MARLBOROUGH DISTRICT COUNCIL

Proposed Marlborough Environment Plan

Topic 11: Coastal Environments

Hearing dates:	9 – 12 and 16 April 2018
S42A Report Writer:	Debbie Donaldson and Ken Gimblett
Conflicts of Interest:	Yes
Interim decision:	Yes

(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)

List of Abbreviations

PMEP	Proposed Marlborough Environment Plan
RMA	Resource Management Act 1991

Submitter abbreviations

AQNZ	Aquaculture New Zealand
FIS	The Fishing Industry Submitters
Fish & Game	Nelson Marlborough Fish and Game
Hort NZ	Horticulture New Zealand
MDC	Marlborough District Council
NZDF	New Zealand Defence Force
NZTA	New Zealand Transport Agency
PMNZ	Port Marlborough New Zealand Limited

Structure of Decisions

1. It is important that the topic decision is read as a whole together with the tracked change version of the Plan. The decision on each topic contains the reasons for the Panel's decisions. These comprise either adoption of the reasoning and recommendations of the original Section 42A Report or the replies to evidence, or a specific reasoning by the Panel[1].

2. The tracked change version of the relevant PMEP provisions forms an integral part of the decision. The source of the change in terms of the topic that the subject matter was dealt with is clearly identified in the track changes version of the plan. This records all amendments (additions and deletions) to the notified PMEP provisions made by the Panel.

3. Where the PMEP provisions **remain as notified**, it is because:

   (a) The Panel has decided to retain the provision as notified for reasons set out in this decision; or

   (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to retain the provision as notified as recommended in the Reply to Evidence; or

   (c) The Panel adopted the reasoning and recommendation of the Section 42A Report to retain the provision as notified in the original Section 42A report.

4. Where there is a **change to a provision** within the plan it is because:

   (a) The Panel has amended a provision for reasons set out in this decision in response to a submission point which the Section 42A report writer(s) does not recommend in their reports; or

   (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the Reply to Evidence; or

   (c) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the original Section 42A report; or

[1] (The only exception to that approach relates to the Noise section of the Nuisance topic where the reasoning and recommendations in the responses to Minutes 54 and 59 may have been adopted, rather than the reasoning and recommendations in the Section 42A Report or the Reply to Evidence report. The reasons for that difference in that topic are dealt with in detail at the commencement of the Noise section of the Nuisance topic decision. In respect of that topic the approach to understanding of the individual submission point decisions addressed in paragraphs 13.3 to 13.5 below should be adjusted accordingly to apply references to the Section 42A Report and/or Reply to Evidence in those paragraphs as being references to the responses to Minutes 54 & 59 for that Nuisance topic.)

(d) A consequential change has been necessary following on from a decision in either a), b) or c).

5. Where there is a **different recommendation** between the Section 42A Report and the Reply to Evidence (i.e., the recommendation by the Section 42A report writer(s) has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.

6. There are limited circumstances where the Panel has taken the opportunity to give effect to national policy statements or implement national environmental standards. Where this occurs the relevant decision clearly sets out the nature of the change and the reason for the change.

7. Finally, there are limited circumstances where the Panel has decided that **alternative relief** is more appropriate than that requested by the submitters, but still within the scope of the relief sought. This is recorded in the Panel's decision.

Fishing

Issue 13C

The depletion of wild fisheries in the Marlborough Sounds.

Objective 13.4

The sustainable management of fisheries in the Marlborough Sounds.

8. A number of submitters had considerable concerns about the inclusion of these provisions in the PMEP and queried: the lack of jurisdiction for Council to control the sustainable management of fisheries; the Council's role in the sustainable and integrated management of fisheries; the narrow scope of the issue that only relate to the Marlborough Sounds; the role of kaitiaki; the Council's support advocacy role.[2]

Section 42A Report

9. The report writer's recommendation, after exploring all the issues arising, was the Fishing section in Chapter 13 Use of the Coastal Environment should be deleted.

Consideration

10. After discussing this recommendation, the Panel decided that Issue 13C and Objective 13.4 provisions were inappropriate as worded. There is concern regarding legal jurisdiction issues as to the inclusion of provisions on fishing. It is necessary to amend the provisions to put the emphasis on fish habitats. The Council has no function to control the fisheries resources itself. This is the role of the Fisheries Act 1996.

Decision

11. The emphasis should be placed as a result on fish 'habitats', that is already achieved in Policy 8.2.12 which covers 13.4.1 and 13.4.2 in the context of habitats and methods 8.M.6 and 8.M.11 covers advocacy and support. On this basis decision made to delete the issue and subsequent provisions. However, advocacy in terms of the fisheries management role of MPI not covered by existing methods. Insert a new method in 8.M.11 as follows: "

There are a number of Crown agencies with statutory responsibilities that influence the management of the indigenous biodiversity of the Marlborough Sounds, including the fishery resources that exist in the coastal marine area. The Council will take steps to encourage discussions between these agencies to facilitate a discourse on the respective management roles of each agency and how they could be better integrated to achieve Objectives 8.1 and 8.2.

[2] Burkhart Fisheries Limited and Lanfar Holdings (4) Limited (610.003), The Fishing Industry Submitters (710.030), Legacy Fishing Limited (906.003), PauaMAC 7 Industry Association Incorporated (1038.003).

12. As a consequence Issue 13C and Objective 13.4, Policy 13.4.1, 13.4.2 and Method 13.M.9 are deleted.

Policy as to adverse effects of Subdivision, use and development

Policy 13.1.1

Avoid adverse effects from subdivision, use and development activities on areas identified as having:
(a) outstanding natural character;
(b) outstanding natural features and/or outstanding natural landscapes;
(c) significant marine biodiversity value and/or are a significant wetland; or
(d) significant historic heritage value.

13. A number of submissions were made on this policy raising issues amongst the more significant changes requested such as whether it was consistent with the RMA; requests that 'avoid' be changed to 'avoid, remedy or mitigate in Policy 13.1.1; whether it should refer specifically to s 6(e) RMA matters; or to fisheries resources.

Section 42A Report

14. The Section 42A Report identified that the policy should be prefaced by aiming at 'inappropriate' adverse effects on 'characteristics and values' protected by the policy and recommended amendments to capture those points. The Reply to Evidence changed stance on the recommendation of the insertion of 'inappropriate' concluding it was unnecessary as the identification of values to be assessed addressed the issue of appropriateness.

15. The Section 42A Report also identified that the outstanding aspects as requiring protection in the NZCPS should be emphasised in the explanatory statement to the policy and made a recommendation to that effect, with the Reply report adding a recommendation of addition of reference to indigenous biodiversity.

Consideration

16. On the issue of whether 'avoid' should be changed to 'avoid, remedy or mitigate in Policy 13.1.1 the Panel had regard particularly to the NZCPS provisions and also considered the interrelationship and consistency of this Policy with Policy 8.3.1 which states:

> *Policy 8.3.1 – Manage the effects of subdivision, use or development in the coastal environment by:*
>
> *(a) avoiding adverse effects where the areas, habitats or ecosystems are those set out in Policy 11(a) of the New Zealand Coastal Policy Statement 2010;*

(b) avoiding adverse effects where the areas, habitats or ecosystems are mapped as significant wetlands or ecologically significant marine sites in the Marlborough Environment Plan; or

(c) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects where the areas, habitats or ecosystems are those set out in Policy 11(b) of the New Zealand Coastal Policy Statement 2010 or are not identified as significant in terms of Policy 8.1.1 of the Marlborough Environment Plan.

17. The Panel decided the issues raised were best responded to by some changes which better aligned the policy with the distinctions in the NZCPS between effects as expressed in NZCPS Policy 11(a) and 11 (b). By doing that a better alignment with Policy 8.3.1 would be achieved.

18. The iwi concerns and s 6(e) RMA imperatives were best addressed by a specific reference to sites of significance specific and a more general reference to 'cultural values'. The latter also encompassed heritage values meaning that specific reference could be replaced in that way. Cross –references could also be made in the explanatory statement to Chapters 3, 6, 7, 8 and 10.

19. The broader fisheries effects issues are dealt with later in a separate consideration in this decision.

Decision

20. Amend Policy 13.1.1 by replacing it to read as follows:

Protect against inappropriate subdivision, use and development by avoiding adverse effects on the characteristics and values identified as having:

(a) Outstanding natural character

(b) Outstanding natural features and/or outstanding natural landscapes;

and avoiding significant adverse effects on:

(c) marine biodiversity or cultural values and/or a significant wetland; or

(d) sites and places of significance to Marlborough's Tangata Whenua iwi;

21. Amend the explanatory statement to read:

Policy 13.1.1 identifies ~~four~~ outstanding significant matters upon which the adverse effects of activities are to be avoided and requires significant adverse effects to be avoided on other values and sites. These matters are given particular direction through the principles of the

RMA (Sections 6(a), (b), (c) and (f)) and through direction provided by NZCPS Policies 11, 13, 15 and 17. However, it is important to acknowledge that implementing the policy does not mean that all activities are prohibited from occurring in the areas with the identified values; it simply makes clear that any adverse effects of activities must be avoided in those areas, rather than being mitigated or remedied.

Other Chapters with provisions relevant to this Policy include Chapters 3, 6, 7, 8 and 10.

Policy 13.2.3

To enable periodic reassessment of whether activities and developments are affecting the values of the coastal marine area, to encourage efficient use of a finite resource and in consideration of the dynamic nature of the coastal environment:

(a) lapse periods for coastal permits will be no more than five years; and

(b) the duration of coastal permits granted for activities in the coastal marine area for which limitations on durations are imposed under the Resource Management Act 1991 will generally be limited to a period not exceeding 20 years.

22. This policy outlines that the timeframes for which coastal permits will be granted. Submissions in opposition to the policy were predominantly occupiers of the coastal environment and they raised concerns that a 20 year duration creates potential uncertainty for large investments. NZTA sought an exemption 'where a permit enables the development, operation, maintenance or upgrade of regionally significant infrastructure'. This position is supported in a further submission by Port Marlborough. Port Clifford raised a similar issue in the context of port development.

Section 42A Report

23. The report writer noted that the policy periodically allowed for the impacts of activities on the coastal environment to be reassessed. She considered that this was an appropriate approach given that the resource is finite, sensitive and dynamic, and is subject to demand for use from an increasing number or activities and users.

24. Another aspect highlighted by the report writer was the deliberate inclusion of "generally" in (b). Her view was that the policy therefore allowed for applications for duration in excess of 20 years to be made and considered on their merits.

25. The report writer concluded that there should be not change to Policy 13.2.3 in response to the submissions seeking longer coastal permit terms or exemptions from the policy.

Consideration

26. The starting point for the Panel's consideration of this matter was Section 123 and 123A of the RMA. These provide limited guidance as the term for a coastal permit can be granted up to a maximum of 35 years. In the case of coastal permits for aquaculture activities, the minimum duration is 20 years.

27. The Panel agrees with the report writer that the coastal environment is already a dynamic environment and will probably become even more so as a result of the effects of climate change. The Panel also heard evidence across the topic on the pressures that exist in the coastal environment as a result of increased resource use. In this context, the Panel agrees with the report writer that periodic assessment of adverse effects is appropriate and that the policy should remain as notified. The concerns of the submitters are alleviated somewhat by the notified wording of (b), which clearly anticipates that there will be circumstances where longer durations can be justified.

28. The Panel also took into account the issue raised by NZTA and Port Clifford with respect to regionally significant infrastructure. Provisions elsewhere in this Plan acknowledge the importance of regionally significant infrastructure to community wellbeing. Given the wording of (b), the Panel was of the view that the explanation to the policy should clearly signal that durations in excess of 20 years should be considered for coastal permits required to authorise regionally significant infrastructure.

29. However, a lingering concern of the Panel in this regard is the sea level rise and coastal inundation. The Panel carefully considered the interim direction[3] that should be provided by the Plan for managing for sea level rise as part of Topic 16. The decision on this topic records that new infrastructure should design for the H+ scenario (i.e., 1.52 metres).[4] The Panel's view therefore is that the addition to the explanation should only apply where the H+ scenario has been used in the design of the infrastructure. This direction will ensure a consistent approach with the climate change provisions of the Plan.

Decision

30. Retain the policy as notified but add the following text as a new paragraph at the end of the existing explanation:

Longer durations than those specified in this policy may be appropriate for regionally significant infrastructure. However, sea level rise will be a challenge to constructing and maintaining infrastructure in some parts of the coastal environment in the future. In this context, longer durations are only appropriate where the developers of the infrastructure have taken into account the H+ scenario in the design of the infrastructure. See climate change provisions for further details.

[3] The direction that applies until the outcome of a DAPP process applies.
[4] Policy 19.2.2

Mooring Number Limitations

Policy 13.9.2

Subject to the matters in Policy 13.9.1, moorings will be limited by:
(a) regarding as appropriate the installation of one mooring per Computer Register or Computer Unit Title Register to enhance access to private property;
(b) regarding as inappropriate a mooring where the applicant does not own land in the vicinity of the proposed mooring location, except in the case of collective moorings; and
(c) linking resource consent to a particular property/commercial activity, where consent is granted for a mooring to provide access to an applicant's property or for a boat associated with a commercial activity undertaken in the vicinity of the mooring site. Consent must then be transferred to the new owner(s) on the sale of the property/commercial activity.

31. A submission by Taurewa Lodge Trust raised concerns at the limitation on the number of moorings in this policy. The Panel agreed with the reasoning and recommendation of the Section 42A Report that no change should be made to this policy particularly as the policy is subject to Policy 13.1.19 and the range of factors outlined there which provides a broad discretion to a decision-maker.

32. However, the Panel did decide some small changes to the explanatory statement would be of assistance in limited circumstances where other access options are constrained.

Decision

33. Amend the fourth sentence of the explanatory statement to Policy 13.9.2 to read:

~~Avoiding the proliferation of moorings by~~ Limiting numbers to one per property will generally help to avoid adverse effects and leave enough coastal space for other landowners to locate moorings.

34. Add the following sentence to the end of the explanatory statement to Policy 13.9.2:

Limited flexibility exists to consider special circumstances, particularly for those permanently residing in the Marlborough Sounds without road access.

New Mooring design policy

Policy 13.9.9

In determining an application for a new mooring consideration should be given to the appropriateness of the mooring type and design proposed in order to reduce the ecological effects of seabed disturbance caused by the mooring.

35. As a result of submissions expressing concerns as to the effects of standard swing moorings and in particular the mooring chain movements on the seabed causing major seabed disturbance, the Section 42A Report[5] had proposed that a new Policy 13.9.9 be included in the Plan to address those issues.

[5] Paragraph 463

36. That policy was criticised at the hearing as being by implication an endorsement of elasticized new mooring methods which were said to be inadequate and even potentially dangerous to vessels and/or people in severe wind conditions.

Consideration

37. The Panel accepted that the evidence produced at the hearing meant that the policy needed amendment to ensure that the two aspects of ecological effects on the one hand and health and safety effects on the other both needed consideration at consent stage. The Section 42A Report had also acknowledged that need but the Reply to Evidence report recommendation proposed a wording which might arguably be said to have elevated the ecological considerations above those of health and safety. The Panel, therefore, has split those two considerations to ensure neither has any implied priority.

Decision

38. Insert a new Policy and explanatory statement as follows:

Policy 13.9.9 – In determining an application for a new mooring, (other than applications re-consenting existing moorings) consideration should be given to the appropriateness of the mooring type and design proposed in order to:

(a) reduce the ecological effects of seabed disturbance caused by the mooring in terms of Policy 8.3.1; while

(b) ensuring that the mooring type and design protects the health and safety of people and vessels.

There is evidence to demonstrate that that conventional block and chain moorings can cause damage to the sea bed as a result of heavy ground chain scoring that can occur within the 360 degree arc around the mooring block. The placement of moorings can therefore have adverse effects on seabed habitats surrounding the mooring, in particular within areas of ecological, conservation, or traditional values that are sensitive to disturbance. Policy 8.3.1 requires adverse effects to be either avoided, where the site is a significant site in terms of Policy 8.1.1 or avoided, remedied or mitigated where indigenous biodiversity values have not been assessed as significant in terms of Policy 8.1.1. Policy 8.1.1 provides the criteria for the assessment of significant biodiversity values.

This policy requires that consideration is given to other mooring types and design that would not disturb the seabed surrounding the mooring, whilst also ensuring the mooring type and design is suitable for the location, particularly in exposed settings, and protect the health and safety of people and vessels.

Policy request for 'Development' in Port Zone

Policy 13.11.2

Reclamation or drainage in the coastal marine area shall be avoided, unless:

(a) the activity to be carried out on the reclamation has to be adjacent to the coastal marine area; and

(b) It can be shown there are no alternative land-based sites available (above Mean High Water Springs); or

(c) the works are for the operational needs of ports within Port Zones or for the operational needs of marinas within Marina Zones, where they are consistent with other relevant policies of the Marlborough Environment Plan.

39. Port Marlborough sought the inclusion of 'development' in subclause (c) of this policy.

40. Initially the report writer disagreed and in the Reply to Evidence report reiterated it was not necessary but then succumbed to the request and recommended it.

Consideration

41. The Panel took the view that it agreed with the original analysis of this request that the phrase 'operational needs' enabled all that the policies envisaged in terms of Policies 13.17.3 (d), (f) and (g) and 13.7.4 (g) which provide a policy framework around the ports and marinas. This change sought was not seen as necessary by the Panel.

Decision

42. The amendment requested is rejected.

Disposal of dredged material

Policy 13.12.1

Proposals to dispose of dredged or other material in the coastal marine area must demonstrate that:

(a) no reasonable and practicable alternatives are available on land;

(b) the disposal will be undertaken in a location and at times of the day or year that will avoid (in the first instance), then remedy or mitigate adverse effects on:

- **(i) the growth and reproduction of marine and coastal vegetation and the feeding, spawning and migratory patterns of marine and coastal fauna;**
- **(ii) navigational safety;**
- **(iii) other established activities located in the coastal marine area that are likely to be affected by the disposal;**
- **(iv) water quality, including an increase in water turbidity or elevated levels of contaminants;**
- **(v) shoreline instability or coastal erosion on adjacent coastal land; and**

(c) in the case of dredged material, the site is located so as to avoid, as far as practicable, the spread or loss of sediment and other contaminants to the surrounding seabed and coastal waters through the action of coastal processes such as waves, tides and other currents.

43. A number of submissions were made on this policy and the succeeding one 13.2.2. The Panel agreed with the Reply to Evidence approach and to the extent not amended by that report the reasoning and recommendations in the original report.

44. However, the Reply to Evidence recommended as follows for subclause (a):

Policy 13.12.1 – Proposals to dispose of dredged or other material in the coastal marine area must demonstrate that:

no reasonable and practicable alternatives are available on land, or there is a legitimate use for material within the coastal marine area (such as part of reclamation)

45. The Panel considers the word 'legitimate' in subclause (a) needs to be amended to "appropriate".

46. The only other area of reasoning or recommendations in the original report with which the Panel did not agree related to subclauses (c) and (d) where the report recommended the following amendments:

(c) ~~in the case of dredged material~~, the site is located so as to avoid, as far as practicable, the spread or loss of sediment and other contaminants to the surrounding seabed and coastal waters through the action of coastal processes such as waves, tides and other currents.; and

(d) The material that is disposed is free from waste.

47. The Panel did not agree that those changes were appropriate or necessary and preferred the notified wording. Subclause (c) is specific to dredged material and potential sediment effects but the policy is broader than dredged material ("…dredged and other material…". Removing the text from (c) therefore makes it apply to that other material which is not appropriate given the focus within (c) on sediment. In terms of (d) the concern was that another Panel decision created a new discretionary activity rule to enable restoration or creation of shellfish reefs using mussel shell disposed of at sea for restoration purposes. The new (d) would prevent that from happening as the shells would be "waste". In other words, there would be a conflict between the policy direction and the Panel's intent to enable to the extent possible restoration or creation of shellfish reefs.

Decision

48. Policy 13.12.1 is amended as follows:

Policy 13.12.1 – Proposals to dispose of dredged or other material in the coastal marine area must demonstrate that:

no reasonable and practicable alternatives are available on land, or there is an appropriate use for material within the coastal marine area (such as part of reclamation);

Use of the foreshore by vehicles

Policy 13.13.3

Discourage the use of motorised vehicles on the foreshore where this will impact on ecological values or safety of other foreshore users, where the foreshore acts as protection from the sea or on cultural, heritage and amenity values.

There are some locations around Marlborough's coastline where the foreshore environment is such that motorised vehicles can be used. However, the use of motorised vehicles can have adverse impacts on other beach users, from both a safety and amenity perspective, as well as on ecological, cultural and heritage values. Where there is the potential for these values to be affected this policy discourages the use of motorised vehicles. The policy gives effect to NZCPS Policy 20.

49. Submissions by Forest & Bird[6] and Cape Campbell Farm Limited[7] sought respectively that the word 'discourage' be strengthened and that motorbike usage also be addressed, while Federated Farmers sought the policy be restricted to recreational vehicles.

Section 42A Report

50. The report drew attention to NZCPS Policy 20 and stated that 'vehicles' are to be controlled if certain effects occur rather than specified types. As to the request to change the word 'discourage' the report concluded:

> *As outlined within the s32 where there is the potential for identified values to be affected, this policy discourages the use of vehicles, and provides a policy framework on which the Council and the Department of Conservation will liaise to identify areas, and determine the most effective method for control (such as exclusion of access) if deemed necessary. This approach is consistent with the direction provided within NZCPS Policy 20. I consider that Policy 13.13.3 as notified is able to achieve the outcomes sort by the submitter, and therefore recommend that the submission is rejected*

Consideration

51. The Panel received very strong evidence supported by compelling photographs showing the extensive nature of coastal uplift near Cape Campbell as a result of the recent earthquake and the ability of vehicles as a consequence to range far more widely than was previously possible as a result of tidal influences. The fact of widespread vehicle usage was obvious and the evidence of local farmers was compelling that the level of vehicle use had increased markedly since the earthquake.

52. The Panel had regard to NZCPS Policy 20 which provides:

> *Policy 20 Vehicle access*

[6] (715.303)
[7] (1051.003)

(1) Control use of vehicles, apart from emergency vehicles, on beaches, foreshore, seabed and adjacent public land where:

(a) damage to dune or other geological systems and processes; or

(b) harm to ecological systems or to indigenous flora and fauna, for example marine mammal and bird habitats or breeding areas and shellfish beds; or

(c) danger to other beach users; or

(d) disturbance of the peaceful enjoyment of the beach environment; or

(e) damage to historic heritage; or

(f) damage to the habitats of fisheries resources of significance to customary, commercial or recreational users; or

(g) damage to sites of significance to tangata whenua;

might result.

(2) Identify the locations where vehicular access is required for boat launching, or as the only practicable means of access to private property or public facilities, or for the operation of existing commercial activities, and make appropriate provision for such access.

(3) Identify any areas where and times when recreational vehicular use on beaches, foreshore and seabed may be permitted, with or without restriction as to type of vehicle, without a likelihood of any of (1)(a) to (g) occurring.

53. The Panel was concerned many of the potential adverse effects identified in that policy were present, or potentially likely to occur in the vicinity of Cape Campbell, bringing Method 13.M.18 into play. It provides:

13.M.18 Bylaws

A bylaw promulgated under the Local Government Act may be used to control the use of vehicles on the foreshore.

54. A consequential change to the explanation of Policy 13.3.1 is also considered necessary. Policy 13.3.1 identifies that a permissive approach will apply to recreational activities but also identifies exemptions to this approach. Those exemptions are consistent with Policy 13.13.3 as there is no conflict in the provisions. However, the Panel believes that Policy 13.3.1 would

benefit from a cross reference to 13.13.3 as the latter policy illustrates how the exemption operates.

55. The Panel noted that NZCPS Policy 20 uses the term 'control' which fits with the by-law Method specified in the Plan. It decided that word should be used to rather than 'discourage' so as to more closely align this PMEP policy with the NZCPS.

Decision

Amend Policy 13.13.3 as follows:

Policy 13.13.3 – ~~Discourage~~ Control the use of motorised vehicles on the foreshore where this will impact on ecological values or safety of other foreshore users, where the foreshore acts as protection from the sea or on cultural, heritage and amenity values.

56. Amend the explanatory statement to Policy 13.13.3 as follows:

There are some locations around Marlborough's coastline where the foreshore environment is such that motorised vehicles can be used. However, the use of motorised vehicles can have adverse impacts on other beach users, from both a safety and amenity perspective, as well as on ecological, cultural and heritage values. Where there is the potential for these values to be affected this policy ~~discourages~~ controls the use of motorised vehicles. The policy gives effect to NZCPS Policy 20.

57. Add the following sentence to the end of the existing explanatory statement to Policy 13.3.1.

In this regard, Policy 13.13.3 identifies that control is to be exercised with respect to the use of motorised vehicles on the foreshore in specific circumstances.

Water Transportation effects

Policy 13.14.1

Enable water transportation activities where these do not have an adverse effect on the coastal environment.

58. Submissions in respect of this Policy from a range of water transport users expressed concern that the Policy was worded in far too restrictive a manner so as to avoid all effects. The report writer agreed as did the Panel. However, the Panel wished to see a slightly different wording to that recommended by the report writer.

Decision

59. Amend the Policy as follows:

Policy 13.14.1 – Enable water transportation activities where ~~these do not have an~~ adverse effects on the coastal environment are avoided, remedied or mitigated.

Amend the explanatory statement to Policy 13.14.1 as follows:

Due to the nature of Marlborough's coastal marine area (the extensive sheltered waterways of the Marlborough Sounds) and its central location within New Zealand, a number of water transportation activities have been in operation here for some time. It is important that provision is made to enable the activities identified in Objective 13.14 to continue where there is ~~little~~ minor adverse impact on the coastal environment.

