marlborough District Council.
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Scale 1:30,000

Prepared: 11th August 2016





Marlborough Sounds Marine Farms and Proposed Marlborough Environment Plan

Coastal Natural Character

- KEY**
- Granted Marine Farm
 - Client Marine Farm
 - Outstanding Natural Character
 - Very High Natural Character
 - High Natural Character

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Submission on the Proposed Marlborough Environment Plan



Submissions close 1 September 2016

ISO 9001
Document Number:
EAF0005-C11726

1. Submitter Details

Full Name	TREBLE TREE HOLDINGS LIMITED		
Organisation (if applicable)			
Contact Person (if applicable)	R. D. SUTHERLAND		
Postal Address	P.O. Box 751		
	BLENHEIM		
		Post Code	
Contact Details	Email Address:	palmsltd@xtra.co.nz	
	Phone: [Daytime]	03 5781733	Phone: [Mobile] 027 220 7299
Address for Service			
(if different from above)			
		Post Code	
Signature (of submitter or person authorised to sign on behalf of submitter)	RD Sutherland		Date 26-8-2016

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2. Trade Competition

Could you gain an advantage in trade competition in making this submission? Yes No

If you answered yes, please note that there are restrictions on your ability to make a submission. Refer to Clause 6(4) of the First Schedule of the RMA for further information.

3. Council Hearing

Do you wish to be heard in support of your submission? Yes No

If you answered 'Yes' to being heard, would you be prepared to consider presenting a joint case with others who have made a similar submission? Yes No

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Fax: 03 520 7496

Email: mep@marlborough.govt.nz

For Office Use
Submission No:

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26 AUG 2016

MARLBOROUGH
DISTRICT COUNCIL

5. The specific parts of the Proposed Plan (Volume, Chapter and Provision No.) the submission relates to are as follows:

Volume 4 Plans overlay - Landscapes Plan 1
Overlay - Coastal Natural Character, Plan 1

Continue on a separate sheet if necessary

6. My submission is: (state the nature of your submission whether you support or oppose (in full or in part) specific provisions)

That the illustration of outstanding natural landscape and very high and high natural character is opposed as it relates to the land and water surrounding main farm sites 8104, 8105 & 8106. as is shown on the attached Plans. The presence of main farms should be expressly recognised. The submission by the Marine Farming Association is supported in its entirety. Particular emphasis on research and innovation for this area is supported.

Continue on a separate sheet if necessary

7. The decision I seek from Council is: (where amendments are sought, provide details of what changes you would like to see)

Modify both plans above to reflect the unique, innovative research values identified for this zone.

Continue on a separate sheet if necessary

Marlborough Sounds Marine Farms and Proposed Marlborough Environment Plan

Outstanding Natural Landscape

KEY

- Granted Marine Farm
- Client Marine Farm
- Outstanding Natural Landscape

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Prepared: 11th August 2016



Marlborough Sounds Marine Farms and Proposed Marlborough Environment Plan

Coastal Natural Character

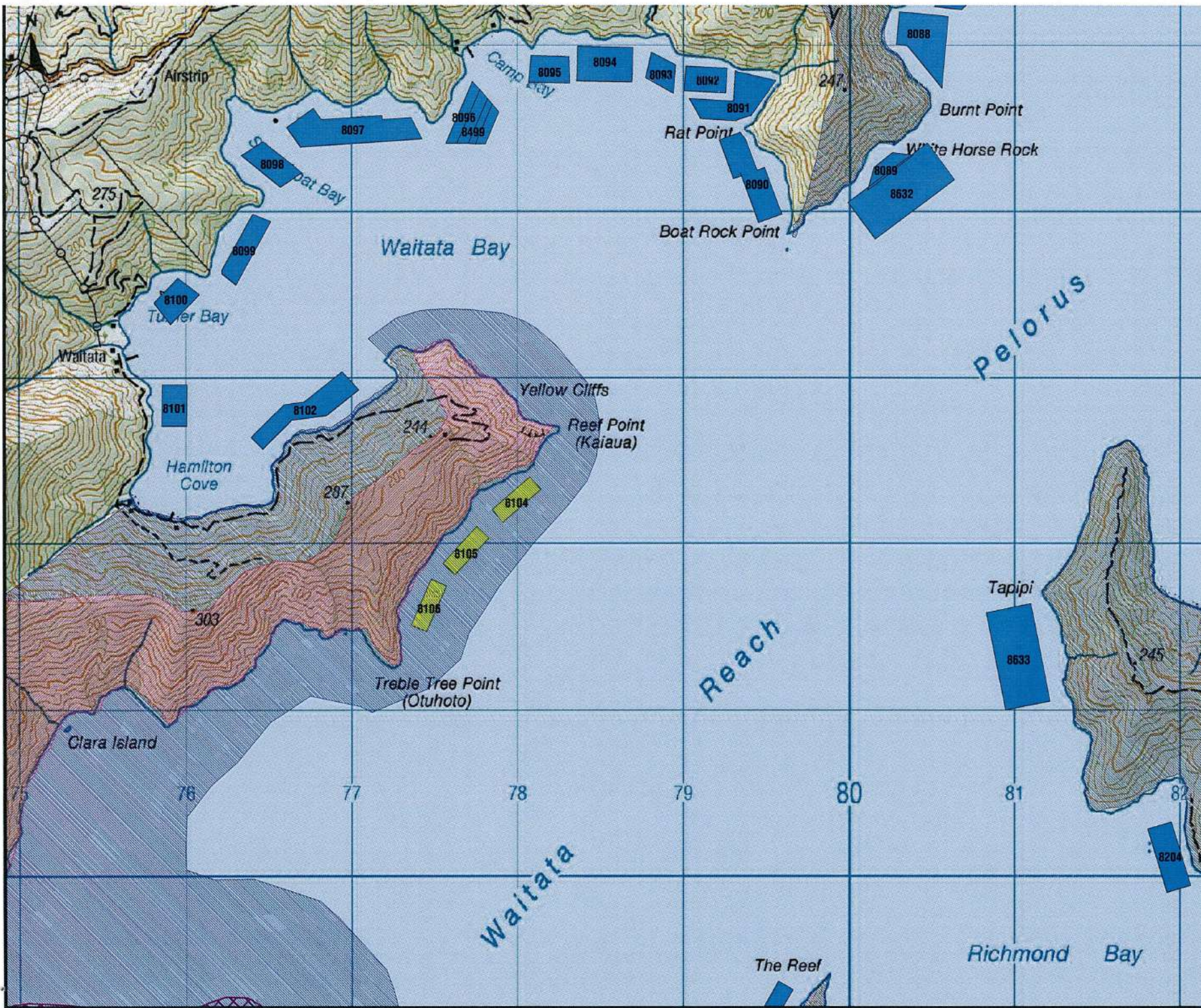
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 Prepared: 11th August 2016



Schedule C

Decision of the MEP Hearings Panel: <https://www.marlborough.govt.nz/your-council/resource-management-policy-and-plans/proposed-marlborough-environment-plan/decisions-on-the-pmep/full-decision-on-the-pmep>

Track Changes of the MEP: <https://www.marlborough.govt.nz/your-council/resource-management-policy-and-plans/proposed-marlborough-environment-plan/decisions-on-the-pmep/pmep-tracked-changes-version>

Schedule D: Persons to Be Served With a Copy of this Notice

Name / Organisation	Contact	Address for Service
Marlborough District Council	Kaye Mcllveney	Kaye.Mcllveney@marlborough.govt.nz