Policy 13.15.2

Avoid, remedy or mitigate adverse effects on water transportation by:

(a) maintaining safe, clear navigation routes around headlands, unimpeded by structures;

(b) avoiding activities and/or locating structures within significant commercial shipping routes (including shipping routes from the Port of Picton, Havelock Harbour and from Waikawa Marina);

(c) avoiding emissions of light that could affect the safe navigation of ships;

(d) ensuring the safety of navigation and use of or access to mooring sites, boat sheds and ramps, jetties, wharves, ports, marinas, water ski access lanes and areas that provide shelter from adverse weather are not affected by activities or structures in the coastal marine area; and

(e) requiring structures to be maintained or marked in a way that protects the safety of water transportation activities.

60. Various submissions were made on this policy with submissions and evidence at the hearing particularly centred around issues of what were recognised navigational routes or recognised anchorages.

Section 42A Report

61. The report writer recommended a range of wording changes to respond to some of those submissions particularly as to 'recognised navigational routes' and 'recognised anchorages of refuge both of which were recommended to be defined. However, in essence the report and the Reply to evidence recommended the notified approach to this method of identifying effects that required to be addressed on consent applications be retained.

Consideration

62. The Panel agreed with the reasoning and recommended changes in the Section 42A Report save in one or two respects. The principal area where a differing conclusion was reached related to whether or it was useful or not to attempt to define both 'recognised navigation routes' and 'recognised anchorages of refuge'.

63. The Panel agreed with the recommendation that there be a definition of 'recognised navigation route' and the wording recommended because as the definition recommended in the original report at paragraph 504 states there are routes of navigation which are '*a safe sea passage and commonly used by vessels navigating within that area.'*

64. By contrast it was clear from the evidence and submissions made at the hearing that anchorages of refuge are particularly needed in extreme weather events and they cannot be readily defined in terms of common usage. Much will depend on weather conditions at the time.

65. The Panel agreed otherwise with the recommendations as to amendments for this policy which are described in the decision below.

Decision

66. Amend policy 13.15.2 as follows:

Policy 13.15.2 – Avoid, remedy or mitigate adverse effects on water transportation by:

(a) maintaining safe, clear navigation routes around headlands, unimpeded by structures;

(b) avoiding activities and/or locating structures within recognised navigational routes ~~significant commercial shipping routes (including shipping routes from the Port of Picton, Havelock Harbour and from Waikawa Marina);~~

(c) avoiding emissions of light that could affect the safe navigation of ships;

(d) ensuring the safety of navigation and use of or access to mooring sites (including Mooring Management Areas), boat sheds and ramps, jetties, wharves, ports, marinas, water ski access lanes and areas that provide shelter from adverse weather are not affected by activities or structures in the coastal marine area; ~~and~~

(e) ensuring that areas that provide for anchorages of refuge are not adversely affected by activities or structures within the coastal marine area; and

(f) requiring structures to be maintained or marked in a way that protects the safety of water transportation activities.

67. Insert a new definition in Volume 2 Chapter 25 as follows:

***Recognised navigational route** is a safe sea passage and commonly used by vessels navigating within that area. The recognised navigational route may be one used by commercial vessels to & from ports, and may also include pleasure craft routes which are normally used to navigate between popular destinations*

Further Development at Waikawa Bay

Policy 13.17.1

Specific areas are identified for activities related to the operation of ports, port landing areas and marinas through a Port Zone, Port Landing Area Zone and Marina Zone, respectively.

The use of zones enables activities to occur in specific and established areas of both the coastal marine area and land regarded as appropriate for the operation of ports/port landing areas/marinas. The zoned areas are based in part on facilities that have existed for some time with largely known effects. Some additional areas have been zoned in recognition of a need for expanded facilities; for example, the port in Shakespeare Bay (which is part of the Port of Picton).

Additionally, an area alongside the existing marina in Waikawa Bay remains undeveloped at notification of the MEP (9 June 2016), but has been zoned to provide opportunities in the future for additional berthage capacity.

The varying nature of ports in Marlborough is reflected in the differences in zoning approach and subsequent rules. For example, marina facilities in Havelock are co-located with port facilities, while smaller port landing areas have different rules than those for Picton or Havelock. This policy also helps to achieve the NZCPS, especially Policy 4, regarding the integrated management of natural and physical resources in the coastal environment.

68. In accordance with a past agreement to resolve an appeal in respect of aspects of the Marlborough Sounds Resource Management Plan Port Marlborough NZ Limited itself sought that a new rule creating non-complying status for any new marina development at Waikawa be inserted in the PMEP as follows:

> *xx. The construction of marinas within the Coastal Marine Zone in that part of the Coastal Marine zone defined as "Waikawa Bay" is a non-complying activity.*

Section 42A Report

69. The report writer pointed out that the Plan had no other rules creating non-complying status and that there was a danger of using non-complying status without specific strongly directed policy wording. The concern was then expressed as follows:

> *Without such clear, strong, objectives and policies, there is a risk that the threshold to meet the second test above (that of s104D(1)(b)) may be set too low, inadvertently allowing consents to be granted where it may not otherwise have been desirable to do so. I do not consider that within the MEP there are clear enough objectives and policies that relate specifically to avoiding or reducing further development in Waikawa Bay (apart from polices specifically relating to moorings) and that for these reasons a full effects, and policy assessment should be undertaken in line with a discretionary activity consent.*

70. For those reasons no change was recommended from the notified wording.

Consideration

71. The Panel acknowledged the good faith demonstrated by PMNZ requesting this rule, but it shared and agreed with the report writer's concerns as to the use of non-complying status.

72. However, on looking at the explanatory statement to the policy the Panel did note that there was a passage which appeared to be supportive of further development, which was possibly not consistent with the submitter's request. Nor was it consistent with the s.42A report view that a full effects assessment should be undertaken before any further development occurs. That passage stated:

> *Additionally, an area alongside the existing marina in Waikawa Bay remains undeveloped at notification of the MEP (9 June 2016), but has been zoned to provide opportunities in the future for additional berthage capacity.*

73. The Panel decided to delete that passage.

Decision

74. Delete the last sentence of the first paragraph of the explanatory statement to Policy 13.17.1

Effects of Port and Marina activities

Policy 13.18.2

Ensure that activities occurring within Port, Port Landing Area and Marina Zones do not adversely affect water, air or soil quality within or beyond the zone boundary, by:

(a) the setting of standards for permitted activities;

(b) prohibiting the discharge of effluent from boats berthed within ports, port landing areas or marinas;

(c) requiring the provision of facilities for:

- **(i) the collection and disposal of rubbish, sewage effluent and other wastes from boats;**
- **(ii) boat maintenance activities (including sanding and blasting effects); and**
- **(iii) the avoidance of contamination of water by the application and removal of antifouling paints.**

75. The submissions on this policy particularly focused on its aim as notified that the activities controlled "do not adversely affect" the quality of water, soil and air both within and beyond the zone boundaries.

76. The report writer accepted that the notified wording could be interpreted to mean adverse effects were to be avoided and that that was not the intent of the policy. The report recommended a wording to replace "do not adversely affect" with a wording that would 'manage' those effects.

77. The Panel agreed with the submitters and the Section 42A Report criticism of the notified wording but preferred to use the phrase that recognised some adverse effects would occur but emphasized the need to "reduce or mitigate" those adverse effects.

Decision

78. Amend the opening words to Policy 13.18.2 as follows:

Policy 13.18.2 – Ensure that activities occurring within Port, Port Landing Area and Marina Zones ~~do not adversely affect~~ reduce or mitigate any adverse effects on water, air or soil quality within or beyond the zone boundary, by: …

Policy 13.18.4

The environmental effects from activities within Port, Port Landing Area and Marina Zones are avoided, remedied or mitigated through the setting of standards so that:

(a) vehicle parking, access and loading do not adversely affect the operation of the port/marina, road system or safe pedestrian movement;
(b) signage enables public identification of port and marina operations but does not dominate the landscape;
(c) structures and buildings in the various Port and Marina Zones do not dominate the landscape, particularly when having regard to visual effects as viewed from the adjoining zones in Picton and Havelock;
(d) the location or height of buildings does not shade sites in adjacent zones;
(e) noise levels allow the zones to function effectively, but also minimise noise nuisance for surrounding residents; and
(f) light spill does not occur in adjoining Urban Residential, Open Space and Business Zones.

79. Port Marlborough NZ Limited had requested that this policy be deleted. The report writer had responded that the policy appropriately set forth the matters which needed to be addressed by standards, but recommended in the Reply to Evidence that the word "Inappropriate" be inserted at the commencement of this policy.

80. The Panel agreed with the report writer's reasoning for not otherwise amending the policy, but did not consider that the word "inappropriate" at the commencement added anything of value to the policy as notified.

Decision

81. Retain Policy 13.18.4 as notified.

Temporary Structure or equipment for scientific monitoring purposes

Rules 13.1.20, 13.3.10, 14.1.10, 14.3.5, 15.1.17, 15.3.9, 16.1.12 and 16.3.9

82. Submissions on these structures concentrated on the time period that was appropriate to allow. Cawthron Institute in particular stressed the importance of these structures being in situ for a calendar year in the coastal marine area to ensure full seasonal and tidal cycle effects were recorded.

83. The Panel agreed with the extended periods recommended by the Reply to Evidence and for the reasons given, but NZTA's submission highlighted that some clarity was needed as to the purpose of a temporary structure as it had interpreted them as being independent of any

scientific monitoring role. The Panel decided that purpose need to be inserted in the opening words of the rules so that it is plain the rule enables both structures and equipment of a temporary nature for scientific purposes in each case.

84. The Panel also agreed with the Section 42A Report's recommendation that the Cawthron request be accepted as to a larger height being necessary for the monitoring equipment as these will be indeed temporary effects and still very limited in adverse effect even if increased from 1 to 2.5 metres. However, the Panel also noted the recommended wording for that increase did not specify from where the measurement was to be taken. That does need specifying as being from the water level.

85. The decision below then amends those two matters only with other reasoning and recommendations agreed as set out in the Reply.

Decision

86. Amend the opening words of the relevant rules to say:

Temporary structure <u>for scientific monitoring purposes</u> or <u>temporary</u> equipment for scientific monitoring purposes.

87. Amend subclause (x) to read:

The structure or equipment must not exceed 2m in length, 2m in width and ~~1~~ <u>2.5</u> m in height <u>above water level</u>.

Port and Marina zone permitted activities

Rule 13.1

88. The report writer made a number of recommendations with which the Panel agreed for the reasons in the reports to expand the permitted activities. One of those recommendations was to include reference to 'port activities' which are defined in Volume 2 Chapter 25. However, the report writer did not recommend that any amendment was made to meet the Port company's request to specifically enable use of service lines as part of the berthing process, the report writer's view being that was already covered by phrases such as 'other activities associated with…".

89. The Panel agrees with the Port company that it would be better for this activity to be expressly specified. That is easiest done in the definition of 'port activities' which have been inserted in rule 13.1 as permitted activities.

Decision

90. Insert the phrase "use of service lines" in the definition of 'port activities' in Vol 2 Chapter 25 so it reads:

Port activities means activities normally associated with the operation of vessels and other water related activities; cargo, handling and storage; embarking, disembarking and transit of passengers; launching, retrieval and storage of vessels; berthage and mooring activities and use of service lines; associated marshalling, parking, and manoeuvring of vehicles and trains, maintenance activities associated with port structures and development; and ancillary activities to the above.

Removal of submarine cables on replacement

Rule 13.1.19.

Replacement of a submarine or suspended cable or line.

And Standards 13.3.9.2, 14.3.4.2, 15.3.8.2, 16.3.8.2 and 16.3.8.3

91. In the Reply to Evidence the report writer recommended various changes to the notified standards to meet submission requests which the Panel agreed with for the reasons given. However, those standards related to increased allowances for laying of replacement cables.

92. A different issue which concerned the Panel related to the removal of existing redundant lines that were being replaced. The Panel decided that a new permitted activity rule was needed to permit that activity, but also an amended standard that a cable or line should not be removed from an ESMS area because of the potential for serious adverse effects on the ecologically sensitive species there.

Decision

93. Insert a new rule 13.1.20

13.1.20 Removal of a submarine or suspended cable or line

94. Insert a new standard for that permitted activity as follows:

13.3.9.x A cable or line must not be removed from a Category A or B Ecologically Significant Marine Site.

95. Amend the other relevant standards listed above by adding:

… except where it traverses through a Category A or B Ecologically Significant Marine Site.

Port Landing zone activities

Policy 13.17.5

Recognise and provide for the following operational requirements of Port Landing Area Zones at Elaine Bay and Oyster Bay:

(a) shipping activities;
(b) cargo handling, storage of cargo and loading and unloading of ships;
(c) building and structures, wharves, mooring structures (excluding swing moorings) and launching ramps;
(d) marine fuel facilities;
(e) maintenance, repair, removal and replacement of buildings and structures;
(f) placement and maintenance of navigation aids; and
(g) signage.

Rule 14.1 Permitted Activities

96. In the event that the request of a number of submitters for some rezoning of these areas to Port Zone was not agreed to by the Panel, which was the case, then a request was made for certain port zone activities to be added to the list of port related permitted activities.

97. 67. The Panel only agreed with some of those requests, but as a consequence to enable proper operation of those changes a related policy enabling is also needed, and a new standard as to odour effects.

Decision

98. Amend Policy 13.17.5 to read as follows:

Policy 13.17.5 - Recognise and provide for the following operational requirements of Port Landing Area Zones at Elaine Bay and Oyster Bay:

(a) shipping activities;

(b) cargo handling, storage of cargo and loading and unloading of ships;

(c) building and structures, wharves, mooring structures (excluding swing moorings) and launching ramps;

(d) marine fuel facilities;

(e) maintenance, repair, removal and replacement of buildings and structures;

(f) placement and maintenance of navigation aids;

(g) ship repair and maintenance;

(h) transportation activities; and

(i) signage.

99. Add the following activities to the list of permitted activities in Rule 14.1:

14.1.x Maintenance, storage, servicing or repair of equipment associated with marine farming or commercial fishing

14.1.x Transportation activity including the construction of road, right-of-way or path, the construction of a vehicle or trailer parking, manoeuvring and transit, or transit or maintenance operations

100. Include a new permitted activity standard 4.3.13.1:

The storage of marine farming equipment must not cause objectionable odour at or beyond the boundary of the Port Landing Area Zone.

Anchoring Ecologically Significant Marine Sites

101. Submitters raised requests for amendments to Objective 13.7 and the provisions that seek to achieve the objective, to exclude anchoring within Ecologically Significant Marine Sites.

Section 42A Report

102. The report writer considered the recommendations contained in the Section 42A Report for Topic 6. Mr Andrew Maclennan, the report writer for Topic 6, recommended that anchoring be prohibited from Category A sites based on the report "Reassessment of selected significant marine sites (2014-2015) and evaluation of protection requirements for significant sites with benthic values".[8] On this basis, the report writer for this topic recommended additions to Objective 13.7 and Policy 13.7.1, and a new standard for 16.3.2, to reflect that anchoring should not occur in Ecologically Significant Marine Sites. She also repeated the recommendations from Mr Maclennan's report with respect to the new appendix (Appendix 27) and the prohibited activity rule.[9]

Consideration

103. Objective 13.7 and Policy 13.7.1 are enabling provisions for the anchoring of boats in the coastal marine area.

104. The potential for anchoring to adversely affect Ecologically Significant Marine Sites has been addressed in the Topic 6 decision. The Panel decided to create Category A sites within which anchoring (amongst other activities) is a prohibited activity.

105. This outcome clearly indicates that anchoring should not be enabled in all locations. The Panel therefore concurs with the report writer's recommendations that Objective 13.7, 13.7.1 and

[8] Topic 6 Indigenous Biodiversity, Section 42A Report (Maclennan), page 66
[9] Section 42A Report, page 75

Standard 16.3.2 need to be adjusted. In respect of the recommended inclusion of "…in appropriate locations" to Objective 13.7, the Panel considers that additional explanation is required to elaborate on the addition (similar to the recommended addition to the explanation of Policy 13.7.1).

Decision

106. Amend the explanation for Policy 13.7.1 as follows:

…The objective seeks to enable use of the coastal marine area for this purpose. <u>There are locations where anchoring has the potential to adversely affect the marine environment and anchoring over these sites would not be appropriate.</u>

Anchoring of marine farm vessels

Policy 13.7.2

Restrict the long-term or permanent anchorage of boats.

16.3.2. Anchoring of a ship.

Standard 16.3.2.1.

The ship must not be anchored to the foreshore or seabed for more than 60 consecutive days or more than 90 days within any 12 month period, within the same embayment, inlet, or estuary.

107. The submissions of Counsel for the aquaculture industry on this issue sought an exemption for marine farm barges. Those submissions provided some practical examples of the needs for aquaculture anchoring to occur on a longer term basis that the notified policy and rule allow. :

> *Permanent barges are integral to some aquaculture operations, such as accommodation and feed storage barges used on salmon farms, or the barge for sorting and grading oysters, which minimises the time juvenile oysters spend out of the water in Croisilles Harbour.*

108. The report writer was of the view that this issue should be left for the aquaculture section of the PMEP to address.

109. However, the Panel was cognizant of the reality of what is and has been an integral part of some sectors of the aquaculture industry which it felt needed to be recognized. It decided that an exemption to enable such activities to continue should be provided for now.

Decision

110. Add the following sentence to the explanation of Policy 13.7.2:

<u>This policy does not apply to the anchoring of marine farm barges and structures.</u>

111. Add to the start of Standard 16.3.2.1:

<u>Except for marine farm barges or structures,</u> …

Shellfish reef restoration

Rule 16.6 Discretionary Activities

112. The aquaculture industry faces a major issue with shell disposal. It wishes to have the opportunity recognised in the PMEP to be able to seek consents to establish shellfish reef restorations as one possible avenue for disposal with a sustainable purpose. NIWA supported that request. The outcome is said to be a potential for significant environmental and/or ecological benefits, akin to those which have been trialled apparently successfully in the Hauraki Gulf. The industry sought provision by way of permitted activity.

113. The Panel agreed with the report writer's view that discretionary activity was needed to ensure effects were managed appropriately but noted that the report left the matter as falling with the generic discretionary activities status in the coastal marine area. Without wishing to pre-empt the outcome of any consenting process the Panel nonetheless felt there was sufficient potential merit in the concept that it should be identified in a positive manner by a specific activity addition to the list of discretionary activities in Rule 16.6.

Decision

77. Amend rule 16.6 by inserting a new Rule 16.6.6 as follows:

16.6.6 Restoration or creation of shellfish reef

Temporary Recreation Buoys

Rule 16.1.8.

Marine navigational aid (including lighting) and any supporting structure.

Standard 16.3.6.

Marine navigational aid (including lighting) and any supporting structure.

Standard 16.3.6.1.

The erection or placement of a marine navigational aid (including lighting) must be carried out by, or on behalf of, Maritime New Zealand.

Standard 16.3.6.2.

Prior to installation, the GPS mapping co-ordinates and a description of the marine navigational aid must be provided to the Harbour Master.

114. Recreational users of the Sounds such as the Waikawa Boating Club will sometimes run yachting or other marine recreational events which require the laying out of a course or route marked by temporary buoys and understandably they seek to avoid having to seek resource consents for that long-standing practice.

115. The report writer recommended that there be no change to the rules which can be interpreted to allow what practically occurs now i.e. that the Harbourmaster has authority to control what occurs.

116. The Panel, however, considered that standard 16.3.6.1 as notified requires involvement of Maritime New Zealand which is not required for such temporary local events where the Harbourmaster's authority is all that is needed as has occurred in the past. Specific recognition of that method of authority is required.

Decision

117. Amend Standard 16.3.6.1 to read:

16.3.6.1. The erection or placement of a marine navigational aid (including lighting) must be carried out by, or on behalf of, Maritime New Zealand, or be placed in accordance with authority issued by the Harbourmaster.

Naval vessels

Rule 16.4.2.

Use of surface water within the National Transportation Route by a high speed ship, or a ship that exceeds 500 gross registered tonnes, which is travelling at a ship speed exceeding 15 knots, including any associated disturbance of the foreshore or seabed.
Any application for Resource Consent under Rule 16.4.2 will require public notification.

118. NZDF asserted that this rule was in breach of s 95 RMA requiring notification its submission reading:

> *3. Rule 16.4.2 – Use of surface water*
>
> *NZDF would also like to raise a matter regarding the requirement for public notification of controlled activity rule 16.4.2, relating to the use of water by ships. Requiring public notification for an application that has controlled activity status is not practical or efficient and cannot be supported with reference to any Section 32 analysis. Importantly, this requirement is also contrary to the notification provisions of the Resource Management Act 1991, as section 95A(5)(a)(i) specifically states that controlled activities are precluded from public notification.*
>
> *NZDF suggests that the Panel reconsider this provision and remove the requirement for public notification in relation to rule 16.4.2.*

119. The report writer had reported that in the Harbourmaster's view similar adverse effects could arise from high speed naval vessels as occurred from high speed ferry wash, and for that reason recommended no change in the notified provision.

Consideration

120. The provisions of s 95A (5)(a)(i) of the RMA are part of the highly complex 'step' provisions for notification. The Panel agreed on carefully working through the 'steps' in s 95 that the

controlled activity rule in the PMEP could not in terms of earlier steps require public notification.

121. However, the Panel wished to record its view that it was highly likely that the Council as consent authority acting under Step 4, which requires consideration of whether special circumstances required public notification, would conclude that public interest in such applications was so high that it was appropriate to require public notification.

122. In short the amendment sought by way of deletion of the compulsory public notification will be have to be granted, but in practical terms the result may well end up being the same pursuant to Step 4 in s 95A.

Decision

123. Remove the requirement for mandatory public notification in Rule 16.4.2.

Beach renourishment standards

Standard 16.3.12.

Deposition of sand for beach replenishment or beach renourishment.

16.3.12.1. The deposition must be carried out by, or on behalf of, the Marlborough District Council.
16.3.12.2. Sand deposition must be limited to the amount necessary to replace what has been lost through natural processes.

124. Iwi submitters Te Atiawa and Ngati Kuia expressed concerns as to aspects of this beach renourishment process seeking more detailed standards as to the type of sand to be used. The Reply to Evidence agreed with those requests and recommended extra standards with which the Panel also agreed with one exception. The second of those additional recommended standards recommended the inclusion of a requirement that the sand used must be "*free from noxious or toxic organisms".*

125. Whilst as a goal that is obviously desirable, as a standard with which absolute compliance is required, it is too prescriptive. Moreover, the Panel drew confidence from the standard requirement that the deposition must be carried out by or on behalf of the Council which is the very body charged with ensuring adverse effects of that nature are avoided.

Decision

126. Insert two additional standards in Standard 16.3.12 as follows:

16.3.12.1 The activity is undertaken at Shelley Beach, Picton Foreshore or Waikawa Bay.

16.3.12.4 Sand used for beach replenishment must be of the same grain size as the beach to be replenished.

Burial Protocols for marine carcasses on foreshore

Standard 16.3.14.
Burial of a dead marine mammal or other dead marine fauna on the foreshore.
16.3.14.1. The marine carcass must have either resulted from a stranding or have been washed up on the foreshore through natural tidal processes.
16.3.14.2. It must not otherwise be practical to move the carcass to a more appropriate disposal location.
16.3.14.3. Iwi representatives must be notified prior to the commencement of the burial.
16.3.14.4. Disturbance to the foreshore or seabed must be limited to the minimum amount of disturbance necessary for carcass burial.

127. Iwi concerns to be notified at as early a stage as practicable were agreed to by the Panel. The Addendum Report had recommended a wording which met that request in part, but worded the standard as requiring notification "*on discovery and prior to the commencement of the burial*." The Panel wished to see reference to an emphasis on early notification inserted in the notification requirement.

Decision

128. Amend Standard 16.3.14.3 to read as follows:

16.3.14.3 Iwi representatives must be notified <u>as early as practicable after discovery and</u> prior to the commencement of the burial.

Building heights at Lake Grassmere

Standard 22.2.1.

Construction and siting of a building or structure.
22.2.1.1. A building or structure constructed or sited within 500m of mean high water springs must not exceed 8m in height.
22.2.1.2. A building or structure constructed or sited within the Lake Grassmere Salt Works Administration, Workshops, Salt Refining and Processing Area must not exceed 15m in height.
22.2.1.3. Notwithstanding 22.2.1.1 and 22.2.1.2, a building or structure must not exceed 10m in height.

129. Dominion Salt expressed concern at the use of the word "notwithstanding" at the start of standard 22.2.1.3 and requested it was replaced with 'any building not coming within'.

130. The report writer recommended instead "Any building or structure to which Rule 22.2.1.1 and 22.2.1.2 does not apply, must not exceed 10m in height."

131. The Panel preferred the wording to be as in the decision below.

Decision

132. Amend Standard 22.2.1.3 to read as follows:

<u>Any building or structure is not covered by Rule 22.2.1.1 and 22.2.1.2, must not exceed 10m in height.</u>

Boat sheds

Policy 13.10.19

The purpose of a boatshed shall be to house boats and boating equipment. Where a boatshed is to be located in the coastal marine area or on land immediately adjacent to the coastal marine area and its use differs from the purpose described above, the activity is inappropriate in the coastal environment and is to be avoided.

133. A boatshed cannot be used for anything other than storing a boat or boating equipment. Given the public nature of the coastal marine area and reserve land adjacent to the foreshore, it is important a boatshed is used for the purpose for which consent was sought. Where this ceases to occur, the building should be removed.

134. A number of submissions were made in respect of the policies addressing the issues of boatsheds and slipways particularly seeking a lessening of the management of effects by policies in the notified Plan.

135. The reasoning and recommendations of the Section 42A Report were accepted by the Panel in respect of most issues raised by those submissions. However, some limited wording changes were made in the wording of the explanatory statement to Policy 13.10.19 recommended in the Section 42A Report so as to ensure clearer guidance was provided a to the sole purpose of use in any consent and the opportunity for removal being required if that sole use was not adhered to.

Decision

8. Amend the explanatory statement to Policy 13.10.19 as follows:

A boatshed cannot be used for anything other than storing a boat or boating equipment. Given the public nature of the coastal marine area and reserve land adjacent to the foreshore, it is important a boatshed is used <u>solely</u> for the purpose for which consent was sought. Where this ceases to occur, the building ~~should~~ <u>may be required</u> to be removed.

National Transportation Route (NTR)

136. The NTR is mapped on the NTR Overlay Map and is the transportation route through Tory Channel and Queen Charlotte Sound that is of national significance for shipping activity. The extent of the NTR Map is as outlined on the NTR Overlay within Volume 3 of the PMEP.

137. A number of submissions relating to the NTR seek: reduction of the NTR to apply only to the main channels of the Tory Channel and Queen Charlotte Sound with the exclusion of the side bays - an NTR overlay within Volume 4 PMEP requires amendment to reflect this

requirement;[10] extension of the NTR overlay to include the Port Zone at Clifford Bay;[11] extension of the NTR to include the 'Northern Entrance' to Queen Charlotte Sound.[12]

138. To protect against wave effects particularly in side bays, ship speed is limited to 15 knots in the PMEP, as it was under the MSRMP. If submissions are accepted, it would allow large and fast ships to seek resource consent to travel at 15 knots through the Queen Charlotte Sound 'Northern Entrance' as a controlled activity.

Rules and standards governing ship speeds in Queen Charlotte Sound

Rule 16.1.1. Use of surface coastal water by a ship in the National Transportation Route and Queen Charlotte Sound.

- Use of surface water by a ship within the NTR is a permitted activity under Rule 16.1.1.
- This activity is subject to Standards 16.3.1.1 and 16.3.1.2 that restrict the speed of 'high speed ships' and 'ships exceeding 500 gross registered tonnes' within the NTR and Queen Charlotte Sound to 15 knots.

Rule 16.3.1 - Use of surface coastal water by a ship in the National Transportation Route and Queen Charlotte Sound;
Standard 16.3.1.1 - A high speed ship must not exceed a ship speed of 15 knots.
Rule 16.4.1 – Use of surface water by a high speed ship or a ship that exceeds 500 gross registered tonnes, which is travelling at a ship speed exceeding 15 knots in the National Transportation Route for the purposes of undertaking measurements of Wave Energy, including any associated disturbance of the foreshore or seabed.

139. The development of the management framework of the NTR and rules were imposed to manage the wake effects of the large and fast ships. The framework was introduced through Variation 3 to the MSRMP and has been operative since 2008. The characteristics of the framework identify:

Standard 16.4.1.1 - A resource consent will apply only to the ship for which consent has been obtained and will be distinguished by the International Maritime Organisation number and name.

140. High speed ships or ships that exceed 500 gross registered tonnes exceeding 15 knots within the NTR require consent as a controlled activity under Rules 16.4.1 and 16.4.2 subject to the standards and terms outlined in these rules.

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[10] *AQNZ (401.150, 291), Marine Farming Association (426.155, 282), Salvardor Delgado Oro Laprida (218.005), Apex Marine Farm Limited (544.021), Lloyd Sampson David (890.021), New Zealand King Salmon Company (997.003) and Sanford Limited (1140.101).*

[11] *Port Clifford (1041.054).*

[12] *Strait Shipping (790.008) and KiwiRail (873.193).*

Rule 16.4.2 - Use of surface water within the National Transportation Route by a high speed ship, or a ship that exceeds 500 gross registered tonnes, which is travelling at a ship speed exceeding 15 knots, including any associated disturbance of the foreshore or seabed.
Standard 16.4.2.1 - The ship must not propagate waves that exceed the Wash Rule identified in Appendix 12 in the National Transportation Route.

141. This rule restricts wave energy and requires measurements at approved measurement sites listed within the Appendix.

142. Ships must not exceed the Wash Rule identified in Appendix 12 Determination of Wave Energy.

Omission

143. The MSRMP applies prohibited status to the 'Use of surface water within that part of Queen Charlotte Sound not on the National Transportation Route by high speed ships, or ships that exceed 500 gross registered tonnes, which are travelling at ship speeds greater than 15 knots'[13]. QCSRA notes that this prohibited activity rule has not been carried through to the PMEP. This fact results in a high-speed or large ship exceeding 15 knots in other parts of Queen Charlotte Sound, not on the NTR, being a discretionary activity under the PMEP.

144. This omission has certain ramifications for Strait Shipping and KiwiRail which are unexpected.

Reduction in the extent of the NTR to exclude side bays
Section 42A Report

145. The submissions on this issue have received priority from the marine farming and fishing industry representatives. The submissions also request that the NTR overlay within Volume 4 of the notified PMEP is amended to reflect the request.

146. None of the submissions provided a reason as to why the change is sought.

147. The extent of the NTR, as mapped within the NTR overlay, reflects the areas in which the Wash Rule identified in Appendix 12 of the PMEP Determination of Wave Energy should not be exceeded, as it represents areas of the Sounds where wave wash may create adverse effects from high-speed and large ships.

148. As the waves generated from the ships in the Tory Channel and Queen Charlotte Sound will extend into side bays, given the narrow nature of these channels, the extent of the NTR has been mapped to reflect this. Thus the extent of the NTR as notified recognizes the extent of the area where environmental and other effects may occur and is required in order for environmental effects to be adequately measured, maintained and controlled.[14]

[13] Rule 35.6 Marlborough Sounds Resource Management Plan
[14] Section 42A Report, paragraphs 530-531.

149. The report writer recommends the submissions requesting the removal of the NTR within the side bays of the Sounds are rejected.

150. The extension to include the request for the NTR to link with the Port Zone at Clifford Bay is also recommended to be rejected. This area is significantly different from the NTR and it is unlikely the NTR framework would be suitable for that environment.

Consideration

151. The Panel endorses the opinion of the report writer. Given that the extent of the NTR is reflective of Appendix 12 Wash Rule, it is difficult to anticipate any instance where the application of the NTR will adversely affect other activities - such as marine farming within the NTR or would raise navigational safety concerns.[15]

Decision

152. The submissions requesting the removal of the NTR within the side bays of the Sounds are rejected and the extension of the NTR to include Clifford Bay is also rejected.

The expansion of the NTR to include the 'Northern Entrance' to Queen Charlotte Sound

153. KiwiRail sought that the mapped area of the NTR be extended to the Outer Queen Charlotte Sound (northern area). If this extension was not granted, then the submitter sought a series of amendments to Rules 16.4.1 and 16.4.2 which would enable ferry operators to seek consent for shipping activities in excess of 15 knots in Queen Charlotte Sound and request that the words 'and Queen Charlotte Sound' be inserted in the text of each rule.[16]

154. The NTR is currently shown on an overlay map in Volume 4 of the PMEP.

Strait Shipping and KiwiRail

155. The two shipping companies identify their reasons for their submissions:

- Severe south-easterly conditions or other bad weather sometimes make the entrance to Tory Channel unsafe.
- When ships suffer certain propulsion malfunctions, the 'Northern Entrance' is used as an alternative with a lower navigational risk profile.

[15] *Section 42A Report, paragraphs 527-537.*

[16] *KiwiRail (873 various), Strait Shipping (790.8) supported by PMNZ (970.992).*

- Up to approximately 120 Strait Shipping and 288 KiwiRail sailing transits a year are made through the Northern Entrance for the sole purpose of training and keeping crews familiar with the alternative entrance.[17]
- The alternative route via the Northern Entrance adds approximately 11 nautical miles to the Picton to Wellington return trip; travelling the alternative route on the *Aratere* is 55 minutes longer: in order to maintain timetables, ships need to travel faster than the current 15 knots.
- The Outer Queen Charlotte Sound is much wider than the Inner Sound and Tory Channel, recreational traffic density is much lower with relatively few other ferry transits through the Outer Sound.[18]

Section 42A Report

156. In light of this information, the Panel queried whether the NTR should apply to the Northern Entrance to the Sound or whether provision be made for research to investigate that possibility. The Panel also sought clarification from the MDC's Harbourmaster, Captain Luke Grogan, on whether an amended NTR route through Outer Queen Charlotte Sound was satisfactory from his experience in terms of navigational health and safety.[19]

157. On the advice of Dr Steve Urlich, marine scientist formerly of MDC, the lack of measuring sites within the area of the Northern Entrance to Queen Charlotte Sound to pick up changes to shoreline profiles from increased ferry speed through the Northern Entrance remained of concern. As a result, the report writer considered that extension of the NTR to the Northern Entrance of Queen Charlotte Sound would require that wave wash is measured at approved sites.

158. Initially, the request of the shipping companies was recommended to be rejected, the report writer citing the cases relating to the adverse effects on the environment by the fast ferries, , including impacts on kaimoana, beaches and baches due to erosion, sites of cultural significance, water clarity and marine ecology, which had culminated in the introduction of the Wash Rule, as to why this should not occur.

159. It was therefore considered that while there is sufficient use of the Northern Entrance to warrant an extension of the NTR, there is a lack of information available to assess

[17] *Maritime Regulations, Regulation 90 in particular.*

[18] Section 42A Report, paragraphs 514(i-v).

[19] Panel Minute 21.

environmental effects in the Outer Queen Charlotte Sounds. Further research should be undertaken before the NTR can be extended in this way. In its absence, an additional prohibited activity should be included in the PMEP preventing ships that exceed 500 tonnes from travelling at greater speed than 15 knots.

160. Nonetheless, the report writer also sought the advice of, Captain Grogan, as to whether there was likely to be significant navigational safety issues arising from ferries/ships travelling at the same speed through the Northern Entrance as their current resource conditions allow.

161. Captain Grogan's response was that to allow the change would make it less complicated for ferry masters to understand speed regulations and comply with the rules. 'Until recently, many ferry masters were not aware that any resource consent was limited to the NTR … [they] have routinely been exceeding 15 knots through the northern entrance for some time.'

162. The report writer advised as a result of this interchange she did not consider that the proposed extension to the NTR would have adverse effects on other activities. The application of the Wash Rule (in Appendix 12) or similar would ensure that wave wash is limited. She was satisfied that the use by large ships through the Northern Entrance to Queen Charlotte Sound is sufficient to warrant the extension of the NTR.[20]

163. In response to the Panel's minute, Captain Grogan confirmed that the course lanes provided by Strait Shipping align with the passage plans provided by both Strait Shipping and Interislander. The lodging of the passage plans provides sufficient opportunity for any concerns to be addressed. Captain Grogan stated that it is not uncommon for a ship to deviate from a planned passage to avoid collision or to mitigate the effects of bad weather. 'As such, it is important that the NTR encompasses an area sufficient to enable what might be considered normal or reasonable deviations from the planned passage.' Captain Grogan included a diagram to illustrate the parts of the northern entrance to where the NTR could be extended without undue maritime risk. He also produced a copy map of the suggested NTR extension. Both are attached to this decision (Figure 11.1 and 11.2).[21]

Consideration

164. On the basis of Captain Grogan's evidence and the report writer's (somewhat conflicting) acknowledgement above, we concluded that the Northern Entrance should be agreed as

[20] Section 42A Report, paragraphs 538-549.

[21] Harbourmaster's response to Minute 21. The Navigation Safety Bylaw 2009 requires that: The master of every vessel which is pilot exempt shall lodge with the Harbour Master a copy of the current passage plan for the whole of the voyage which occurs within defined pilotage limits.

being within the NTR as this enables resource consent (as contained in Controlled Activity Rule 16.4.1) to be applied for increased speed if the evidence gathered as controlled activity testing establishes minor effects on the route.

165. The Panel's concern relates to whether the Wash Rule identifies measurement sites in the Outer Queen Charlotte Sound. As we understand the evidence, the rule requires measurements at 'approved measurement sites' listed within Appendix 12. The Panel does not have that evidence and a plan change will be required to achieve that.

166. Dr Steve Urlich raised the issue of the lack of measuring sites to pick up changes to shoreline profiles from the amended navigation route. This prompted the Panel to consider the relationship of the NTR with the content of Appendix 12. Appendix 12 as notified did not cover the Northern Entrance. The Panel requested Dr Richard Croad of Gillrich Consulting Limited to prepare several new measuring sites to include the Northern Entrance Section 3 sites under Appendix 12 of the PMEP.[22]

167. In his letter in reply, Dr Croad identified his selection criteria,[23] identifying that 17 sites were examined (site visits carried out on 7 January 2020[24]) of which five were recommended as the new 'approved measurement sites'. The table included one optional site should the channel east of Long Island be allowed as part of the NTR to cater for log ships which use the eastern channel in which the water is deeper.[25]

168. As part of his advice, Dr Croad recommended the following:

Table 1: Approved Measurement Sites

Channel	Location Description	NZGD2000 Coordinates	
Tory Channel	Ngaionui Point West, Arapawa Island	174° 10.782' E	41° 14.462' S
	Te Weka Bay	174° 11.396 E	41° 14.983' S
	Wiriwaka Point West, Arapawa Island	174° 12.287' E	41° 14.192' S
	Tipi Bay West	174° 17.001' E	41° 13.699' S
Queen Charlotte Sound (west of 174° 9.5' E)	Picton Point	174° 02.177' E	41° 15.283' S
	East Kahikatea	174° 07.095' E	41° 14.170' S
Queen Charlotte Sound (Northern Entrance)	North of Snake Point	174° 10.650' E	41° 11.811' S
	North of Double Bay	174° 11.460'E	41° 12.764' S
	North West Blumine Island	174° 14.066' E	41° 09.612' S
	South West Long Island	174° 16.079' E	41° 07.802'S

Table 2: Tidal zones and tidal speed parameters that might be adopted to assess speed through the water

[22] Letter from Pere Hawes, MDC, 9 January 2020
[23] Letter to Pere Hawes, Marlborough District Council, 10 January 2020, Annex A – Potential Measurement Sites Visited and Assessed, page 4.
[24] Ibid, Table 1: Approved Measurement Sites, page 2.
[25] Ibid, Footnote 3, page 2.

Zone	Description of Limits of Zone	A (knots)	t_L (hour)
A	Zone anywhere in Queen Charlotte Sound, including the Northern Entrance, and separated from Tory Channel along latitude 41° 14' S at Dieffenbach Point.	0.3	-0.4
B	Zone in Tory Channel between latitude 41°14' S at Dieffenbach Point at its western end and longitude 174° 18; E in Tory Channel at its eastern end.	1.8	-0.4
C	Zone near the Heads in Tory Channel located east of longitude 174° 18' E.	6.7	0.0

Decision

169. The NTR is expanded to include the Northern Entrance of Queen Charlotte Sound as shown on Figure 11.2 to this decision.

170. Add to Table 1 the Queen Charlotte Sound (Northern Entrance) details provided by Dr Croads recommendations and amend Zone A in Table 2 to include the words 'including the Northern Entrance'.

MV Aratere grandparenting rule

Rule 16.3.1.1

A high speed ship must not exceed a ship speed of 15 knots

171. It is submitted that as the MV *Aratere,* a KiwiRail ship, operates under a different provision in the MSRMP, which enables it to operate at speeds up to 20 knots, this grandfathering rule should be carried through to the PMEP.[26]

172. It was initially considered by the Council that the grandfathering rule was not required within the PMEP as there is already a certificate of compliance allowing the MV *Aratere* to operate as a permitted activity at speeds up to 19 knots.

173. It is clear from the report writer's recommendation, however, that there is no provision that allows a certificate of compliance to override a provision of the PMEP if the plan is operative and resource consent has not subsequently been obtained. For this reason the grandfathering rule is required within the PMEP to provide for the ongoing operations of the MV *Aratere*.

Decision

174. Rule 16.3.1.1 is amended as follows:

Rule 16.3.1.1. A high speed ship must not exceed a ship speed of 15 knots, with the exception of the MV Aratere which must not exceed a ship speed of 19 knots.

[26] KiwiRail (873.162), Section 42A Report, paragraphs 565-572.

New permitted activity status for ferries outside the NTR exceeding 15 knots?

175. The MSRMP applies a prohibited activity status to the use of surface water within that part of Queen Charlotte Sound not on the NTR by high-speed ships or ships that exceed 500 gross registered tonnes while travelling at ship speeds greater than 15 knots.

176. The Section 42A Report proposes the following prohibited activity rule:

> *16.7.X The use of surface water within that part of Queen Charlotte Sound not on the National Transportation Route by high speed ships, or ships that exceed 500 gross registered tonnes, which are travelling at ships' speeds greater than 15 knots.*[27]

177. QCSRA observed that this prohibited activity rule had not been 'carried through' to the PMEP. A high speed or large ship exceeding 15 knots in other parts of Queen Charlotte Sound not in the NTR would therefore have discretionary activity status under the PMEP.

178. The report writer identified she had not seen any information within the Section 32 Report as to why the prohibited activity rule had not been included in the PMEP, especially given the fact that the Section 32 Report states the management framework for the NTR has been followed from the MSRMP.

179. KiwiRail identifies that the Section 42A Report proposes to include the rule on the basis that it was omitted from the notified Plan without reason, and that the change was not necessary to make the Plan consistent with the suite of provisions agreed through the Environment Court hearing on Variation 3. Its witness Rebecca Beals says this:

> *The Environment Court hearing was on the provisions of the MSRMP, and simply because it was omitted and is part of the suite from the Environment Court is not justification for its inclusion through this process. There are inferred decisions in relation to ferry speeds and the use of Tory Channel, however I am not aware of a specific submission which would give scope to include this new prohibited activity rule. There is a submission point that notes this is missing (504.87), however that submission does not seek any relief, and the Council did not infer any relief from it in its summary of submissions (unlike the submissions on the use of Tory Channel).*[28]

Consideration

180. MDC staff undertook a review of submissions without success, to confirm none had supported suggested Rule 16.7.X. Not only is the suggested rule out of scope, Ms Beals made an appropriate observation on the role of a prohibitory activity rule from her planning

[27] Tranz Rail New Zealand v Marlborough District Council W001/2008, NZEnC 14, 22 January 2008.
[28] KiwiRail, Rebecca Beals, Evidence, paragraphs 72-79.

perspective. In this case, a prohibitory activity would not allow consent to be sought to measure effects in order to determine whether or not an increase in speed of any future shipping will comply with the wash rule. Because the effects of increased speed are well understood in this situation, there is already sufficient information to provide for an application for resource consent to be lodged.

181. There is also no inherent incompatibility within the zone given the recognition (in this case) of Queen Charlotte Sound as a shipping route or any significant risk to the environment that justifies prohibited activity status.

182. While there is no guarantee under the discretionary activity rule that consent will ultimately be forthcoming, it provides for an application to be assessed on its merits.

Decision

183. As stated in the MDC report, suggested Policy 16.7.X is out of scope.

Figure 11.1

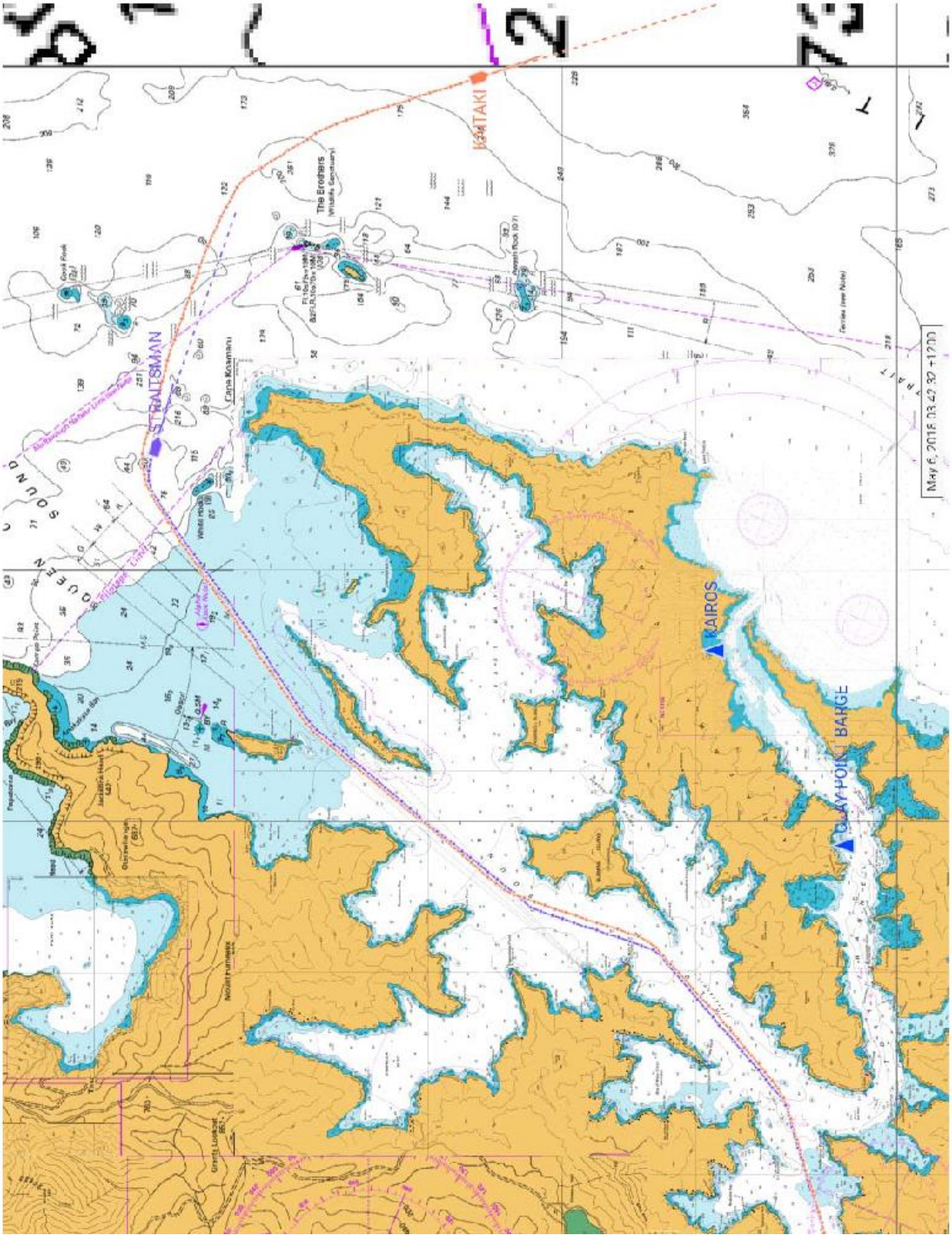
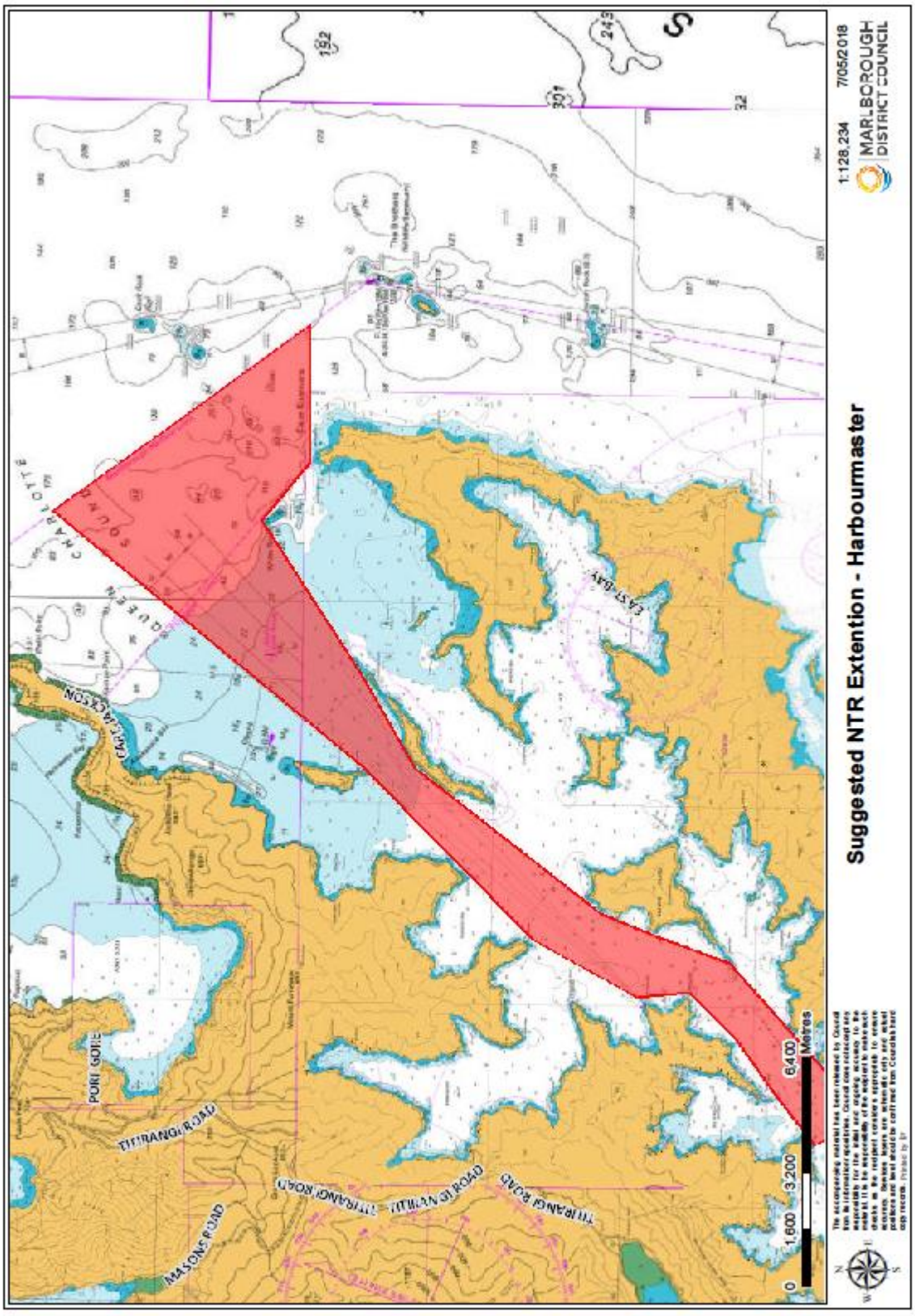

KAITAKI
The Brothers
Whistle Sanctuary
STRAITSMAN
QUEEN CHARLOTTE SOUND
KAIROS
CLAY POINT BARGE

Figure 11.2


Suggested NTR Extention - Harbourmaster
1:128,234
7/05/2018
MARLBOROUGH DISTRICT COUNCIL
EAST BAY
TITIRANGI ROAD
MASONS ROAD
PORT GORE
Metres
6400
3200
1600
0

Zoning

Port Landing Zone and Port Zone

184. Port Marlborough operates Port Landing zones at Oyster Bay in Port Underwood, and Elaine Bay in Pelorus Sound. It owns the port landing infrastructure, while MDC owns the underlying land.

185. PMNZ identify the purpose of the Port Landing facilities is to provide for safe and efficient loading and landing of cargo and supplies primarily associated with Marlborough's aquaculture industry, in an appropriately zoned and controlled area. Both Port Landing zones are located remotely in the Marlborough Sounds and as a consequence present economic and logistical challenges to maintain. They are nevertheless viewed as an important part of the infrastructure required to support aquaculture in Marlborough and therefore, they remain part of PMNZ's infrastructure portfolio.

186. Submitters from the aquaculture industry drew the Panel's attention to NZCPS Policy 20(2) which requires identification of the locations where vehicle access is required for the operation of existing commercial activities and provision is made for access. The Panel kept this in mind during its considerations.

187. The relevant NZCPS policy states:

> *Identify the locations where vehicular access is required for boat launching, or as the only practicable means of access to private property or public facilities, or for the operation of existing commercial activities, and make appropriate provision for such access.*

188. PMNZ consider that the Port Zone should be extended to both Oyster Bay and Elaine Bay and if not, seek some Port Zone requirements be provided in amendments to various policy provisions.

Elaine Bay – Zoning Maps 65 and 103

189. The submissions requested rezoning of the commercial wharf from Port Landing Zone to Port Zone;[29] extension of the Port Landing Zone to include more of the coastal marine area and

[29] AQNZ (401.155, 156, 249, 295), MFA (426.067, 161, 285, 286), Goulding Trustees Limited (750.010, 011), Just Mussels Limited and Tawhitinui Greenshell Limited (842.017, 018), and Shellfish Marine Farms Limited (1150.001, 012) – Opposed in Further Submission by PMNZ (946).

adjacent road;[30] extension of the Port Landing Zone to the west to better reflect the area occupied by the port landing activities within the bay.[31]

Oyster Bay – Zoning Maps 77 and 139

190. The submissions request rezoning of the commercial wharf from Port Landing Zone to Port Zone;[32] extension of the zone to include more of the coastal marine area Open Space Zone and adjacent road.[33]

Okiwi Bay – Zoning Maps 64 and 111

191. The submissions request the rezoning of the wharf area and boat ramp at Okiwi Bay from Open Space 3 to Port Landing Zone.[34]

Differences between permitted activities in the Port Zone and those in the Port Landing Zone.

192. The list of the permitted activities in the Port Zone is extensive. The following is a brief summary: cargo processing; passenger terminals and associated activities; port engineering; truck fuel facility; border control; maintenance, storage etc associated with marine farming or commercial fishing; manual scraping of anti-foul or bio-foul; maritime education or research facility; port administration; living accommodation for port staff, transportation activity; geotech bore drilling and dredging, and discharge of contaminants to air from a range of activities.[35]

193. By way of contrast the following are provided for in the Port Landing Zone at Elaine Bay and Oyster Bay at Policy 13.17.5(a)–(g) – shipping activities; cargo handling, storage of cargo and loading and unloading of ships; building and structures, wharves, mooring structures (excluding swing moorings) and launching ramps; marine fuel facilities; maintenance, repair, removal and replacement of buildings and structures; placement and maintenance of navigation aids; and signage. The two zones have quite distinct operational requirements.

Section 42A Report

194. The report writer's initial limited response under this heading was given before she had had the opportunity to visit the three sites of Okiwi Bay, Elaine Bay and Oyster Bay. She initially concluded from the submissions that the smaller port areas such as Elaine Bay and Oyster Bay, while playing an important role in commercial fishing, have more sensitive environments than the larger ports such as Picton. Thus the need for permitted activities associated with ports is not required. In order to protect the sensitive environments, it is not appropriate to re-zone

[30] AQNZ (401.294) and MFA (426.285).
[31] PMNZ (433.208).
[32] AQNZ (401.155, 156, 296, 297) and MFA (426.067, 161, 287, 288).
[33] AQNZ (401.294) and MFA (426.285).
[34] AQNZ (401.155, 156, 159) and MFA (426.067, 161, 164).
[35] Section 42A Report, paragraph 851.

them as Port Zone, as there are a number of permitted activities within this zone that would likely create adverse effects.[36] Even so she recognised the smaller port areas have an important part to play in providing for loading and unloading of mussels and marine farming gear as well as fishing produce.

195. The Section 42A Report includes aerial photographs and extracts from zoning maps to access locations and activities associated with these bays. The report writer's overall recommendation on the submissions was to reject the Port Zone extension and the extension of the Port Landing Zone as requested for all three bays, with the current Port Landing Zone in Elaine Bay and Oyster Bay to remain as notified.[37]

Report writer's site visit – 13-14 March 2018: Okiwi Bay - Zoning Maps 64 and 111

196. The submissions from AQNZ and MFA seeking rezoning to the wharf at Okiwi Bay to Port Landing Zone refer to the 'wharf and boat launching ramp at Okiwi Bay'. These are located in different places, the wharf being at the end of Wharf Road and the boat ramp located within the main bay of the Esplanade Okiwi Bay.[38] The wharf at Okiwi Bay is an important linkage between the marine farm sites within Croisilles Harbour and land transport roads.[39]

197. The wharf area and the facilities at and surrounding this wharf are at a lesser scale and extent compared with the nature of the wharves at Elaine Bay and Oyster Bay. Both of these bays have cranes and lifting equipment on the wharves and provide for marine fuel facilities. These activities are reflected within the proposed permitted activity provisions of the Port Landing Zone in the PMEP as notified. These activities are not currently provided at Okiwi Bay.

198. In addition, the extent of land available for the activities identified in Okiwi Bay does not reflect those at Oyster Bay and Elaine Bay. The road access to the wharf, Wharf Road, is a narrow gravel road and at present the wharf is not overly visible when viewed from Okiwi Bay. Any extension, in the report writer's opinion would result in diminishing the bay's visual amenity as it currently exists. The report writer recommends that any extension to Okiwi Bay should be undertaken through the resource consenting process which would allow the conditions to address more closely any wider effects of the activity.[40]

199. On her visit to Okiwi Bay, the report writer also noted that while there was no indication of commercial activities taking place at the boat ramp area in the centre of the bay, there were

[36] Addendum dated 22 March 2018.
[37] Section 42A Report, Reply to Evidence, pages 96-100.
[38] Section 42A Report, Addendum dates 22 March 2018, paragraph 66.
[39] AQNZ and MFA, Counsel Submissions, paragraph 84, Appendix 1. Also verbal evidence at hearing.
[40] Section 42A Report, Addendum 22 March 2018, paragraphs 63-73.

properties at the rear of Okiwi Bay that appear to provide storage facilities. This boat ramp in the main landing area of Okiwi Bay beach appears to provide for both commercial and recreational facilities; if a Port Landing Zone were to proceed here, this could result in adverse visual and amenity effects in this sensitive location.

200. The Reply to Evidence identifies that within his verbal submission at the hearing, Counsel for MFA and AQNZ acknowledged that the Port Landing zoning on this site would identify the different expectations within this area in terms of noise and activity, from that in the Open Space 3, as currently zoned.

Consideration

201. In terms of Okiwi Bay and its current wharf at the end of Wharf Road the Panel considered the Port Landing Zone should include the road. Even though this is an unusual step to approve, it is practically the only useable area for Port Landing Zone facilities because of the steep contour of the surrounding land. The wharf is nevertheless identified as a critical outlet for all marine farms in Croisilles Harbour and areas associated. It is an important transport mode.[41]

202. With regard to the main boat ramp launching area at the Okiwi Bay beach, Port Landing Zone is not approved because it is a major recreational launching area with heavy weekend and holiday use with which aquaculture or other port-related activities would clash.

Decision

203. The Panel rezones as Port Landing Zone the existing launching facility on the west side of Okiwi Bay and the road to the launching facility. This is to be reflected on Maps 64 and 111.

204. The Panel rejects the submission seeking Port Landing Zone for the boat ramp area in the central part of the bay.

Elaine Bay – Zoning maps 65 and 103

205. Elaine Bay provides a wharf and marina that extends to the south of the main area of the wharf. The submitters seek that this area become Port Landing Zone which would encompass a seaward extension of the zone and that extension to include some of Elaine Bay Road that provides access to the Port Landing Area. They also seek to apply Port Landing zoning to the boat launching ramp located on the west of the existing Port Landing Zone located to the east of the residential properties at 202-208 Elaine Bay Road.

206. At the outset the Section 42A Report writer recommends rejecting the notion of this bay becoming a Port Zone, a position the submitters acknowledge has logic given the heavy

[41] MFA (401.155, 156, 159), AQNZ (426.067, 161, 164). Counsel Submissions, page 84 Appendix 1.

engineering facilities provided in that zone. The reasons why are identified where we outline the differences between permitted activities in the Port Zone and those in the Port Landing Zone.[42]

207. The report writer's concern in relation to the boat launching ramp, is that this area is in close proximity to the Coastal Living zoned properties located at 202-208 Elaine Bay Road. The properties are elevated and overlook the area proposed by the submitter as Port Landing Zone. Thus the nature of activities provided for within the Port Landing Zone Area, as permitted activities, is not consistent with activities that would be anticipated to take place in this location. The activities would be likely to significantly alter the nature and characteristics of this area, which presently is used as a low scale launching ramp for recreational and commercial vessels. In addition, the submitter had provided very little evidence as to why the extension of the zone is required.[43]

Consideration

208. The Panel considered that the map included in the original submission of PMNZ as to the Coastal Marine Zone showed an area at the south-west corner of the notified Port Landing Zone.[44] We requested more detail as to the nature of the activities conducted in that area which are said to require the extension of the Port Landing zoning.

209. PMNZ informed us that this area provides for the maintenance of port infrastructure to take place in the Port Landing Zone i.e. citing the report writer that activities need to occur within the Coastal Marine Zone on the landward side of the existing wharf to facilitate its maintenance.[45] PMNZ's submission seeks to achieve consistent treatment in the PMEP for the area between the shoreline and wharf infrastructure.[46]

210. The report writer, however, considers the inclusion of the small area of the Coastal Marine Zone between Elaine Bay Road and the identified Port Landing Zone on the western side of the port for inclusion as Port Landing Zone should be approved. There were no reasons within the s 32 report why this should not be included.[47]

Decision

211. Maps 65 and 103 of the PMEP are amended to rezone the strip of Coastal Marine Zone located between the current Port Landing Zone and Elaine Bay Road to Port Landing Zone. The

[42] See details of facilities at page 19 of this decision (paragraphs 69-70).
[43] Section 42A Report, Reply to Evidence, page 96.
[44] Minute 20, 26 April 2018.
[45] PMNZ Memorandum Response to Minute 20, 22 May 2018, paragraphs 5-7.
[46] Section 42A Report, paragraph 864.
[47] Section 42A Report, paragraphs 864-866.

balance of the requests for Port Landing Zone both on the seaward site and on the road are rejected.

Oyster Bay – Zoning maps 77 and 139

212. The zoning as notified in the PMEP, appears to encompass all of the physical wharf structures, plus a margin for any vessel. The site visit undertaken by the report writer prompted the same response that she indicated for Elaine Bay. The area between the Port Landing Zone at the road is very steep with considerable vegetation and would require removal and excavation. She considers that the proposed PMEP zoning provides for activities that are relative to the operations and scale within the commercial wharf area at the present time. But the aquaculture industry identified the access to Oyster Bay Wharf is currently on a road located within the Open Space 3 Zone. MFA and AQNZ seek that the Port Landing Zone should be enlarged to include the road from Port Underwood Road to the existing port facility. In the alternative, the access road should be zoned Road.

Consideration

213. The Panel queried the legal status of the access road in an email to Steve Murrin, Journey Manager for Marlborough Roads. Mr Murrin's response was to provide a photo illustrating the legal road, Port Underwood Road, to illustrate the access to the port facility is not on the legal road and is not maintained by the Council.[48] We concluded as a result of this information that the extension of the Port Landing Zone should include the area of surfaced roadway to the junction with the public road.

214. We note that Counsel for MFA and AQNZ considers that the access to the Oyster Bay Wharf is currently an Open Space 3 Zone.

Decision

215. The Port Landing Zone at Oyster Bay is extended to encompass that part of Oyster Bay Road which is not a legal road but is in practical terms part of the road surface.

216. The zone status and extent of Port Landing Zone at Oyster Bay is therefore amended to include the part of the surfaced roadway area to the junction with the public road (Port Underwood Road). Maps 77 and 139 are amended accordingly.

New rules and standard

217. Both MFA and AQNZ request that if Port Landing zoning was disallowed for Elaine Bay and Oyster Bay then in the absence of this zone change, they requested, through legal submissions, two additional permitted activities to Policy 13.17.5(a)–(g) these being:

[48] MFA and AQNZ, Memorandum.

(h) ship repair and maintenance

(i) transportation activities.

218. And to add to the list of permitted activities in Rule 14.1:

- Maintenance, storage, servicing or repair of equipment associated with marine farming or commercial fishing.
- Transportation activity including the construction of a road, right-of-way or path, the construction of a vehicle or trailer parking, manoeuvring and transit or maintenance operations.

Consideration

219. The Panel assessed the provisions of the Port Zone to determine which are the most appropriate to combine with the provisions in the Port Landing Zone, concluding that those identified were available in the zoning for Elaine Bay and Oyster Bay.

Decision

220. Two additional permitted activities are amended to Policy 13.17.5(h)-(i) and to Rule 14.1. The two further permitted activities are provided as identified above.

Waikawa Marina – Zoning maps 41 and 43

221. A number of submissions relating to Zoning Map 41 seek: expansion of the Marina Zone boundary to provide for in-situ structures, marina reclamations and the entry and exit areas to the marina (20 metres beyond visible structures is requested);[49] rezone the properties at 64–72 Beach Road and the narrow parcel of land beside Endeavour Stream from Urban Residential 2 Zone to Marina Zone to enable expansion of marina activities. The witness provided a concept plan for the development of the area, but it was recognised within verbal evidence that this plan is 10 years old, and is only an initial scoping plan. [50]

222. PMNZ in evidence produced a map[51] of the Waikawa Marina vicinity showing an area on the eastern side of the marina bund structures which PMNZ sought to be included within the Marina Zone boundaries in the PMEP.[52]

223. A witness for PMNZ, Louise Taylor, advised at the hearing that the area to be included was to ensure the maintenance of the land structures, including their base under water, could occur as a permitted activity.[53]

[49] PMNZ (433.205, .206).
[50] PMNZ (433.204), Rose Prendeville, Evidence, page 10. See also reply to evidence, page 101.
[51] PMNZ, Louise Taylor, Evidence presented at hearing, Figure 2
[52] PMNZ, Louise Taylor, Evidence, page 14.

224. She advised that the area depicted as Figure 2 extends beyond what is visible on the surface to include the base of the marina structures on the seabed. If the submission is granted the witness advised that the MDC would need to have a better mapping definition than that contained in PMNZ's Figure 2.[54]

Consideration

225. In Minute 20 to the PMNZ, the Panel requested the submitter provides a GIS detailed map establishing the exact location of the structures to be identified in the MDC's GIS mapping.

226. In response, PMNZ provided a map (Appendix A – Map) which included the zoning sought by PMNZ at Waikawa Bay showing the Marina zoning extending 20 metres horizontally beyond the mean low water springs (MLWS). This map also shows the other landside area that PMNZ seeks to be rezoned.

227. The expansion of the Marina Zone to provide for in-situ structures is supported as it would enable activities that are operational requirements of the Marina Zone to occur as a permitted activity and is unlikely to cause any adverse effects.

228. Rezoning of the private properties on Beach Road and the area near Endeavour Stream was sought on the basis of some dated concept plans. The proposal is not supported in the present setting as it would result in the Marina Zone being much closer to the residential interface of the Beach Road properties, allowing a range of permitted activities to be undertaken without Council control which might have potential adverse effects on the residences impacted.

229. We considered that the proposed wider new zone area on Beach Road was dated. We considered that given the close proximity of the residences on the other side of the road, a detailed proposal assessing effects would be needed to justify rezoning and also to enable resident's consideration of any future marina related proposal.

Decision

230. Amend Zoning Maps 41 and 43 to provide a 20 metre extension to the Marina Zone beyond all visible structures as shown on the PMNZ Appendix A to their response to Panel's Minute 20, and as recommended by the report writer.[55]

[53] PMNZ, Louise Taylor, Panel Minute 20 and Evidence.
[54] PMNZ, A Beatson, Memorandum: Waikawa Bay Marina Zone, Response to Minute 20, paragraphs 2-3.
[55] Section 42A Report, paragraph 901.

Shakespeare Bay - Zoning Map 36

231. A number of submissions relating to Zoning Map 36[56] variously seek: rezone the narrow strip of Open Space 3 Zone that separates the Port Zone from the Coastal Environment Zone to Port Zone because it is unnecessary and will be difficult to manage;[57] reduce Port Zoning to reflect its boundaries within the operative MSRMP.[58]

Consideration

232. The purpose of the Open Space 3 Zone in Zoning Map 36 is to provide for public access along the coastal marine area from Queen Charlotte Drive around Shakespeare Bay. There is a clear direction under the RMA and NZCPS to promote public access in the coastal environment and therefore the submission to rezone this area is rejected.

233. In addition to the provision of public access, it was the intention of the MDC, that this area of open space would also provide an opportunity to screen any subsequent Port development (as a result of the extension of the Port Zone within the PMEP) on the land below the road. This would recognise that Shakespeare Bay retains a greater level of natural character than the other port areas of Picton and Havelock.[59]

234. Nevertheless, within the proposed Port Zone at Shakespeare Bay there are areas of ecological significance, such as Significant Wetland W991 and Ecologically Significant Marine Site 4.10. There is a clear obligation on MDC to manage activities that have adverse effects on these identified ecological sites and it is considered that the permitted activities allowed in Port Zone may result in adverse effects to these areas, particularly the significant wetland.

235. It is considered that the best way to protect this area is to remove the Port zoning and rezone the area as Open Space 3 Zone. Port Zone would be retained for all other areas (including the Ecologically Significant Marine Site).

236. The Panel queried the recommendation to amend Zoning Map 36 to delete wetland area W991 from Port zoning and apply Open Space 3 zoning but not to change the submitted zoning of ESMS 4.10 being the eel grass bed. We concluded that the report writer's recommendation as to W991 was because of NZCPS Policy 11(3)(b) which requires protection of wetlands. Te Ātiawa's request made at the hearing for further protection of the eel grass beds is out of scope but because the beds are already on ESMS 4.10 they have a level of protection anyway through that identification.

[56] Section 42A Report, page 164.
[57] PMNZ (433.209).
[58] Te Ātiawa (1126.015, .227).
[59] Section 42A Report, paragraph 907.

Decision

237. In regard to the requested amendment to Zoning Map 36 to rezone the area identified as Significant Wetland W991 as Open Space 3 Zone, we accept Peter Hamill's recommended changes to the wetland boundary, as shown on Map 9 of the response to Minute 10 of the Panel, to better reflect PMNZ's concerns.[60]

Picton – Zoning Map 35

238. PMNZ sought that the Open Space 1 Zone land immediately adjacent to the Marina Zone at Picton (near 39 and 41 Waikawa Road) be zoned Marina Zone in order to reflect the activities taking place there. The area affected was depicted in Annexure B of the PMNZ submission as 'indicative area to be zoned'.

Section 42A Report

239. The report writer visited the site and determined that there was an area of water that is zoned Open Space 3 either side of the jetty on which boats are moored within the marina. On this basis, she agreed with PMNZ that the rezoning of this area would better reflect the activities being undertaken in this area, and would enable PMNZ to undertake works to the marina facilities.

240. However, the report writer also noted that the Open Space 1 zoning proposed provided for public access around the Marina, in line with Policy 9.1.1 of the PMEP.

241. The report writer made two recommendations. Firstly, that the water area of the Marina as depicted in Annexure B be rezoned as Marina Zone. Secondly, that a strip of Open Space One zoned land at least 3m in width be retained between the Marina Zone and the Urban Residential 2 Zone.

Consideration

242. The Panel concurs with the report writer's recommendations. In particular, the Panel notes that Rule 24.1.18 of the Plan requires that, where land zoned Urban Residential 2 adjoins the Picton Marina and is to be subdivided, an esplanade reserve of esplanade strip of 3m must be provided. There is therefore a clear intent in time to achieve continuous public access around the marina. Rezoning all of the land adjoining Picton Marina as Marina Zone could frustrate that outcome as marina activities, and structures associated with those activities, could be undertaken that could physically block public access.

[60] See Topic 6 – Indigenous Biodiversity - Significant Wetlands.

243. On the other hand, PMNZ's stated need to operate and maintain the marina infrastructure is also important. The marina is recognised as regionally significant infrastructure in Volume 1, Chapter 3.

244. The second recommendation of the report writer, retaining a strip of Open Space 1 zone of the same dimensions as Rule 24.1.18 (i.e., 3 metres) meets both needs and is endorsed by the Panel. The Panel concurs with the report writer that the appropriate width for the area retained as Open Space 1 is 3 metres. The requirement of Rule 24.1.8 provides useful guidance in this respect.

Consideration

245. The Panel does not agree with the first recommendation of the report writer to rezone any coastal marine area as Marina Zone. That is simply because, on closer inspection of the zoning relative to what exists "on the ground" (via aerial photography), there is no coastal marine area zoned Open Space 1. This is clear from the figure below:

246. In terms of the land zoned Open Space 1, the Panel notes that Rule 24.1.18 of the Plan requires that, where land zoned Urban Residential 2 adjoins the Picton Marina and is to be subdivided, an esplanade reserve or esplanade strip of 3m must be provided. There is therefore a clear intent in time to achieve continuous public access around the marina. Rezoning the land adjoining Picton Marina as Marina Zone could frustrate that outcome as marina activities, and structures associated with those activities, could be undertaken that could physically block public access.

247. On the other hand, PMNZ's stated need to operate and maintain the marina infrastructure is also important. The marina is recognised as regionally significant infrastructure in Volume 1, Chapter 3.

248. The second recommendation of the report writer, retaining a strip of Open Space 1 zone of the same dimensions as Rule 24.1.18 (i.e., 3 metres), has been carefully considered by the Panel. The report writer considered that this outcome would meet both of the needs identified above

249. That may be the case, but that remedy ignores current land use and what is physically on the ground on the relevant properties. With the exception of the seawall, all of the land is open space, including a formed pathway. The land is not obviously used for marina purposes. Rezoning some of the land as Marina Zone would risk the public's current opportunity to utilise these strategic land parcels (with or without future connection around the remainder of the marina). The Panel is reluctant to remove or reduce the extent of this opportunity given that the land is within one of Marlborough's significant urban communities.

Decision

250. That the submission by PMNZ is rejected and the land adjoining 39 and 41 Waikawa Road (shown in Annexure B of the PMNZ submission) is retained as Open Space 1 Zone.

Lake Grassmere – Zoning maps 187, 188, 203

Introduction

251. Dominion Salt Limited (DSL) operates a solar sea salt production field, refining and processing facilities at Lake Grassmere Marlborough.

252. The Lake Grassmere operation is not only significant for the manufacturing and employment opportunities it brings to Marlborough but DSL's management practices maintain sustainable water levels in the lake year round providing flood control in winter and supporting significant flora and fauna in the area. A DOC summary report for the South Marlborough SNA Programme in 2004 identified the lake is nationally significant for five species of birds, and regionally significant for five others either for feeding, roosting or breeding. An additional MDC Report in 2005 provided further details on the ecological significance of the Lake Grassmere area.[61] DSL has indicated its support for the setting up of a Landcare Group by residents for the area.[62]

253. A number of submission points were received in relation to Zoning Map 187 from DSL variously seeking: extension of the Lake Grassmere Salt Works Zone over adjoining roads, over

[61] North, M. 2004 Wairau Ecological Region – Blenheim, Grassmere, Flaxbourne, Wither Hills and Hillersden Ecological Districts. Survey report for the Protected Natural Areas Programme. Occasional Publication No. 60. Department of Conservation, Nelson at 139. Appendix 2.
Marlborough District Council. July 2005. South Marlborough: Significant Natural Areas Project – A Summary of Results from an Ecological Survey of Significant Natural Areas on Private Land in Marlborough, south of the Wairau River at 51.

[62] Section 42A Report, Reply to Evidence, page 106.

the Open Space area bordering the coastline so that it encompasses 25 metres either side of the pipeline and infrastructure within the Coastal Marine Area; inclusion of the area to the south as highlighted in the plan, used for 'administration, workshops, salt refining and processing area'.[63] This area is also zoned within the Lake Grassmere Salt Works Zone. DSL consider the zoning sought is indistinguishable from land on the site already used for this purpose and initially did not provide any maps to support the proposed extensions.

Site Visit

254. The Panel undertook a site visit to familiarise itself with DSL's operation in December 2018. Only when seen from the hill to the south, looking down on the operation is its large scale appreciated. The site visit provided clarity as to the requested zoning of the site, the expansion of its facilities, together with the accuracy of the location and dimensions of the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor. Of importance was the proposal to create the new Salt Works Outlet Area which would incorporate both the Salt Works Zone and Open Space 3 Zone and the extent of the proposed additional administration areas.

Issues Arising

- Extent of the Lake Grassmere Salt Works development.
- Accurate mapping of the pipeline.
- Length of the Pipeline Corridor.
- New Salt Works Outlet area.
- Panel's site visit.
- Rules as amended.

255. In order to further clarify these issues, the Panel made several requests for further information from Dominion Salt Limited both during the hearing and via minutes after. These responses included the following:

- Supplementary legal submissions in response to questions from the Panel provided during the hearing;
- Response to Minute 18 of the MEP Hearing Panel; and
- Response to Minute 34 of the MEP Hearing Panel.

[63] DSL (355.017), Memorandum dated 24 April 2018.

256. Figure 11.3 attached to this decision, taken from DSL's memorandum in response to Minute 18, now contains an accurate map reflecting the zoning amendments the company seeks. It is the result of the new assessments illustrating the changes to be made. It encompasses its operations in respect of the current and old intake pipelines. The Panel as a result of this amendment, sought further clarification from DSL if Appendix 21 to the notified plan is still accurate.

257. DSL responded that factually, Appendix 21 does not entirely encompass its operations in the intake area. The old intake pipeline is approximately only 4 metres outside the boundary of Lake Grassmere Salt Works Zone Intake and Pipeline Extension Corridor.

Extent of the Salt Works Development
Section 42A Report

258. The report writer initially recommended there was no clear justification for the expansion of the Lake Grassmere Salt Works Zone although it was foreseeable that production of solar salt may require expansion of some areas of the operation in the future.

259. The extent of the proposed expansion was provided in the evidence given by DSL at the subsequent hearing.[64] This expansion of the site appeared significant compared with the limited size of the existing development within the zone. As a result of the report writer's closing statement and after hearing from the Panel, DSL reduced the area for rezoning significantly.[65]

260. Within the DSL Supplementary Submissions of 24 April 2018 responding to questions of the Panel asked at hearing, areas marked in hatched red in their Appendix 3, identify the areas DSL seek to have amended including the Administration and Processing area. These small areas, in relation to the scale of the overall operation, are used for temporary facilities such as storage of equipment, mining of bitterns using a mobile mixer[66], mixing of gypsum using mobile equipment, and the screening of gravel using mobile equipment.[67] In his evidence, Mr Euan McLeish, Production Manager of DSL, identified there is in fact only a modest amount of land suitable for processing. This was clear from the Panel's subsequent site visit and from Smart Map prints put in evidence, illustrating the large extent of the salt processing ponds by comparison.[68]

[64] DSL, Euan McLeish, Evidence, paragraphs 7-9.
[65] Section 42A Report, Reply to Evidence, page 108.
[66] Bittern is a solution that remains after evaporation of halite (common salt).
[67] DSL Memorandum, paragraphs 17-19, Appendix 3 attached, 24 April 2018.
[68] DSL Evan McLeish Evidence 26 March 2018, paragraph 6, 7, 12.

261. The report writer was satisfied that the areas now proposed are small in size and located in clear proximity to the existing development. She considered the expansion of the 'Salt Works Administration Area' into this location could appear to be a continuation of the existing built area. She concluded also that the development of this area within this zone would not result in adverse effects on amenity of the area.

262. Overall, the report writer's acceptance of the proposed development did not stretch to the southern end of the salt ponds (marked on Figure 11.4, attached[69]) which DSL identified would be permanent structures in which to house its operations in the medium term. No information at this stage was provided to suggest these structures should be 15 metres in height which would exceed the permitted height of 10 metres within the identified zoning as notified in the PMEP.

Reply to request for further evidence

263. In its memorandum of 24 April 2018, DSL provided two pages of an Appendix 3 showing map delineations on aerial photographs of the locations for which it seeks the Administration and Processing Area status in the PMEP. These delineations appeared to be hand drawn only. The maps provided need to be of GIS mapping standard for accuracy.[70] In response to Minute 34 of the Panel, Dominion Salt provided an appropriately, GIS mapped depiction of the three administration areas being requested.

Consideration

264. The Panel's site visit enabled an overview from within the zone on an elevated centrally located highpoint. The site visit satisfied the Panel that Areas 1 and 3 could be approved for re-zoning to meet the expansion needs described in evidence for increased administration areas. The Panel was satisfied the scale of development on those extra areas could be readily absorbed within the effects of the existing scale of development at the location.

265. However, Area 2 was regarded as not so readily being able to meld into existing levels or scale of development. Moreover, the Panel remained unsatisfied from the evidence as to what exactly would be the nature of the proposed development, its height, bulk and other effects which would need to be understood to be able to make an appropriate assessment of effects. The size of Area 2 and its proximity to Kaparu Road and hence its visibility was such that further detail would be necessary as full built development and/or use of such a very large area could not be readily absorbed within the scale of the existing development.

[69] Photo: Additions sought to Lake Grassmere Salt Works Administration Workshop, Salt Refining and Processing Area marked up as 1, 2, 3.
[70] Panel Minute 34.

Height issue

266. The appropriate height limit for any buildings on Areas 1 and 3 then arises. The general height limit standard applying in the Salt Works zone is 15 metres. The location of Area 1 adjacent to existing built structures of about that height, and its relatively small size in added area satisfied the Panel that a height of 15 metres over extended administration areas would not cause significant extra adverse effects.

267. The potential addition of Area 3 as a new administration building area separate from other existing development initially caused some concern that the effects of buildings of such height could be significant in a visual sense from SH 1. However, having now seen on the site visit the way in which the hill from which the site visit overview occurred blocks most views from SH1 the Panel was more comfortable with the general height standard of 15m in the zone applying. Moreover, the Panel notes that the height of the hill, which shields most of this area, is 36 metres, which will assist in reducing any effects from what would be long-distance views of SH1 from the south or from Marfells Beach Road. The Panel decided, therefore, that the height standard applicable to the rest of the zone should apply also to Areas 1 and 3.

Decision

268. The PMEP is amended as follows:

- Zoning Map 187 is amended to reflect the proposed expansion for the Lake Grassmere Salt Works Administration, Workshops, Salt Refining and Processing Area Zone as illustrated as areas 1 and 3 only as shown on the Response to Minute 34.
- The inclusion of Area 2 as shown on the Response to Minute 34 is rejected.
- The height limit for buildings and structures within new areas 1 and 2 zoned Lake Grassmere Salt Works Administration, Workshops, Salt Refining and Processing area are subject to relevant Chapter 22 standards and no additional restrictions applied.

Accurate Mapping of the Pipeline Corridor

269. DSL initially indicated that Appendix 21 Volume 3 PMEP showed the accurate location and dimensions of the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor Zone: see Volume 4 Maps 187-188 (the zoning maps). In the notified PMEP however, Appendix 21 shows only approximate locations and dimensions of the base width of the Pipeline Corridor at (approximately) 55 metres shorter than it should be on those maps. The datum line as shown in Appendix 21 of the PMEP reflects these provisions.

270. DSL now seek the pipeline corridor be extended 25 metres north-east, as shown in Figure 11.3, to ensure that DSL can carry out maintenance on the old intake pipeline which the company wishes to repair in the future. The old intake pipe extends seaward approximately the same distance as the current pipeline.

271. DSL advised that if the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor was accurately mapped in Volume 4 Maps there would be no need for Appendix 21 of the notified plan.

272. Questions about the length of the pipeline corridor arose because the physical pipeline itself only extends 30 metres from mean high water springs (MHWS) (the old pipeline was 15 metres) whereas, the Pipeline Zone extends 1000 metres from MHWS. It was explained the November 2016 earthquake caused uplift along a sizeable area of the East Coast including Clifford Bay adjacent to Lake Grassmere. The pipeline's intake was raised 36cm relative to sea level resulting in:

- The intake is now at a shallower depth and is affected by more silt and seaweed washed into the settling ponds requiring more frequent cleaning.
- Reduced tidal flow into the settling ponds has reduced the pumping window into the main lake over each tide (adjusted by providing more pumps).

273. DSL as a consequence seeks to retain the notified length of the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor Zone (1000 metres) to allow for contingencies such as future changes to sediment transport along the coast, while a future earthquake uplift may need the intake pipe to be extended further.

274. Originally DSL sought that the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor be extended 25 metres either side of the pipeline. This is now considered unnecessary because the length and situation of the pipeline will now allow the excavation to be carried out with a boom to clean sand away unimpeded, the operational requirements of the salt works to continue, maintenance of the pipeline to be undertaken, and finally providing cuts for stormwater overflow as permitted activities within the Salt Works Zone.[71] The locations of all these activities are illustrated on Figure 11.3 to this decision.[72]

[71] DSL, Counsel Supplementary Submissions.
[72] Appendix 1, Lake Grassmere Salt Works Zone Intake and Pipeline Corridor.

275. DSL requests changes to the dimensions. The effect of the identification of the Lake Grassmere Saltworks Intake and Pipeline Extension Corridor is to accurately demonstrate its location.

Consideration

276. The Pipeline Extension Corridor extends 1000 metres from MHWS. In terms of extending the physical pipeline from its current location at 30 metres from MHWS (see paragraph 133 above),[73] increased sediment transport along the coast may well change over time. Further climate change weather-related events may well be a factor in creating a build-up of sediment unable to be readily cleared away. Meanwhile, earthquakes in the area may well cause further uplift requiring further repositioning of the pipeline. The November 2016 earthquake caused uplift along a sizeable area of the east coast including in Clifford Bay adjacent to Lake Grassmere. The pipeline's intake pipe from that event was raised 36 cm, the results identified above.

277. During the hearing it became evident that the areas comprising the Lake Grassmere site could not be adequately determined on the maps at a 1:40,000. A 1:10,000 scale would allow users of the hard copy version to identify the different areas and elements that make up the site. The submitter noted that the site, if appropriately mapped, would make Appendix 21 redundant. The Panel agreed that suitable mapping would serve plan users better than unnecessarily having the double up of map and an additional appendix.

Decision

278. The PMEP is amended as follows:

- The length of the pipeline corridor is set at 1000 metres.
- Zoning Map 187 is amended to accurately map the Lake Grassmere Salt Works Zone intake and pipeline extension corridor, as shown on Appendix 1, Response to Minute 18.
- The Lake Grassmere Saltworks Zone is to be mapped at the 1:10,000 scale and the additional zoning maps are inserted at Map 88.

New Salt Works Outlet Area

279. Mr McLeish identified that the Open Space 3 Zone between the saltworks and the internal road (to which the public does not have access) and the pipeline should also be zoned as part of the Lake Grassmere Salt Works Zone. DSL further noted the current zoning prevented maintenance activity in that area.

[73] Supplementary Submissions of Counsel for DSL. Topic 11 Use of the Coastal Environment, 24 April 2018, paragraphs 13-14.

280. In response to the Panel's request at the hearing for further clarity, DSL provided Supplementary Submissions[74] setting out what they were seeking.

281. A number of issues arose from the zoning of the area between the Lake Grassmere Salt Works Zone (Salt Works Zone) and the Pipeline Corridor as Open Space 3 Zone.

- The two areas are separated by the Open Space 3 Zone. Therefore it is unclear that the Pipeline Corridor is part of the Salt Works Zone its inclusion only being implied by the rules relating to the Pipeline Corridor.[75]
- Rule 22.1.5 allows for the construction and use of a temporary stormwater flood outlet channel as a permitted activity; if required, DSL would construct the channel with the outlet located within the southernmost section of the Pipeline Corridor. This would need to go through the area zoned Open Space 3 to which Rule 22.1.5 does not apply. Consequently the company would need a resource consent to construct the channel in this area.
- DSL carries out regular activities such as intake repairs, unblocking the pipe and maintenance within the area zoned Open Space 3 between the Pipeline Corridor and the Salt Works Zone along which a gravel legal road runs along the coastline within Open Space 3.

282. DSL's solution to requiring a resource consent for its activities is to create a new Salt Works Outlet Area hatched in black on the map attached (Figure 11.3).[76] The rules for Open Space 3 Zone would apply as well as permitted activity Rules 22.1.2, 22.1.4 and 22.1.5. These prescribe the standards applying to the limited activities which mirror those already carried out within the proposed new Salt Works Outlet Area. In addition, DSL sought a new rule of the maintenance of the intake pipelines. These were set out in the tracked changes version of Chapter 22, provided in the response to Minute 18, dated 24 May 2018.

Consideration

283. The report writer and the submitter were agreed on the following rule: Lake Grassmere Salt Works Zone Permitted Activities

> *22.1.X Within the Salt Works Outlet Area the following are permitted activities subject to their relevant standards:*
>
> *(a) Activities identified in Rules 22.1.2 to 22.1.5;*

[74] Supplementary Submissions of Counsel for Dominion Salt Limited, dated 24 April 2018.
[75] Chapter 22: Lake Grassmere Salt Works Zone, page 22-23.
[76] Maps included, Memorandum in response to Minute 18

(b) Activities permitted in the Open Space 3 Zone.

284. This is based on submission point 355.011 using the wording suggested by the report writer.

285. The Panel considered the zoning change would enable the operational requirements of the salt works to continue by providing the link to the pipeline corridor. The zoning of this area will provide for the activities anticipated to occur there unimpeded, such as maintenance of the pipeline, as permitted activities.

Decision

286. The Open Space 3 Zone between the Salt Works Zone and the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor, is to be rezoned as Lake Grassmere Saltworks Zone.

New provision 22.1.20

287. The solution proposed by DSL to establish a new Salt Works Outlet Area encompasses some of the area zoned both Open Space and Salt Works Zone to provide the link from the Salt Works Zone to the Pipeline Corridor and provide for the activities that are anticipated to occur there such as maintenance of the pipes. It is therefore important that this mapping is accurate, requiring the exact location and extent of the pipeline.

288. As proposed by DSL, the report writer recommends the following[77] is included in the PMEP:

22.1.20 Within the Salt Works Outlet Area the following are permitted activities subject to their relevant standards:

a) activities identified in rules 22.1.2 to 22.1.5

b) activities permitted in the Open Space 3 Zone

Decision

289. Create a Salt Works Outlet Area as set out in response to Minute 18 dated 24 May 2018 and add the new area to the map legend.

Rules as amended

290. **The WARMP** methods of implementation for the Lake Grassmere salt works operation have been carried over into the PMEP. Permitted Activity Rule 22.1.1 provides for solar production refining, handling, packaging, storage and sale of salt and associated by-products. No change is considered as these operating systems have proven to be efficient and proven management by inclusion of the wording "and the full range of process required".

291. The report recommended that Rule 22.1.1 be amended as follows:

[77] Section 42A Report, pages 174-176, Reply to Evidence, page 110.

Solar production, refining, handling, packaging, storage and sale of salt and associated by-products, and the full range of processes required.[78]

292. Dominion Salt sought an alternative expression for Standard 22.2.1.3 that would result in 'notwithstanding' being replaced with 'any building not coming within'. The report writer agreed that an alternative expression was appropriate but instead recommended the following:

22.2.1.3 Any building or structure to which Standard 22.2.1.1 and 22.2.1.2 does not apply must not exceed 10 metres in height ~~Notwithstanding 22.2.1.1 and 22.2.1.2, a building or structure must not exceed 10m in height~~.

293. Another recommendation of the report writer was for the following change:

22.3.4.1 The temporary channel must only be constructed and used when a storm event is forecast or immediately following a storm event.

Consideration

294. In terms of Permitted Activity Rule 22.1.1, the Panel subsequently changed the words 'full range' in Rule 22.1.1 to 'associated' range of processes as being more appropriate as 'full range' is too uncertain.[79]

295. The Panel also agreed that the term 'notwithstanding' does not function effectively when considered alongside 22.2.1.1 and 22.2.1.2. However, it determined that the wording should be 'any building or structure not covered by 22.2.1.1 and 22.2.1.2 must not exceed 10m in height'

Decision

296. The following rule is to be inserted:

22.1.X Within the Salt Works Outlet Area the following are permitted activities subject to their relevant standards:

(a) Activities identified in Rules 22.1.2 to 22.1.5;

(b) Activities permitted in the Open Space 3 Zone.

297. Standard 22.2.1.3 is amended as follows:

22.2.1.3 ~~Notwithstanding~~ Any building or structure not covered by Standards 22.2.1.1 and 22.2.1.2~~,~~ ~~a building or structure~~ must not exceed 10m in height.

[78]). Section 42A Report, page 175
[79] Section 42A Report, paragraphs 974 – 976, 981.

298. Standard 22.3.4.1 is amended as follows:

22.3.4.1 The temporary channel must only be constructed and used when a storm event is forecast or immediately following a storm event.

299. *Rule 22.1.1 is amended as follows:*

22.1.1 *Solar production, refining, handling, packaging, storage and sale of salt and associated by-products, and the associated range of processes required.*

Rule 22.1.3

Take and use of coastal water and the maintenance of existing seawater intake pipelines within the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor shown in Appendix 21.

300. DSL requested that permitted activity Standard 22.1.3 is revised to separate out the 'take and use of coastal water' from the remainder of the rule as more certainty is required as to the nature of the activities enabled in the Pipeline Corridor.

301. In her Reply to Evidence, the report writer agreed with DSL that the zoning of the area linking the Salt Works Zone to the Pipeline Corridor does not allow the company to undertake works namely the construction of an outlet channel (to accommodate flooding) as permitted within the Salt Works Zone but does not apply within the Open Space 3 Zone where the works need to occur.

Decision

302. The following amendment was proposed with which the Panel agrees:[80]

22.1.3 – Take and use of coastal water from ~~and the maintenance of existing seawater intake pipelines~~ within the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor ~~shown in Appendix 21.~~

303. Lake Grassmere Settling Ponds and Roading - Lake Grassmere Saltworks Zone is applied to the ex-settling ponds. The area runs adjacent to the eastern end of Kaparu Road through to the Lake Grassmere Salt Works Zone intake and pipeline extension corridor. The area is shown as unzoned in the notified plan.

304. There was general concern about the lack of detail as to roads and waterbodies in and around the Salt Works Zone.

305. The redundant settling pond shown in photograph 3 in the response to Minute 18 was shown as river bed on the notified plan. DSL sought for it to be zoned Lake Grassmere Salt Works Zone.

[80] Section 42A Report, Reply to Evidence, page 109-110.

Decision

306. The ex- settling pond area shown in photo 3 contained in response to Minute 18 is rezoned Lake Grassmere Salt Works Zone.

Zoning of internal roads

307. DSL states that the Council has zoned as road internal parts of the salt works site. But in DSL's experience, these are not places that the public has access to in practical terms. The processes undertaken in this area of the site are similar to those that occur in other parts of the salt works. The submitter seeks that all of the appurtenant areas on its land be zoned for consistency.

308. The report writer identifies that within the PMEP zoning map those areas are identified as indicative river beds. She considers that within these areas the management framework for the land as Lake Grassmere Salt Works Zone still applies to this land.

309. The report writer's recommendation is that as the submission provided no clear justification for the need for the expansion of this zone, nor a map to indicate any expansion, she was unable to assess the zoning request and that the submission from DSL is rejected.[81]

310. The report writer reiterated her rejection of the submission in her Reply to Evidence. The Panel agrees with her reasoning.

Decision

311. The request for the zoning of roads is rejected.

Lake Grassmere – Scheduled sites

312. The above decisions, combined with a decision on another DSL submission point in the Topic 19: Land Disturbance decision, add additional overlays to the Plan. The effect of the overlays is to allow location specific rules apply to specific activities. The same also applies in the case of the existing Intake and Pipeline Extension Corridor.

313. Having made decisions on these submission points on their merits, but in isolation to each other, the Panel has reflected on the best structural option for giving effect to its decisions. As they stood, the decisions would introduce a level of complexity to the permitted activity rules in 22.1, and their accompanying standards in 22.2 The Panel considered that this complexity would create the potential for confusion in the implementation and administration of the rules.

[81] Section 42A Report, paragraph 962.

314. In the process of considering a remedy to this matter, the Panel noted the content of Appendix 16 of Volume 3. As notified, Appendix 16 contains three scheduled sites[82] and it operates to allow a set of specific rules apply to each of the scheduled sites. This is exactly how the Salt Works Outlet Area and Salt Works Lake Maintenance Area (see Topic 19 decision) are designed to operate with respect to DSL's operations at discrete parts of Lake Grassmere.

315. The Panel has determined that Appendix 16 should therefore be utilised to provide for the rules that apply to each of the relevant spatial areas. To achieve this end, the relevant spatial areas have to be mapped as scheduled sites in the relevant zoning maps of Volume 4. This would have the effect of removing complexity from 22.1 and 22.2 of Volume 2. Those sections would simply contain the rules that apply to the Lake Grassmere Salt Works Zone in its entirety.

316. The Panel also noted that the Intake and Pipeline Extension Corridor operates in much the same way to the two new overlays: A discrete set of rules applies to specific activities in the Corridor. For consistency, the Panel is making a consequential change to also relocate the rules that apply to the Corridor to Appendix 16.[83]

317. There is one further consequential change required to implement this structure and that is a minor change to the introductory wording of 21.1 to recognise that the rules in Appendix 16 may enable activities in addition to the rules of Chapter 22. A wording for doing so is set out below.

Decision

318. The Salt Works Outlet Area and the Intake and Pipeline Extension Corridor, in addition to the Salt Works Lake Maintenance Area, are to be depicted as scheduled sites on the relevant zoning maps in Volume 4.

319. The rules and standards applying to the new Salt Works Outlet Area and the existing Intake and Pipeline Extension Corridor, in addition to the new Salt Works Lake Maintenance Area, are added to Appendix 16 of Volume 3 as a new schedule, as follows:

[82] Decisions on Topic 21: Zoning add two additional scheduled sites.

[83] The Panel has also decided to delete Appendix 21 as a result of accurately mapping the Intake and Pipeline Extension Corridor on the relevant zoning maps.

Schedule 7 – Salt Works Outlet Area, Lake Grassmere Salt Works Intake and Pipeline Extension Corridor and Salt Works Lake Maintenance Area.

Where not otherwise expressly provided for, or limited by, the rules in Schedule 7 of Appendix 16, the rules of the Lake Grassmere Salt Works Zone apply to all activities when undertaken by the operator of the salt works within the Salt Works Outlet Area, Lake Grassmere Salt Works Intake and Pipeline Extension Corridor and the Salt Works Lake Maintenance Area.

Schedule 7A – Salt Works Outlet Area

7A.1 Permitted Activities

Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent when undertaken by the operator of the salt works within the Salt Works Outlet Area identified in Appendix 21, and where they comply with the applicable standards in Chapter 22:

[D]

7A.1.1 Buildings, bunds, roads and other developments associated with the Salt Works activities existing at 9 June 2016.

[D]

7A.1.2 Maintenance of existing seawater intake pipelines and associated structures

[C]

7A.1.3 Discharge of stormwater from Lake Grassmere and surrounding catchments or diluted brine to the coastal marine area.

[C, D]

7A.1.4 Construction and use of a temporary stormwater flood outlet channel from Lake Grassmere to the coastal marine area, including any disturbance of the foreshore and seabed.

[R, D]

7A.1.5 Activities permitted in the Open Space 3 Zone.

7A.2 Standards that apply to all permitted activities

7A.2.2 When undertaking an activity in accordance with permitted activities in the Open Space 3 Zone, the relevant standards for the activity in 19.3 must be complied with.

Schedule 7B – Lake Grassmere Salt Works Intake and Pipeline Extension Corridor

7B.1 Permitted Activities

Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent when undertaken by the operator of the salt works within the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor identified in Appendix 21, and where they comply with the applicable standards in Chapter 22:

[C]

7B.1.1 Take and use of coastal water.

[C]

7B.1.2 Maintenance of existing seawater intake pipelines and associated structures.

[C]

7B.1.3 Discharge of stormwater from Lake Grassmere and surrounding catchments or diluted brine to the coastal marine area.

[C]

7B.1.4 Construction and use of a temporary stormwater flood outlet channel from Lake Grassmere to the coastal marine area, including any disturbance of the foreshore and seabed.

[C]

7B.1.5 Activities permitted in the Coastal Marine Zone.

7B.2 Standards that apply to all permitted activities

7B.2.2 When undertaking an activity in accordance with permitted activities in the Coastal Marine Zone, the relevant standards for the activity in 16.3 must be complied with.

Schedule 7C – Salt Works Lake Maintenance Area

7C.1 Permitted Activities

Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent when undertaken by the operator of the salt works within the Salt Works Lake Maintenance Area, and where they comply with the applicable standards in Chapter 22:

[R, D]

7C.1.1 Excavation

320. The introductory wording to 22.1 is amended to read:

"Unless <u>expressly permitted by rules in Schedule 7 of Appendix 16 or</u> expressly limited by a rule elsewhere by a rule in the Marlborough Environment Plan…"

Figure 11.3

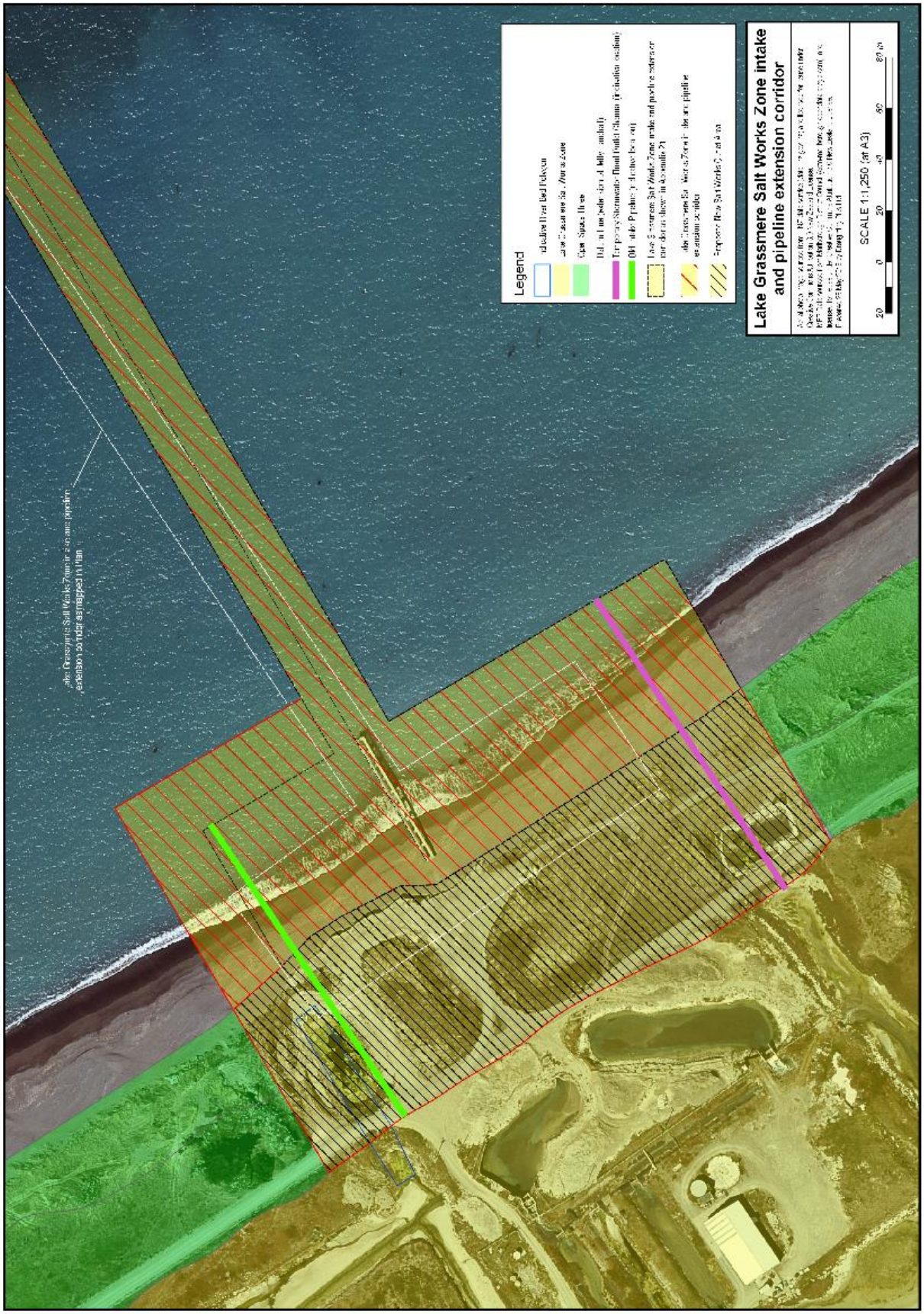
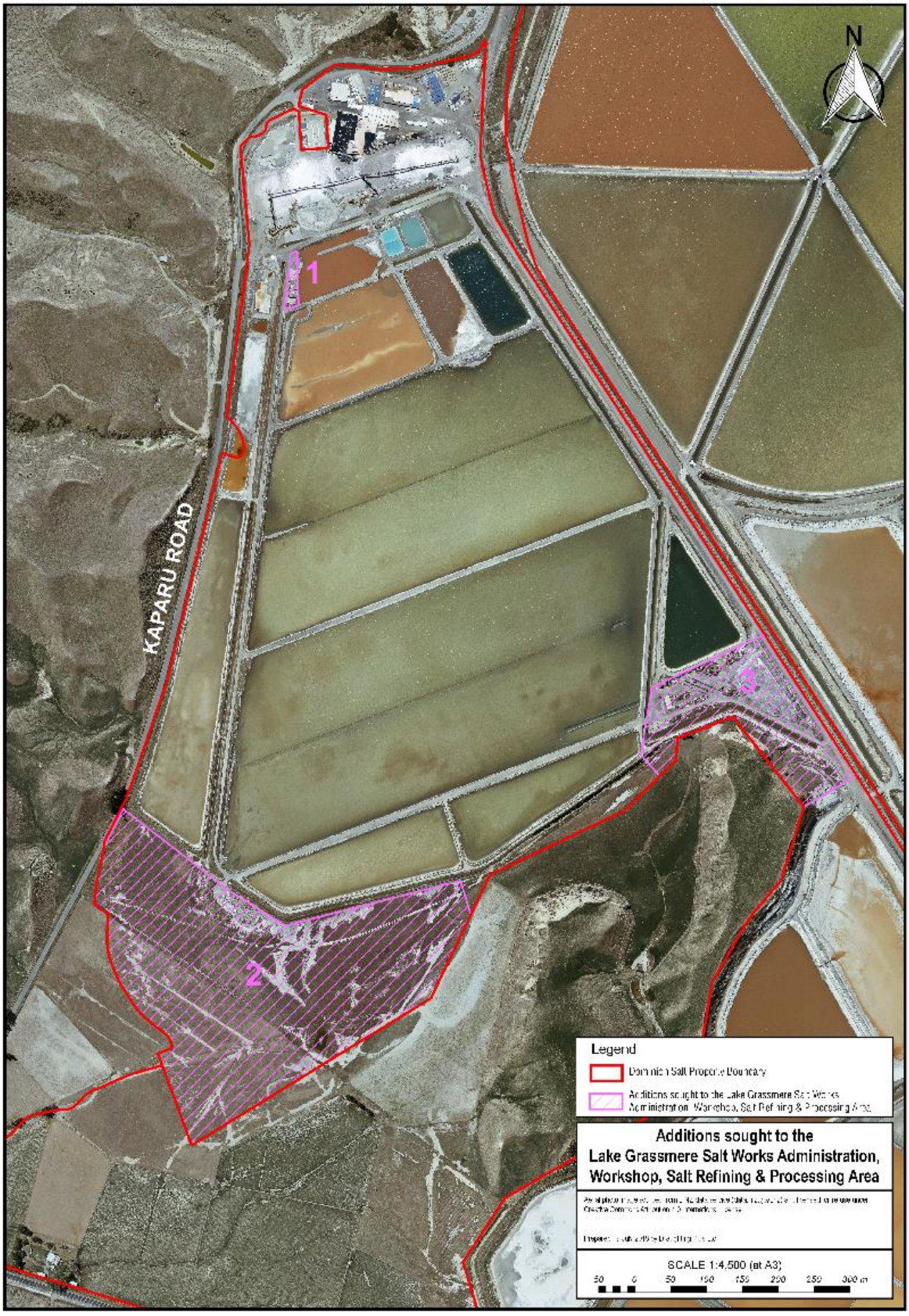

Legend
Lake Grassmere Salt Works Zone intake and pipeline extension corridor
SCALE 1:1,250 (at A3)

Figure 11.4


N
KAPARU ROAD
1
2
3
Legend
Additions sought to the
Lake Grassmere Salt Works Administration,
Workshop, Salt Refining & Processing Area
SCALE 1:4,500 (at A3)

Port Zone - Clifford Bay

321. A number of submission points from Port Clifford Limited (PCL) received in relation to the Port Zone at Clifford Bay seek: retention of the Port Zone but amend its boundaries to provide for a smaller 'pocket port' concept (where the submission envisages the use that may include, but not limited to, export of goods and international road freight services); amend the objectives and policies to include reference to the Clifford Bay Port Zone; remove Rule 13.5.2 which requires resource consent for any activity for the purpose of constructing any port facility within Port Clifford.[84]

322. The Port Zone extension sought by PCL (identified within Appendix A to its submission), identifies an area where the following zoning and overlays apply to the site:

- Zoning
    - Coastal Marine Zone
    - Open Space 3 Zone
    - Rural Environment Zone
- Overlays
    - Significant Wetland (W78)
    - Threatened Environment – Indigenous Vegetation Site
    - Coastal Natural Character – Very High Rating.[85]

323. The PMEP provisions relevant to the PCL proposals are as follows:

> *Objective 13.1 - Areas of the coastal environment where the adverse effects from particular activities and/or forms of subdivision, use or development are to be avoided are clearly identified.*
>
> *Policy 13.1.1 - Avoid adverse effects from subdivision, use and development activities on areas identified as having:*
>
> *(a) outstanding natural character;*
>
> *(b) outstanding natural features and/or outstanding natural landscapes;*
>
> *(c) significant marine biodiversity value and/or are a significant wetland; or*
>
> *(d) significant historic heritage value.*

[84] Port Clifford Limited (1041.001) Duncan Whyte Evidence.
[85] Section 42A Report, paragraphs 995-996.

Section 42A Report

324. The Section 42A Report does not identify that the Port Zone needs to be rezoned. Zoning is a tool to achieve objectives and policies within the PMEP and is not itself an outcome.[86] The submission from PCL to amend the zone's boundaries did not provide any information on the surrounding areas. But there was the potential in the little that was provided, to indicate the proposed extension may result in significant adverse effects to the existing coastal environment.

325. The evidence produced at the hearing, however, provided some clarification of what was required. PCL sought to significantly reduce the boundaries of the existing Port Zone within a rectangle of land marked up and included in the mapping produced.

326. In terms of the NZCPS Policy 13 Natural Character implications, the submitters' focus was on the second part of Policy 13(1)(b) *'avoid, remedy or mitigate other activities other than those which do not have significant adverse effects on natural character on all other areas of the coastal environment.'*

327. Nevertheless, the report writer's primary concern remained. The proposed Port Zone extension signalled that the new port would be located over Significant Wetland (W78) and dunelands. Under NZCPS Policy 11(b)(iii) to which the submitter did not refer, the suggested removal of these features to give way to the 'pocket port' would be considered a significant adverse effect on the environment to be avoided.

Consideration

328. Port Clifford submitted that the objective and policies should include reference to 'remedy and mitigate' adverse effects to bring Policy 13.1.1 into alignment with the NZCPS. This was rejected by the Section 42A Report writer citing NZCPS Policy 7: Strategic planning, which provides Policy 7(1)(b) to identify the areas in the coastal environment where development is inappropriate in preparing regional policy statements – Policy 7(1)(b)(i).This is what the PMEP achieves with the provisions relevant to the protection of the coastal environment.

> *Policy 13.1.2 - Areas identified in Policy 13.1.1 as having significant values will be mapped to provide certainty for resource users, Marlborough's tangata whenua iwi, the wider community and decision makers.*

329. The two policy provisions above identify the areas with significant values to be avoided, and where this occurs, these areas are to be mapped in the PMEP to provide certainty to plan users. The policies seek to identify areas of the coastal environment that the Council has an

[86] Section 42A Report, Reply to Further Evidence, page 113.

obligation to protect from adverse effects from development use and subdivision to give effect to the provisions of the RMA and the NZCPS.[87]

330. The Panel provided PCL with the opportunity to seek legal advice as to the implications of the NZCPS on the zoning map changes its submission requested[88] (as under s 66(1) RMA the MDC must prepare the PMEP in accordance with the NZCPS). The effect of the request by PCL ignores NZCPS Policy 11 (b)(iii) Indigenous biological diversity (biodiversity) relating to indigenous ecosystems and habitat found only in the coastal environment that are particularly vulnerable to modification (such as coastal wetlands and significant effects on dunelands), as well as other potentially relevant provisions in Policy 11.

331. The wording of Policy 11(b)(iii) requires avoidance of significant adverse effects on:

> *(iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh.*

332. In its memorandum[89] in reply to Minute 22, PCL responded that the company does not believe it is necessary to add anything further to those particular matters it had already addressed in the hearing, namely:

- There is an existing Port Zone that is much larger than the proposed pocket port that currently forms part of the existing environment.
- As the proposal is in an existing zone, the legal test found in NZCPS Policy 11(b) is firstly to avoid 'significant adverse effects' and secondly 'to avoid, remedy or mitigate other adverse effects_…'. These three (secondary) options are allowed for in PCL's proposal. The witness stated this 'must be the case' or there are other ports across New Zealand that would be constrained with no change permitted.
- If Significant Wetland W78 is a coastal wetland of significance, this has never been identified or discussed before in the previous TranzRail hearing under WARMP.
- It is hypothesized that an 'artificial channel' from the area identified as W78 to Lake Grassmere has long been established as can be observed in historical aerial imagery. This may have drained water or taken it from Lake Grassmere to create the area now identified as W78.

[87] Section 42A Report, paragraphs 69-72.
[88] Hearing Panel Minute 22, 10 April 2018.
[89] PMEP Response to Minute 22, Port Clifford Limited, 9 May 2018.

- Objective 13.1 and Policies 13.1.1 and 13.1.2 should be amended to include reference to the words 'remedy and mitigate' adverse effects.[90] The company's intent appears to be an attempt to modify Policy 13.1.1 to bring it into alignment with the NZCPS Policy 11(b) (second part) in order to modify 'or play down' the 'avoidance' of significant adverse effects of developments in the coastal environment. Specifically PCL sought to separate out the wetland (PCL was a further submitter to the PMNZ submission on this matter).

333. We find from the Section 42A Report that the submitter did not submit on Policy 8.3.1(b) that identifies the need to 'avoid' adverse effects on areas mapped as significant wetlands. Both Policy 13.1.1 and Policy 8.3.1 in fact reflect the obligations on the Council to give effect to the directions within the NZCPS that include Policy 11(b)(iii) to avoid significant effects on (inter alia) coastal wetlands and dunelands.[91]

334. Nor did the submitter seek to remove the Significant Wetland (W78) from the PMEP Planning Maps about which the submitter had the opportunity to comment. Instead the submission only queried how the area was established as a significant wetland in the first place. 'Significant' by definition is just that – established through the criteria identified in Chapter 8 and applied to the wetland in Clifford Bay by Peter Hamill, an experienced scientist for the MDC who gave earlier evidence at the hearing.

335. In his evidence Mr Whyte, witness for the submitter, produced a series of maps providing two options for the proposed development.[92] Also produced as *Appendix 2*: *Extracts from PCL submission Planning Maps*, were two further maps identifying the various zones marked in black applying to the proposal. The first of these illustrates the 'Proposed Port Zone' entirely encompassing in purple the whole of what is identified as a 'Significant Wetland' and the second map including in green a small sliver of coastal environment called 'Threatened Environments'. The proposed zone has been moved to the northwest and includes more land for the 'pocket port' than coast which was previously included in the TranzRail case.[93]

336. From these maps the Panel's conclusion is that the proposal remains within the existing TranzRail area but in a different northwest location than the previous TranzRail proposal. The new proposed area also encompasses a Significant Wetland, the only remaining wetland

[90] Port Clifford (1041.20).
[91] Section 42A Report, Reply to Evidence, page 16.
[92] Port Clifford, Duncan Whyte Evidence, pages 19-20. *Extracts from AECOM Feasibility Study 27 May 2016.*
[93] Ibid, pages 21-22.

feature in this whole coastal area. The Panel found it difficult to imagine a more significant adverse effect on a wetland than to propose its entire destruction.

Decision

337. The submitter failed to appreciate the significance of the legal barrier it faced in NZCPS Policy 11(b)(iii) given that the Council is required by law under s 66 RMA to ensure its resource management plans are in accordance with the NZCPS (2010).

338. After hearing further evidence on this submission and assessing the maps illustrating the boundaries of the proposed pocket port boundaries, the PCL submission is rejected. The proposed zone would effectively remove Significant Wetland W78 and dunelands from the PMEP and would not give effect to the NZCPS Policy 11(b)(iii) nor the relevant provisions of the RMA or the PMEP.

339. The submission on creating a pocket zone within the Port Zone at Clifford Bay is rejected.

Bio-fouling, Cleaning

Manual scraping of anti-foul paint coating or bio-foul waste from a ship

340. The relevant NZCPS provision is:

NZCPS Policy 12 Harmful aquatic organisms

(1) Provide in regional policy statements and in plans, as far as practicable, for the control of activities in or near the coastal marine area that could have adverse effects on the coastal environment by causing harmful aquatic organisms to be released or otherwise spread, and include conditions in resource consents, where relevant, to assist with managing the risk of such effects occurring.

(2) Recognise that activities relevant to (1) include:

(a) the introduction of structures likely to be contaminated with harmful aquatic organisms;

(b) the discharge or disposal of organic material from dredging, or from vessels and structures, whether during maintenance, cleaning or otherwise; and whether in the coastal marine area or on land;

(c) the provision and ongoing maintenance of moorings, marina berths, jetties and wharves.

341. And the definition of Harmful Aquatic Organisms is:

Aquatic organisms which if introduced into coastal water, may adversely affect the environment or biological diversity, pose a threat to human health, or interfere with legitimate use or protection of natural and physical resources in the coastal environment (NZCPS Glossary).

342. The NZCPS has a significant crossover with MPI's role in marine biosecurity and the Biosecurity Act 1993 which provides new tools for the management of bio-fouling including the Craft Risk Management Standard for Bio-fouling (CRMS) which came into effect November 2018.[94]

343. There are two sections to this part of the decision, the first is the technical aspects of bio-fouling and the second is the rules recommended to implement them.

344. Submitters assert: that the permitted activity rule does not provide for the in-water cleaning of microfouling from a ship hull – this activity may have minimal impact on the release of contaminants and assist in stopping macrofouling from occurring;[95] the Council should amend the provisions relating to the removal of bio-fouling to include provisions for in-water cleaning with standards taking into account the guidance in the Australia and New Zealand Anti-fouling and In-water Cleaning Guidelines;[96] restricting normal scraping from occurring within 10 metres of the coastal marine area is unnecessarily limiting as it normally takes place in close proximity to the CMA and is managed to ensure contaminants do not enter the area – the rule should be deleted (Standard 13.3.4. provides the appropriate benchmark for the use);[97] it is unclear why there is no rule permitting this activity within the Port Landing Zone when this activity is permitted in the Port Zone and should be subject to the same standards as specified in the Port Zone.[98]

Section 42A Report

345. The report writer's initial response ranged over a number of resulting issues arising:

- That water bio-fouling takes place within the CMA and is important to occur for the maintenance of boats and maintenance of biosecurity risk.
- The issue has not been clearly or specifically provided for in the PMEP.
- Any activity in the plan which is not specifically provided for as a permitted activity within the Port, Port Landing or Coastal Marine Zone requires resource consent as a discretionary activity; while manual scraping of bio-foul waste is provided for as a permitted activity within the Port and Marina Zones, the standards restrict it from occurring within 10 metres of the coastal marine area.

[94] Minister of Conservation, Sarah Hucker, Evidence, paragraph 24(b).
[95] DOC, NZDF, MPI.
[96] http://www.agriculture.gov.au/biosecurity/av/vessels/biofouling/anti-fouling-and-inwater-cleaning-guidelines
[97] PMNZ (433.121).
[98] PMNZ (433.145).

- The Australia and New Zealand Anti-Fouling and In-Water Cleaning Guidelines (the Guidelines) assist authorities to decide the appropriateness of in-water cleaning on a case by case basis determining (a) the environmental risk of in-water cleaning; (b) specific guidance when it may be acceptable. These guidelines if incorporated within the PMEP will provide sufficient control to ensure effects on the environment are mitigated. The Guidelines distinguish bio-fouling origin in three categories – regional, domestic (outside the region) and international.[99]

- The report writer recommended Permitted Activity Rules within the Port, Port Landing, Marina and Coastal Marina Zone, together with a series of standards. She recommended that the Permitted Activity Rules within these areas are amended to provide a new permitted activity together with a number of new amended standards and a new definition.[100] She also identified a new abrasive cleaning method used in the Guidelines to avoid contaminant risk and coating damage.

346. The Minister of Conservation and MPI through the DOC witness, Ms Sarah Hucker, gave extensive evidence on why the rules in the PMEP did not give adequate guidance to the NZCPS Policy 12, including track changes to proposed new rules, providing a copy of the Anti-Fouling and In-Water Cleaning Guidelines June 2013, and detailing reasons why she suggests a number of amendments to the report writer's recommendations, providing, in conjunction with MPI, a series of proposed changes.

347. Recommendations from Ms Hucker include:

- A new condition which explicitly provides for the cleaning of microfouling without the need for capture and removal from the coastal marine environment (consistent with the Guidelines).

- The exclusion of barnacles because they are low risk (also provided for in the MPI's CRMS).

- Deletion of the word 'treatment' in the report writer's recommendations because this would likely involve a contaminant and require discretionary activity consent: the word 'treatment' should be amended by the word 'cleaning' of bio-foul.

- Refer to 'macro-fouling' as well as 'micro-fouling' as a new definition. Micro-fouling is a layer of microscopic organisms referred to as a slime layer and easily removed; macro-

[99] Section 42A Report, paragraph 1103, citing Guidelines, Appendix 5, page 29.
[100] Minister of Conservation, Sarah Hucker, Evidence, paragraphs 1108-1111.

fouling is the removal of organisms visible to the eye such as barnacles tube worms or other large attached organisms.[101] The macro-fouling definition allows for the low level macro-fouling capture and removal from the coastal marine area.

348. The witness identified that their proposed condition (d) on macro-fouling is stricter than the Australia and New Zealand Guidelines because it confines this type of cleaning to a Level of Fouling (LOF 2) Ranking less than or equal to a published and widely-used LOF 2 scale development developed by NIWA in 2005. The Panel was advised by Ms Hucker[102] the reason this limit to LOF 2 was agreed to for the Greater Wellington Regional Council (GWRC) proposed rule. This was because access to technology in New Zealand to undertake in-water cleaning with 100% capture capable of dealing with large areas of a vessel hull is limited; particularly if the extent of macrofouling is more than discrete patches.

349. Ms Hucker also referred to the Guidelines cleaning method stating that New Zealand needs to be conscious that this applies dependent on the type of anti-fouling coating. It is the case for biocide coatings which are soft and gradually release a copper compound or other pesticide to deter bio-fouling organisms. It is not the case for mechanically resistant coatings that are designed for regular cleaning.[103]

Consideration

350. LOF 2 is still considered a low level of macrofouling, described as: "Light bio-fouling 1-5% of visible surface covered by very patchy macrofouling. [The] remaining area is often covered in slime…."[104]

351. The LOF 2 restriction together with a condition that requires the operator to "…capture any biological material greater than 50 microns in diameter, with any captured cleaning debris disposed of at an approved landfill' means that to Ms Hucker, the risk of introducing a harmful aquatic organism or pest species is minimal.

352. The Panel requested clarification from the Minister of Conservation and from MPI in the context of the permitted activity rule and standards for in-water bio-foul cleaning proposed by DOC and MPI querying, how big is 50 microns? And is the average boatie able to comply with a requirement that there be no discharge of material greater than 50 microns when undertaking in-water cleaning of bio-foul?[105]

[101] Section 42A Report, paragraph 1103, citing Guidelines, Appendix 5, page 29.
[102] Minister of Conservation, Sarah Hucker, Evidence, paragraphs 46.
[103] Minister of Conservation, Sarah Hucker, Evidence, paragraph 37.
[104] Minister of Conservation. Sarah Ellen Hucker, Evidence, paragraph 46.
[105] Panel Minute 35.

353. The response from Counsel for both Ministers indicated that 50 microns is 0.05mm; a micron is 1/1000 of a millimetre and therefore 50 microns is very small.

354. Counsel's observation is that the 'average boatie' is able to comply with the performance standard requirement of no discharge of biological material greater than 50 microns into the water column by employing specialised operators with contamination and filtration equipment. These commercial operators are able to provide services to locations in the Marlborough Sounds.[106]

The Issue of macrofouling

355. The report writer's concerns were expressed, however, with the standard (d) proposal from the Minister of Conservation and MPI on the basis that the 50 micron standard for macrofouling less than this size (if from outside the region) would not require capture, and therefore would pose a biosecurity risk. It would be more beneficial to provide macrofouling to LOF 2 – then it would be equivalent to be of 'Marlborough origin' as recommended and also be defined. The report writer expressed other reservations:

- The measurement of 50 micron size referred to in the rule might be difficult for plan users to determine;
- It was likely that most boat owners would be advised to seek specialist advice to determine the nature, level (and size) of macrofouling and how to remove this; and
- A note to the proposed rule would be appropriate to guide plan users that specialist advice should be sought to ensure compliance with that particular standard.

356. MDC's Biosecurity Officer also raised concern that the rule and standard as proposed overlapped with the Biosecurity Act 1993 and failed to give consideration to the origin of the bio-fouling as a necessary criteria for the suitability of in-water fouling.

357. As a result the report writer sought leave to discuss her concerns further with MDC's Biosecurity Officer and Ms Hucker of DOC for the Minister of Conservation and MPI.

Minute 35

358. The Panel issued Minute 35 granting leave to the report writer to discuss the potential effects of these activities and their complexities with Minister of Conservation, MPI and also with MDC's Biosecurity Officer. A record of that meeting of the related parties was provided to the

[106] Minister of Conservation, MPI, Submissions D Van Mierlo, page 2.

Panel – a record which endorsed much of what had already been recommended in the agreements reached previously:[107]

- DOC and MPI's preferred options did not make any distinctions about bio-fouling origin. The stricter approach of limiting discharge to LOF 2 applies to macrofouling of any origin and it was decided trying to enforce a rule that allowed a different standard for 'local' or 'regional' sources of bio-fouling would be difficult to determine and enforce.
- The proposed wording for a permitted activity rule will allow for in-water cleaning of microfouling and some macrofouling.
- The permitted activity should provide for the cleaning of microfouling, including goose barnacles in water without the need for capture.
- Some in-water cleaning of macrofouling should be provided for by the permitted activity: all parties agreed removal of 'light fouling' should be allowed by capture and with disposal.
- DOC and MPI agreed that the term 'light fouling' as used within the Marlborough Regional Port Management Plan 2018 is consistent (in accordance with the Biosecurity Act 1993) with the wording less than or equal to 2 on the Level of Fouling rank (Floerl et al (2005) as proposed by DOC and MPI in the PMEP Topic 11 hearing.
- The use of consistent terminology across the MDC plans is considered preferential. The definition of 'light fouling' in the Marlborough Regional Pest Management Plan (RPMP) 2018 is: 'means small patches (up to 100 millimeters in diameter) of visible fouling, totaling less than 5% of the hull and niche areas. A slime layer and/or goose barnacles are included in this definition.'
- Agreement was reached to use the term 'light fouling' within the rule, with a definition of 'light fouling' to be included within Chapter 25 of the PMEP.

359. The report writer accepted that the proposed rules and standards submitted within the evidence of MDC, MPI and DOC with minor amendments appear to provide clear and measurable standards for inclusion in a permitted activity rule, concluding that 'provisions, namely permitted development rules within the PMEP, that provide for "in-water cleaning of bio-fouling from ships, moveable structures or navigational aids and associated discharge of contaminants and biological material" as a permitted activity within the Port, Marine, Port Landing and Coastal Marine zones, will be efficient and effective in achieving the objectives of

[107] Section 42A Report writer: Response to Minute 35, 31 October 2018.

the Plan and, in turn, the purpose of the Act while mitigating the effects of this activity [on] the environment'.

360. The Panel agreed with the reasoning supplied in response to Minute 35 with two exceptions.

361. The first is that the notes recommended were not viewed as being appropriate save for the note drawing particular attention to the anti-fouling guidelines. The second point was that the officer designations proposed were again considered inappropriate as the obligation and authority conferred is the Council's.

Decision

362. Insert a new permitted activity rule in Chapters 13, 14, 15 and 16 as follows:

xx.x.x In-water cleaning of bio-fouling of ships, moveable structures or navigational aids and associated discharge of contaminants and biological material.

363. Insert a new standard in Chapters 13, 14, 15 and 16 as follows:

xx.x.x In-water cleaning of bio-fouling of ships, moveable structures or navigational aids and associated discharge of contaminants and biological material.

(a) the owner or operator of the ship, structure or navigational aid shall ascertain, and produce on request by the Council, details of the anti-foul coating used on the ship, structure or navigational aid, the planned service life as specified by the coating manufacturer, and the cleaning method recommended by the coating manufacturer, and

(b) the anti-foul coating on the ship, moveable structure or navigational aid shall not have exceeded its planned service life as specified by the manufacturer, and

(c) the cleaning method shall be undertaken in accordance with the coating manufacturer's recommendations, and

(d) the cleaning of microfouling and goose barnacles may occur without capture, and

(e) any coverage of macrofouling cleaned (other than goose barnacles) shall be no more than light fouling, and all biological material greater than 50 microns in diameter dislodged during cleaning shall be captured and disposed of at an approved landfill, and

(f) if any person undertaking or responsible for the cleaning, suspects that harmful or unusual aquatic species (including species designated as unwanted organisms or pest species under the Biosecurity Act 1993) are present on the ship, structure or navigational aid, that person shall take the following steps:

i. any cleaning activities commenced shall cease immediately, and

ii. the Marlborough District Council and the Ministry for Primary Industries shall be notified without unreasonable delay: and

iii. the cleaning may not recommence until notified by the Council to do so, or in the event a designated unwanted organisms or pest species is found, notified to do so by the Ministry for Primary Industries.

364. Insert a new note under the standard, as follows:

Note: For further context and guidance on anti-fouling and in-water cleaning of vessels and structures refer to the Anti-fouling and In-water Cleaning Guidelines (June 2013).

365. Add the following Definitions to Chapter 25 of the PMEP:

Light fouling: means small patches (up to 100 millimeters in diameter) of visible fouling, totaling less than 5% of the hull and niche areas. A slime layer and/or goose barnacles are included in this definition. Macrofouling: any organism or life stages of an organism not included in the definition of microfouling.

Microfouling: a layer of microscopic organisms including bacteria and diatoms and the slimy substances they produce. Often referred to as a 'slime layer', microfouling can usually be removed by gently passing a finger over the surface.

Navigational aid: has the same meaning as in Section 2 of the Maritime Transport Act 1994.

Coastal Marine Zone, Port Zone, Marina Zone and Port Landing Zone: Permitted Activities

366. The start point of the protection of the coastal environment in respect of the removal of antifoul paint is identified under prohibited activities in the coastal marine zone:

16.7.6 Removal of anti-foul paint from a ship

This is a regional coastal rule protecting coastal waters.

367. The following rules enable removal subject to standards in the Port Zone and Marina Zone. These are district rules relating to activities on land in those two zones only.

Rule 13.1.11.

Manual scraping of an anti-foul paint coating or bio-foul waste from a ship.

Rule 15.1.7.

Manual scraping of an anti-foul paint coating or bio-foul waste from a ship.

368. MFA and AQNZ submissions set out relevant provisions for minor infringement of these rules. They consider that minor spot removal of bio-fouling (including marine pests) from a ship that

individually removes antifouling should be permitted. Maintenance and applications of antifouling below MHWS should be prohibited other than minor works and a keel strip.

369. To achieve this the submitters seek in the Coastal Marine Zone:[108]

- a new Permitted Activity added to Rule 16.1: 'Inadvertent removal of anti-foul paint from a ship'; and
- a further Permitted Activity added to 16.1: 'Removal of slime layer if removal with nothing more abrasive than a brush'.

370. MFA and AQNZ provided the following as a new permitted activity in the Port Landing Zone:

14.1.xx. Manual scraping of anti-foul paint coating or bio-foul waste from a ship.

Consideration

371. For reasons in the discussion of standards below, the Panel does not agree with a concept of removal of antifoul paint or biofoul waste in the coastal marine area. Policy 23 (5)(a) NZCPS applies only to port and other marine facility operators.

372. As to the request for the permitted activity in the Port Landing zones at Elaine Bay and Oyster Bay the lack of facilities at those remote locations means the Panel is not satisfied that the potential risks can be sufficiently mitigated.

Decision

373. The relief requested in the Coastal Marine Zone and Port Landing Zone is rejected.

Standards 13.3.4.1, 13.3.4.2, 15.3.3.1 and 15.3.3.2

13.3.4.1. The activity must not be undertaken within 10m of the coastal marine area.
13.3.4.2. All anti-foul or biofoul waste, coating waste or other contaminant removed must be captured and stored for disposal in a covered container located in a roofed area.
15.3.3.1. The activity must not be undertaken within 10m of the coastal marine area.
15.3.3.2. All anti-foul or biofoul waste, coating waste or other contaminant removed must be captured and stored for disposal in a covered container located in a roofed area.

374. PMNZ consider that Rules 13.3.4.1 and 15.3.3.1 that restrict manual scraping anti-foul or biofuel waste from a ship occurring within 10 metres of the coastal marine area is unnecessarily limiting as this activity typically takes place in close proximity to the CMA. The activity is managed to ensure the contaminants do not enter the CMA and as a result PMNZ requests the rule be deleted.

[108] The Panel is advised by MFA and ANZ this is consistent with relevant biosecurity protocols. See a minor discharge in terms of NZCPS Policy 23(5)(a).

Section 42A Report

375. After traversing the relevant General Rules (Rules 2.17.4 and 2.17.5) and Standards (13.3.4.2 and 13.3.4.5) and PMNZ's statement that these provisions provide the intention that the General Rules will be able to be achieved, the report writer had to assume that Standard 13.3.4.1 is to apply a 'belt and braces' approach to the rule, to effectively add an additional buffer around the coastal marine area to help reduce contaminants entering the coastal marine area from this activity.[109] But no information has been supplied by the Council about why the 10 metre setback from the coast has been applied, and no similar standard applied within the MSRMP.

376. The report writer acknowledges that in reality this activity takes place in locations closer to the CMA than 10 metre within the Port and Marina zones. As a result, she considers it is within scope to amend the rule to remove the 10 metre restrictions from the coastal marine area, but nevertheless maintain a restriction that prevents the activity from taking place within that area. The activities are common place within the Port and Marina zones.

377. As a result, her recommendation addressing the Permitted Activity Standards 13.3.4 and 15.3.3 reads:

> *Manual scraping of an anti-foul paint coating or bio-foul waste from a ship.*

378. And with 13.3.4.1 and 15.3.3.1 amended to read:

> *The activity must not be undertaken within ~~10m of~~ the coastal marine area.*

Consideration

379. The Panel decided to retain the standard for manual scraping of anti-foul coating only. While bio-foul waste is a separate issue it has to occur as part of removal of antifouling paint. The Marina and Port Zones should provide for these activities to occur on land.

380. The essence of what must be achieved to avoid effects on the CMZ is the capture of any antifoul paint or any biofoul waste removed. That requires an amendment to Rule 13.3.4.2 to make it clear that capture is the important issue. Because the Panel has decided that capture is mandatory then the standards 13.3.4.1 and 15.3.3.1 become redundant. The storage for disposal should be a separate rule.

Decision

381. Standard 13.3.4.2 is amended as follows:

[109] PMNZ (433.121, 164).

13.3.4.2 All anti-foul or biofoul waste, coating waste or other contaminant removed must be captured. ~~and stored for disposal in a covered container located in a roofed area~~.

382. A new standard is inserted as follows:

13.3.4.x The waste and contaminants captured must be stored for disposal in a covered container located in a roofed area.

383. Standard 15.3.3.2 is amended as follows:

15.3.3.2 All anti-foul or biofoul waste, coating waste or other contaminant removed must be captured. ~~and stored for disposal in a covered container located in a roofed area~~.

384. A new standard is inserted as follows:

15.3.3.x The waste and contaminants captured must be stored for disposal in a covered container located in a roofed area.

Discharge of Sewage from ships in Coastal Waters

Policy 15.1.20 and Rules (Prohibited Activities) 13.6.4–13.6.6 - Port Zone, 14.5.4–14.5.6 - Port Landing Area Zone, 15.7.4–15.7.6 - Marina Zone 16.7.2–16.7.3 and Coastal Marine 15.M.10–15.M.12, 15.M.14.

Issues Arising

- Issues of concern to Marlborough's tangata whenua iwi
- Regulatory framework.
- Relevance of Resource Management (Marine Pollution) Regulations 1998 (Regulations 2 and 3).
- Relationship between NZCPS Policy 23: Discharge of contaminants and MARPOL regulations
- Potential risks from discharge of untreated sewage to the CMA.
- Alternatives for discharge of untreated sewage.
- Distances from shore for disposal of untreated sewage in the CMA.
- Stronger educative messages.

Issue of concern to Marlborough's tangata whenua iwi

385. The discharge of human waste to fresh and coastal water is culturally inappropriate. All of Marlborough's tangata whenua iwi have expressed concern (via submissions) outlining their strong views on this issue.

386. The Section 42A Report identifies Ngai Tahu's concern at the discharge of treated or untreated human sewage into the CMA and how this is deeply culturally offensive to iwi. The Runanga however supports the rules proposed on the basis that that prohibition signals over time that the Runanga would like to see all discharge of human waste cease.[110]

387. Policy 15.1.20 states:

> *Policy 15.1.20 - Except for Grade A or Grade B treated sewage, control the discharge of human sewage from ships in the Marlborough Sounds.*

388. This policy is implemented by the Rules in Volume 2 for all zones within the Marlborough Sounds that are contained wholly or partially within the coastal marine area.

Regulatory Framework

Prohibited Activity Rules

389. Discharge of untreated human sewage into the coastal marine area is specified as prohibited in:

- Port Zone Rules 13.6.4 – 13.6.6.
- Port Landing Zone Rules 14.5.4 – 14.5.6.
- Marina Zone Rules 15.4.4 – 15.7.6.
- Coastal Marine Zone Rules 16.7.2 – 16.7.3.

390. A number of submissions (16) were received in support of the policy and rules as notified relating to discharge of sewage from ships into coastal waters. Other submitters' concerns (234) range from: lack of evidence from the Council to justify the provisions;[111] failure to recognise the provisions of the Resource Management (Marine Pollution) Regulations 1998; lack of pump-out facilities; expense of installation of holding tanks; impact on boat owners/operators; absence of consultation; cultural values; compliance monitoring; alternative non regulatory methods; the proposed policy and rules replace existing regulatory control on sewage discharge from vessels contained within the Resource Management (Marine Pollution) Regulations 1998; [112] concerns for the implications of provisions for the health and safety of boaters.[113]

[110] Ngai Tahu (1189.112), Section 42A Report paragraph 1229.
[111] Pelorus Boating Club (1124. 011, .010).
[112] Yachting NZ (503.10, .13, .16).
[113] Waikawa Boating Club (580.001, 0.10).

391. Yachting NZ Inc in one of its submission points requested clarification of whether the Resource Management (Marine Pollution) Regulations 1998 (Marpol) are subject to the policy provisions of the NZCPS Policy 23(2). The relevant regulations are:

> *Resource Management (Marine Pollution) Regulations (1998)*
>
> *(1) …*
>
> *(2) On or after 1 July 2000, no person may discharge sewage in the coastal marine area from a ship or offshore installation unless that discharge occurs –*
>
> *(a) more than 500 metres (0.27 nautical miles) seaward from mean high water springs; and*
>
> *(b) more than 500 metres (0.27 nautical miles) from a marine farm; and*
>
> *(c) in water depths greater than 5 metres; and*
>
> *(d) more than 200 metres (0.108 nautical miles) from an area that the Minister of Fisheries has declared by notice in the Gazette to be a material reserve under regulations made under section 186 of the Fisheries Act 1996.*
>
> *(3) A rule may only be included in a regional coastal plan or a proposed regional coastal plan relating to the discharges under this regulation if –*
>
> *(a) the rule increases the distances seaward or increases the depth specified in subclause (2) for any harbours, estuaries, embayments, or other parts of a region, or increases the distances from a marine farm, marine reserve, or mataitai reserve specified in subclause (2), for all or any part of the year; and*
>
> *(b) the rule takes effect on or after 1 July 2000.*

392. Regulation (2) limits discharge 'from a ship or offshore installation'.

Relationship between NZCPS Policy 23: Discharge of contaminants and MARPOL regulations

393. Yachting NZ provided a measured opinion of the relationship between the Marpol Regulations and NZCPS Policy 23 Discharge of contaminants. These submissions:

- Discounted any relationship between NZCPS Policy 23(2)(a) and (b) and the Marpol Regulations, considering the NZCPS Board of Inquiry when it sat in 2008 recognised that these regulations control the discharge of sewage from ships, boats and yachts.[114]

[114] Yachting NZ, J Brabant Submissions, citing NZCPS Working Papers (2009), Volume 2, page 300, footnote 188.

- Concluded as a result that making such specific provisions for sewage discharge in the Regulations is not contrary to the policy provisions of the NZCPS and in particular Policy 23.
- Advanced the Marpol Regulations as providing for specific and limited variations for the control of sewage through coastal plan provisions subject to the regulatory provisions controlling sewage discharge under Regulations (2) and (3).
- Considered that the issue of sewage discharge from boats is only dealt with in the NZCPS Policy 23(5) as a general provision for councils in managing discharges from ports or other marine facilities.
- Considered any departure from the regulatory controls by way of rules in the coastal plan derives from the Marpol Regulations, not from the policy direction in the NZCPS. The regulations consequently do not affect the Council's obligation under Policy 23(2)(a) of the NZCPS to 'not allow' the discharge of untreated human sewage directly into the coastal environment from land based activities.

Consideration

394. The NZCPS was drafted after the Marpol Regulations were introduced. From the Working Papers relating to the NZCPS called in aid by Yachting NZ, it appears the Board of Inquiry was obviously aware of the Marpol Regulations. As a result, the provisions relating to the Regulations are not referred to within the NZCPS document with the exception of the inclusion of wording from Regulation 3(a) relating to 'distances and depths' and discharges to water. The NZCPS does not refer to discharge of waste from ships, boats and yachts except in a very general and different context under Policy 23(5)(a)(b)(c) and (d).[115]

395. The correct approach to the interpretation of a statutory instrument such as NZCPS, and the Marpol Regulations, requires that every reasonable effort is made to adopt an interpretation of both so as to ensure effect is given to both, that is, if possible, they are interpreted in a manner that ensures they work in a complementary manner with each other, rather than one overriding the other. There is an implication of this approach in the wording of NZCPS Policy 23(2)(b)(i).

396. The Regulations do not override the NZCPS. Other than in managing need for facilities for requiring the collection of sewage and waste for recreational and community boating NZCPS

[115] Proposed New Zealand Coastal Policy Statement (2008), Board of Inquiry Report and Recommendations, Volume 2 Working Papers, July 2009, pages 287 - 299.

Policy 23(5)(d), Policy 23(5)(a) and (c) relate directly to the operations of ports and other marine facilities.

397. Any relevant rule proposed in the PMEP must therefore be within the scope of Regulation (3). Any change to the depth or distance dimensions stated in the Regulations thus restrict what the Panel references from Regulation 3, and in respect of treated sewage from boats and normal ship operations from Regulation 12(2) and 12A(2).

398. Any change to the depth or distance dimensions stated in the Marpol Regulations is restricted to what the regulations permit and any provision proposed in the plan must be within the scope of the discretion.

399. As advised by the report writer, one submitter proposes that the MDC address the discharge restrictions as outlined within the Regulations and develop a map of the area where the Council advises boat owners that they should discharge sewage. That map is suggested to show areas that are the deep main channels of Queen Charlotte Sound.[116] The map is suggested to be used as a non-regulatory method, providing information to boat users, and displayed in marinas and boat clubs, websites, and cruising guide.[117]

400. Mr Broughton's submission suggested:

> *… I propose a compromise. Leave the regulated limit at 500 metres to align with national marine regulations, but develop a map showing a more restrictive zone where Council advises boat owners that they may discharge sewage. That map would I suggest, show just the deep main channel of Queen Charlotte Sound from about Picton Harbour seawards. Possibly not anywhere in Tory Channel, and possibly not anywhere in Endeavour Inlet either.*

The considerations following this part of the decision assist in shaping whether Mr Broughton's submission is a most appropriate course for the Panel to follow in its decision.

Potential risks from discharge of untreated sewage to the coastal marine area
Risk to health and aquaculture

401. We concluded the science of risk to human health from gastrointestinal upsets from the contaminant sources is undeniable and obvious. So too is the evidence compelling of serious risks to aquaculture and human health through adverse potential effects on aquaculture product. The Panel heard compelling evidence as to potential unsatisfactory increased risk in

[116] We note that the discharge of human waste mentioned in the PMEP only relates to the Marlborough Sounds and not to the whole of the coastal marine area as submitted by YNZ.
[117] Peter Broughton (138.001), Section 42A Report, page 223.

crowded waters in areas such as Waiheke Island leading to closure of aquaculture harvesting in near proximity over summer holiday periods. Such closures in the Sounds would be potentially very damaging for the aquaculture industry and all those in the region reliant on product.

402. Even more compelling was the detailed evidence as to the close monitoring programme conducted by the industry to protect human health. The risks described by Mr Alan Campbell for MFA arising from even a single incident of e-coli or other viral contamination are significantly adverse.[118]

403. Moreover, indirectly, in reputational terms for the nation's aquaculture product, is that the adverse effects of a closure arising from contamination from human sewage could be potentially very damaging and long-lasting.[119]

404. Other examples of evidence of concern existed in the Marlborough and Tasman regions of the potential impacts on aquaculture where closures have occurred at Portage and Golden Bay – in both cases water quality concerns resulted in temporary closures.

405. The Council is bound to give effect to the directive from the NZCPS on the issue of aquaculture. Particular policies of relevance are Policies 8 and 23 – particularly 8(a)(i) and 8(c) as follows:

> *Policy 8 Aquaculture - Recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by:*
>
> *(a) including in regional policy statements and regional coastal plans provision for aquaculture activities in appropriate places in the coastal environment, recognising that relevant considerations may include:*
>
> *(i) the need for high water quality for aquaculture activities; and*
>
> *(ii) the need for land-based facilities associated with marine farming;*
>
> *(b) taking account of the social and economic benefits of aquaculture, including any available assessments of national and regional economic benefits; and*
>
> *(c) ensuring that development in the coastal environment does not make water quality unfit for aquaculture activities in areas approved for that purpose.*

[118] MFA, AQNZ, Alan Campbell, Evidence, paragraphs 28-32.
[119] MFA, AQNZ, Alan Campbell, Evidence, paragraphs 9-10.

Marine risk from recreational gatherings

406. In addition to the risk for aquaculture is the risk for any water contact recreational effects, particularly given the emphasis in the PMEP on the recreational amenity afforded by the Sounds.

407. Of added concern, the Panel received other evidence during the hearing of large gatherings of recreational boats at various locations over the summer period raising the risk of significant potential adverse effects to and from the boating fraternity. An example of this is the situation at Endeavour Inlet where the evidence was commonly indicative of in excess of 200 boats gathering for an extended period in a relatively confined area.

408. We considered too the weight that should be given to the precautionary principle in NZCPS Policy 3 and to iwi cultural concerns.[120] Policy 3: Precautionary approach prescribes the:

> *3(1) Adopt[ion of] a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.*

409. The precautionary principle is applicable as the effects of the discharges from boats on the water will always be uncertain and require as large a mixing zone as possible in the coastal environment. NZCPS Policy 3(1) is almost exactly on point as the potential consequences of an adverse effect on human health can be significant, as can be the economic consequences to aquaculture if contamination of aquaculture product was to occur.

Alternatives for discharge of untreated sewage in the coastal marine area

410. The Panel considered what weight should be given to practicalities as to distance to be travelled to discharge sites on land or on water; to dilution factors (whether mixing zones really are a solution); to on-board treatment systems and their effectiveness/ failings/complexities as to management.

411. We concluded serious consideration must be given to any alternative means of disposal of untreated sewage other than by discharge to sea.

412. The Panel's view is that consideration must involve reasonable solutions, and in the marine environment where issues of vessel and human safety arise, they must also be safe solutions. The imperative in s 5(2) RMA to ensure the *health and safety* of the community is further statutory reinforcement that sound sustainable management of resources is essential.

[120] Ngāti Kuia (501.74).

413. Adopting a rule which requires for large areas of Pelorus and Queen Charlotte Sounds that vessels leave the Sounds and discharge untreated sewage in the exposed waters of the Outer Sounds, or even more exposed Cook Strait waters, is potentially unsafe in adverse weather conditions which commonly prevail in those areas. That conclusion is informed by the evidence, particularly provided by boating associations which appeared at the hearing including the Waikawa Boating Club.

414. Moreover, the Panel's view is that it is also costly, time consuming and wasteful of fuel and that such a rule would be highly likely to be breached more than observed. A further relevant consideration is the difficulty in policing or enforcing the rule.

415. We consider that for such a rule to be workable and achieve its purpose it needs to be practical enough to achieve 'buy-in' or adoption by the boating public. We heard evidence from experienced small boat owners representing their organisations to the effect that small boat owners would always choose and prefer to discharge well away from shore and from marine farms.

416. Our opinion is that extra distance in a rule is unlikely to create a barrier to observance, and in fact is likely to be adopted and observed as good boating practice.

417. The problem with requiring discharge to land-based collection points is that there are not enough of them (3) for the number of boats needing to be serviced. Nor, given the 1500 kilometres of coastline in the Marlborough Sounds, are there enough locations to avoid lengthy, expensive and time-consuming trips solely for the purpose of discharge. That is particularly so for parts of the Sounds distant from major ports where such collection facilities may exist. If in future sufficient collection points were installed, the issue of a more restrictive rule can always be considered.

418. The Panel is satisfied on the evidence it heard that on-board treatment systems and holding tanks are currently inadequate to enable a prohibited activity rule for discharge of untreated sewage throughout the Sounds.

419. 'Reasonable' mixing zones are a concept utilised in s 15B(2) RMA and should be considered in the estimates of distance from shore:

Section 15B

(1) …

(2) No person may, in the coastal marine area, discharge water into water from any ship or offshore installation, unless—

(a) the discharge is permitted or controlled by regulations made under this Act, a rule in a regional coastal plan, proposed regional coastal plan, regional plan, proposed regional plan, or a resource consent; or

(b) after reasonable mixing, the water discharged is not likely to give rise to any significant adverse effects on aquatic life.

420. NZCPS Policies 23(1)(d), (e) and (f) provide some guidance on the manner of best managing the effects of contaminants generally through the use of mixing zones:

> *(d) avoid significant adverse effects on ecosystems and habitats after reasonable mixing;*
>
> *(e) use the smallest mixing zone necessary to achieve water quality in the receiving environment.*
>
> *(f) minimise adverse effects on the life-supporting capacity of water within a mixing zone.*

Distances for disposal of untreated sewage in the coastal marine area

421. At least in the interim, until onshore collection is practical throughout the Sounds or on-board treatment systems become well proven and practical, the Marpol Regulations enable a practical method of disposal of untreated sewage but at distances which significantly reduce risk to human health and biodiversity in shallower waters. In practical terms, this requires settling on distances which enable discharge only in deeper more distant waters and preferably exclude embayment waters from the discharge mixing areas.

422. The Waikawa Boating Club and Marlborough Berth and Mooring Association Incorporated in verbal evidence consider that primarily there is no justification for the increase in distance from 500 metres in the Regulations to 1000 metres. It is no accident that the distance from shore is expressed in nautical miles as well as metres as this is the distance measurement used on marine charts.[121] Yachting NZ indicated that the Auckland Unitary Plan had cut back substantially to reinforce the 500 metres discharge distance as a result of submissions.[122]

[121] Yachting NZ, Legal Submissions, paragraph 31.
[122] The Marlborough Sounds with its incised valleys and waterways is a very different location from the Hauraki Gulf in Auckland.

423. In an overall assessment the Panel queried whether 500 metres could be extended to 1000 metres as per Rules 16.7.2 and 16.7.3 for untreated sewage, or any other distance, for example, 750 metres.

424. Our preferred view is 750 metres as map evidence of the effect of the 1000 metre distance satisfies us that 1000 metre distance is unworkable in practical terms. It would exclude most of the Inner Queen Charlotte and Pelorus Sounds where landform alone, not even taking into account marine farm locations, is within 1000 metres of most locations on the water.[123] Even at 750 metres there are four localities, two in Pelorus Sound and two in Queen Charlotte Sound, where there is so little open water space available 750 metres from shore that little if any reasonable mixing would be able to occur. Those areas need to be excluded as well.

425. The Panel queried whether, if marine farms are to be given protection, customary fishing grounds for iwi also be provided for through some mapping or listing in the possible new iwi sites of significance (in the now prepared Appendix 3).

426. As with other claims to areas of special cultural significance to Māori, the Panel's view is that, unlike the marine farms which will be very closely mapped to a detailed GPS level, sites of special significance will need to be identified by tangata whenua iwi for inclusion in the new proposed Appendix 3 as a plan change, and at that stage if a marine area, the change would be the time and process to consider and consult on such a rule change.

427. The Panel queried if it should consider whether there is scope for imposing a treatment requirement on each vessel or if not, there is at least pump-out capacity from holding tanks. As discussed above, the evidence is accepted that treatment systems are not reliable enough at present. Capacity for holding tanks is only reasonable to consider if there are pump-out facilities to accept the waste.

Stronger educative messages

428. The Panel considered whether there should be either a new policy wording or explanation providing a stronger educative message as to the increasing need to comply with Policy 23 of the NZCPS, and if so, what the wording should be and where it would be best placed in Chapter 13 PMEP.

429. The message which the Panel wishes to emphasise is that the PMEP's more protective provisions are but an interim measure of a progressive path to ensuring there is no discharge

[123] Section 42A Report, paragraph 1237 citing Duffy (97.002), Figure 20: Maps Provided by Duffy showing extent of proposed policy and rules (areas where discharge is permitted shown in dark green) in the coastal marine environment.

of untreated human sewage to the Sounds waters. The message needs to be given in Policy 15.1.20 of the PMEP to the boating community that measures need to be imposed progressively through RMA plan processes to ensure compliance with the NZCPS directive in Policy 23(2)(a).

430. In other words, the more protective approach in this PMEP will be inevitably made more restrictive in time as collection facilities are developed throughout the Sounds. Recreational boat builders and owners need to be aware that they will need to install larger storage tanks and/or more effective on-board treatment systems in coming years to be prepared for the inevitable rule prohibiting discharge of untreated sewage in Sounds waters once those collection facilities are in place.

431. The Council, tangata whenua iwi, the broader community and all of those utilising the Sounds, including marine industries with involvement in the Sounds, need to commit to cooperative planning to make provision on a widespread basis for such collection points to be installed so as to enable the prohibitory rule to be reasonably made.

432. Council has already made considerable commitments in the PMEP in 15.M.10, 15.M.11, 15.M.12 and 15.M.14 which form a base for that wider planning initiative which is required.

433. 15.AER.2 in the monitoring effectiveness column needs an amendment to reflect changes made:

> *15.AER.2*
> *Water quality in Marlborough's coastal waters is suitable to support and sustain swimming, food gathering and marine ecosystems.*
>
> Monitoring effectiveness
> *All coastal water bathing sites are graded either good or very good, in accordance with the Ministry for the Environment's Microbiological Water Quality Guidelines for Marine and Freshwater Recreational Areas.*
>
> *With the exception of regionally significant infrastructure, there are no discharges of human sewage into the coastal waters of the Marlborough Sounds <u>in the areas identified in the MEP where such discharges are a prohibited activity.</u>*
>
> *The number of point source discharges directly to coastal water, other than stormwater discharges, do not increase. No discharges into water that breach water quality standards set in the MEP.*

Decision

434. The explanation to Policy 15.1.20 is amended to read:

… In addition, in many locations there is limited movement of water that would provide for mixing of the contaminants with the receiving waters.

The control implemented via this policy is an interim measure as part of a progressive response to eliminate the discharge of untreated human sewage into the coastal waters of the Marlborough Sounds. Other measures are likely to be proposed for discharges from ships to give effect to Policy 23(2)(a) of the NZCPS. The policy will inevitably be made more restrictive in time as collection facilities are developed throughout the Marlborough Sounds. The interim measure also provides recreational boat owners time to prepare for more stringent controls.

The continuation of discharging human sewage into such valued and significant enclosed waters has been questioned by the community. …

435. 15.AER.2 Monitoring effectives table is amended as follows:

… With the exception of regionally significant infrastructure, there are no discharges of human sewage into the coastal waters of the Marlborough Sounds in the areas identified in the MEP where such discharges are a prohibited activity. …

436. Insert a new overlay in Volume 4 labelled:

Restricted area for discharges from ships

437. Amend rules 13.6.4, 14.5.4, 15.7.4 and 16.7.2 to read:

From 9 June 2022, the discharge of human sewage, except Grade A or B treated sewerage, from a ship within ~~1000m~~ 750m of MHWS or into the coastal marine area identified as a Restricted Area for Discharges from Ships.

438. Otherwise the submissions are rejected.

Effects on Aquaculture of land based sewage disposal

439. The Panel considered whether the MFA request be granted as to the overlay request of 1000 metres around each marine farm requiring notification in the event of sewage leak.[124]

440. The Panel considered this is an impractical suggestion and one that achieved no useful purpose for a number of reasons. First, because it would have no effect on old systems which are the most likely to be leaking; second, the rules for new sewerage (for land based) disposal

[124] MFA, Counsel Submissions, paragraph 34.

fields are designed to ensure no such leaks occur (see Rule 7.3.13.4[125]); thirdly, Method 16.M.20 as to 5-yearly warrants of fitness provides a more practical solution; finally, because landowners were highly unlikely to be aware for some time of a leak.

Decision

441. The relief requested is rejected.

Discharge of contaminants to land

442. NZCPS Policy 23 states:

(1) …

(2) In managing discharge of human sewage, do not allow:

a. discharge of human sewage directly to water in the coastal environment without treatment; and

b. the discharge of treated human sewage to water in the coastal environment, unless:

(i) there has been adequate consideration of alternative methods, sites and routes for undertaking the discharge; and

(ii) informed by an understanding of tangata whenua values and the effects on them.

(3) …

(4) …

(5) In managing discharges from ports and other marine facilities:

a. require operators of ports and other marine facilities to take all practicable steps to avoid contamination of coastal waters, substrate, ecosystems and habitats that is more than minor;

b. require that the disturbance of relocation of contaminated seabed material, other than by the movement of vessels, and the dumping or storage of dredged material does not result in significant adverse effects on water quality or the seabed, substrate, ecosystems or habitats;

c. require operators of ports, marinas and other relevant marine facilities to provide for the collection of sewage and waste from vessels, and for residues from vessel maintenance to be safely contained and disposed of; and

d. consider the need for facilities for the collection of sewage and other wastes for recreational and commercial boating.

443. The first point to note about Policy 23 is that it refers to the discharge of 'contaminants' so it may be expected to encompass a wider range of issues relating to discharges than untreated

[125] Rule 7.3.13.4 There must be: (a) no ponding or effluent; (b) no run-off or infiltration of effluent beyond the property boundary or into a river, lake, Significant Wetland, drainage.

sewage as in the Marpol Regulations. The provisions of NZCPS Policy 23(1) indicate that more extensive reach as does Policy 23(5).

444. Scrutiny of Policy 23(2)(a) and (b)(i)(ii) provides two step provisions relating to the discharge of human sewage:

- The discharge of human sewage is not allowed directly to water in the coastal environment if it has not been treated; and
- it is not allowed even if it has been treated, unless there is adequate consideration of alternative methods, sites and routes for the undertaking, and there is an understanding of the effects on Māori values informed by an understanding of Policy 23(2)(b)(ii).

445. The latter reference has been taken from the Marpol Regulations Clause 3. But this does not provide an override of Marpol by NZCPS Policy 23. The wording applies for consideration in the process of choosing methods, places and systems of treated discharge from the larger land based facilities noted below and from there to the coastal environment.

Policy 15.1.9

Enable point source discharge of contaminants or water to water where the discharge will not result:
(a) in any of the following adverse effects beyond the zone of reasonable mixing:
(i) the production of conspicuous oil or grease films, scums, foams or floatable or suspended materials;
(ii) any conspicuous change in the colour or significant decrease in the clarity of the receiving waters;
(iii) the rendering of freshwater unsuitable for consumption by farm animals;
(iv) any significant adverse effect on the growth, reproduction or movement of aquatic life; or
(b) in the flooding of or damage to another person's property.

And;

Rule 16.7.4

Discharge of treated or untreated human sewage into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.

446. In relation to amending Policy 15.1.19, Yachting NZ submitted that there needs to be a clear distinction between policies for discharges from land and from ships. MDC confirmed this in its submission, seeking amendments to the wording of Policy 15.1.19 and Rule 16.7.4 to clarify the application of this policy and the rule to apply to the discharges from land based activities to coastal water avoiding the confusion that this policy also may apply to discharge from ships.126 (NZCPS Policy 23 would have benefited from that definitive distinction).

[126] MDC (95.156, .157). The Section 42A Report writer acknowledged in a memorandum to her evidence on Policy 15.1.19 that her recommendations now accepts these submissions were not reflected in her original report where she had recommended that the Policy be retained as notified.

447. The Section 42A Report writer notes that the amendments to Policy 15.1.19 as submitted by MDC will ensure the application of this policy is clear and will apply to land based activities only.[127] In a memorandum, the report writer wished to clarify the matter – that MDC's submission is accepted and that Policy 15.1.19 is recommended to read:

> *15.1.19. – Progressively work toward eliminating the discharge of human sewage to coastal waters <u>from the land-based activities</u> in the Marlborough Sounds, with the exception of regionally significant infrastructure.*

448. Prohibited Activity Rule 16.7.4. is recommended to be amended to read:

> *16.7.4. Discharge of treated or untreated human sewage <u>from land-based activities</u> into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.*

449. PMEP Chapter 15 Resource Quality (Water, Air, Soil) amendment may seem to be beyond the influence of the NZCPS Policy 23. But it provides a series of policies (Policy 15.1.18, 15.1.19, 15.1.20) with each one noted 'This policy gives effect to Policy 23 of the NZCPS'.[128]

450. The NZCPS Policy 23(2)(b) use of the phrase 'treated human sewage' implies how it will approach land-based discharge as amended in PMEP Policy 15.1.19 except for regionally significant infrastructure.

451. Regionally significant infrastructure is defined in Policy 4.2.1(a) as reticulated sewerage systems.[129] This includes the 'pipe network, treatment plants (and associated infrastructure)' operated by the MDC indicating discharge of treated sewage to the coastal marine environment is acceptable as long as it assesses suitable sites, places, routes and identifies Māori concerns in relation to these.

452. An implication of Policy 23(1) (processing and treating on land before discharge) is implied in the reference to the 'small mixing zones' in Policy 23(1)(e) as an end process after treating discharge on land to achieve a required water quality standard before discharging to the coastal marine area. In other words the degree of treatment for treated sewage would influence the size of the smallest mixing zone unlike for example the bigger one required for untreated sewage from ships where the 750m distance is necessary.

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[127] Section 42A Report writer, Memorandum 9th April, Use of the Coastal Environment, corrections to S42A Report, 9 April 2018.
[128] Volume 1, pages 15-19.
[129] The reference here to 'sewerage' is defined as 'a system of drainage by sewers', 'sewage works' is a place where sewage is treated, 'waste matter conveyed in sewers', NZ Pocket Oxford Dictionary, Fourth Edition, page 1049.

453. The NZCPS human waste discharge provisions chiefly relate to treatment in land-based facilities, such as the regionally significant infrastructure, before discharge to the Marlborough Sounds coastal environment.

Decision

454. Policy 15.1.9 is amended to read:

15.1.19. Progressively work toward eliminating the discharge of human sewage <u>from the land-based activities</u> to coastal waters in the Marlborough Sounds, with the exception of regionally significant infrastructure.

455. Rule 16.7.4 is amended to read

16.7.4. Discharge of treated or untreated human sewage <u>from land-based activities</u> into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.

Chapter 5 Allocation of Public Space in the Coastal Marine Area

Outline of plan provisions

456. There are two Section 42A Reports which address the management of the occupation of the CMA generally, and the issue of allocation of use of freshwater resources and Coastal Occupancy Charging (COC).

457. The first addresses the management of the occupation of the coastal marine area (CMA) generally and the relevant provisions are found in Issue 5J, Objective 5.10 and Policy 5.10.1, Policy 5.10.2 and Policy 5.10.3.[130]

458. The second Section 42A Report identifies the specific policies that relate to the proposed COC regime specifically – Issue 5J, Objective 5.10, Policies 5.10.4-5.10. 8 and method statements 5.M.10 and5.M.11.[131]

459. COCs are a resource management issue for the Marlborough region and require a framework within the Plan to provide for their merit.

460. Appendices were provided to illustrate proposed changes.

Relocation of Chapter 5 provisions to Chapter 13

461. Several submitters support the provisions under Issue 5J as notified but seek that the issue, objective and subsequent policies and methods are moved to Chapter 13 Use of the Coastal Environment.

[130] Section 42A Report (Plan), paragraphs 134-138.
[131] Section 42A Report (COC), paragraphs 16-18.

Section 42A Report

462. The report identifies the purpose of Chapter 5 (Volume 1) is to provide the framework for the allocation of resources, namely freshwater and space within the CMA, while Chapter 13 provides the management framework for activities undertaken in the coastal environment.

463. The provisions in Chapter 5 thus address higher level concerns about how space within the CMA should be allocated, the degree to which various occupations generate public versus private benefits, and the circumstances where a user should pay to use the resource.

464. Even though the report identifies that Chapter 5 deals with higher level concerns about the allocation of space as opposed to the management of specific activities, the report writer initially recommended to reject the submissions of Federated Farmers and Forest and Bird, to relocate the allocation of coastal space to Chapter 13.[132]

465. In considering further submissions by AQNZ and MFA which support Forest and Bird's submission,133 that identify the relevance of coastal occupancy charges (COC) as only relevant to the coast, the report writer accepted that allocation of COCs is more efficiently linked to the use of the CMA. She considers that relocation to Chapter 13 would make it easier to navigate the provisions that apply to the CMA within the PMEP. The relevant provisions of Chapter 5 could be incorporated within Chapter 13 by amending its heading to 'Use of the Coastal Environment and Allocation of Space Within the Coastal Marine Area'.[134]

Consideration

466. The aspects of an intended COC regime include the finances required each year by the Council to fulfil its role as sustainable manager of the coastal marine area and the allocation of the related costs among the beneficiary ratepayers and the various coastal occupiers. The allocation of freshwater resources requires not only the sustainable management of the marine farms, but the more general natural and physical resources of the coast and all the specific issues addressed in Chapter 13.

467. While acknowledging there is a boundary between 'use' and 'allocation', the Panel agrees it is more appropriate to address COCs in Chapter 13 where the focus is already on the activities utilising aspects of the coastal environment which is a public resource. Those specific issues relate to the provision for and effects of jetties, moorings, boat sheds, utilities, marinas, wharfs and aquaculture. Currently the provisions relating to allocation of space within the

[132] Federated Farmers (425.79) and Forest and Bird (715.100-.110).
[133] AQNZ (FS597) and MFA (FS608), Counsel's Submission, paragraph 49. Parts of Chapter 13 will need to apply to aquaculture following the notification of the aquaculture provisions.
[134] Section 42A Report (Plan), Reply to Evidence, pages 3-4.

CMA are tucked away at the back of Chapter 5 Allocation of Public Resources but these principally relate to allocation of freshwater.

468. As a result of this change, the report writer recommends that the following paragraphs are inserted after the notified Introduction to Chapter 13 (Volume 1), which the Panel finds appropriate for addressing the issue:

> …
>
> *The Council's role also involves managing resources that are in the public domain, which includes the extensive areas of coastal marine area within Marlborough. The Council frequently allocates or authorises the use of these natural resources for private benefit.*
>
> *Allocating rights to use public resources has become a fundamental part of the overall fabric of Marlborough's social and economic wellbeing. For example, within the coastal marine area there are many moorings, boatsheds and jetties throughout the Sounds, all of which contribute to the social wellbeing of residents and holidaymakers.*
>
> *The importance of the community and visitors being able to continue to use and develop these coastal marine areas within the constraints of the Resource Management Act 1991 (RMA) cannot be underestimated. Any significant reduction or change in approach to resource use could have significant implications for Marlborough's economic, cultural and social wellbeing.*
>
> *Management frameworks for specific uses and activities in the coastal marine area are included within the first part of this chapter. The remainder of the chapter under the heading 'Allocation of Space within the Coastal Marine Area' contains provisions to deal with higher level concerns about how space in the coastal marine area is to be allocated, the degree to which various occupations generate private versus public benefits and the circumstances in which a user should pay to use the coastal marine area.*

Decision

469. For the reasons given the recommendations to the structural changes of Chapter 13 and the Introduction, the following amendments are accepted.

470. Amend the heading for Chapter 13 to read:

'Use of the Coastal Environment <u>and Allocation of Coastal Space</u>'

471. Add the heading *<u>Allocation of Space Within the Coastal Marine Area</u>* to the end of the Chapter 13 between the methods and Anticipated Environmental Results.

- Amend the Introduction to Chapter 5 as the introduction to the new section in Chapter 13 as recommended by the report writer to reflect this new structure.[135]

472. Relocate Issue 5J, Objective 5.10 and Policies 5.10.1 – 5.10.8 and Methods 5.M.10 and 5.M.11 within Volume 1 Chapter 13 Use of the Coastal Environment and Allocation of Coastal Space.[136]

Coastal marine area/common marine coastal area

Coastal occupation charging

473. Section 64A RMA states as follows:

64A Imposition of coastal occupation charges

(1) Unless a regional coastal plan or proposed regional coastal plan already addresses coastal occupation charges, in preparing or changing a regional coastal plan or proposed regional coastal plan, a regional council must consider, after having regard to—

(a) the extent to which public benefits from the coastal marine area are lost or gained; and

(b) the extent to which private benefit is obtained from the occupation of the coastal marine area,—

whether or not a coastal occupation charging regime applying to persons who occupy any part of the common marine and coastal area should be included.

…

474. In the Section 32 Report, the Council considered the private and public benefits associated with coastal occupations deciding that where the private benefit is greater than that of the public, charging for occupation is justified.137

475. At the outset of discussion of this issue the report writer recommended a small number of amendments that better align with the provisions of s 64A RMA (Imposition of Coastal Occupancy Charging), the Marine and Coastal Area (Takutai Moana) Act 2011, and s 2 RMA Definitions,. The report writer suggests an amendment is necessary to the provisions of Chapter 5 relating explicitly to the COC regime referring to persons occupying 'the common marine and coastal area' as defined in the Marine and Coastal Area (Takutai Moana) Act 2011. Given that s 64A RMA also refers to both 'coastal marine area' and the 'common marine and coastal area' in differing provisions relating to a coastal charging regime, the recommendation

[135] Section 42A Report (Plan), Reply to Evidence, pages 4-5.
[136] Ibid, page 4.
[137] Section 42A Report (COC), paragraph 39, citing Section 32 Report – Chapter 5 Allocation of Public Resources, page 3.

was to replace the term 'coastal marine area' and instead use the term 'common marine and coastal area.'[138]

476. The report writer consequently recommends amendments to the provisions set out in Appendix 2 of the Section 42A Report.

Consideration

477. The terms 'coastal marine area' and 'common marine and coastal area' referred to in s 64A(1) RMA are each defined separately in s 2 RMA, the latter by a cross-reference to s 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act). To compound matters further the Takutai Moana Act also has a separate definition for 'marine and coastal area'.

478. The Panel's view was that the Plan definitions which apply to the Coastal Charging regime need to ensure no ambiguity arises. In the context of a charging regime certainty is important. It is necessary to remove any opportunity for any person levied with a charge in future to argue that there is some underlying technical wording defect arising out of the language used in the Plan, or subsequent documents to impose coastal charges.

479. Section 64A RMA states that a regional council must consider after making the statutory considerations whether a COC shall be applied to persons who occupy any part of the 'common marine and coastal area'. However, the statutory consideration required is as to the extent of public benefit gained or lost, or private benefit gained from occupation of the 'coastal marine area'.

480. In the Panel's view the pragmatic approach is to have the Plan referring to one phrase as it did in its notified from – 'coastal marine area', with the definition including all other related statutory definitions for the purposes of the coastal charging regime.

481. COCs nevertheless must not be imposed on a customary rights group or customary marine title groups exercising a right under Part 3 of the Takutai Moana Act. This specified exemption needs to be incorporated in the PMEP.

482. In the context of Marlborough, there are parts of the Port of Picton and the Havelock Marina that have been issued with general land titles.[139] These areas will be exempt from a charging regime under the s 384A RMA.

[138] Section 42A Report (COC), paragraphs 72-76.
[139] Picton Harbour Queen Charlotte Sound/Totaranui – Pt Lot DP4964, 158,396 ha, and Havelock Marina – Pt Blk A Blk XII Whakamarina SD, 572,982 ha.

Decision

483. Insert in Chapter 25 definitions section a definition of coastal marine area as follows:

Coastal marine area has the same meaning as Section 2 of the Act, (but particularly for the purposes of the coastal occupancy charge provisions in the Plan to give practical and purposive effect to the provisions of Section 64A of the Resource Management Act 1991 the phrase shall be interpreted to also mean and include where required both the common marine and coastal area, or the marine and coastal area).

Issue 5J - People want to be able to use and develop the coastal marine area for private benefit.

484. The submissions of Federated Farmers and Forest and Bird[140] support the issues under Issue 5J as notified while seeking for this part of Chapter 5 as noted be relocated to Chapter 13. As other decisions above have moved the coastal charging aspects of Chapter 5 to Chapter 13 and have amended its title to include 'and Allocation of Coastal Space' to reflect that move, the second paragraph of the explanatory statement is now no longer needed. Its purpose in the notified Plan was to link this section of Chapter 5 to Chapter 13, and with that movement now agreed to, that discussion is no longer needed in the explanatory statement to Issue 5J.

Decision

485. The explanatory statement to Issue 5J is amended by deleting the second paragraph.

Objective 5.10

Equitable and sustainable allocation of public space within Marlborough's coastal marine area.

486. Several submitters support the objective as notified. Others seek: the word 'equitable' is removed as they consider the word is vague in its context - it could mean equity of opportunity to apply for use within the CMA, or that the space is equally apportioned between different users – 'equitable' should be replaced with 'efficient' to reflect lower transaction costs and lowest/highest net benefit to society; the commentary in the objective should use the word 'manages' conflict between users rather than 'avoids' conflicts;[141] it is unclear what equitable means in relation to sustainable allocation;[142] oppose in part the explanation to Objective 5.10 because it fails to recognise the inherent rights to utilise the fisheries resource under the Fisheries Act 1996;[143] oppose on the basis it does not take into account cultural values;[144] support with the acknowledgement of cumulative effects in a finite

[140] Federated Farmers (425.79) and Forest and Bird (715.100-.110).
[141] AQNZ (401.34) and Marine Farming Association (426.34).
[142] Sanford Limited (1140.4).
[143] The Fishing Industry Submitters (710.7).
[144] Te Ātiawa (1186.46).

resource with an amended wording to read 'Equitable and sustainable … while recognising cumulative effects in a finite resource'.[145]

487. AQNZ and MFA's submissions seek to replace the word 'equitable' with 'efficient'. The NZCPS Policy 6(e) is identified as promoting the efficient use of occupied space by requiring that structures be made available for public or multiple use wherever reasonable and practicable.[146] The industry maintains the word 'equity' is fraught – it is not a word used within the RMA or the NZCPS. It provides the various dimensions of 'equity' – such as 'production', 'allocation', 'dynamic' and 'innovative'. Those who suggest that 'equity' means 'fair and impartial' amplifies the industry's concern, for the Council might (unwittingly) open up novel allocation arguments in a resource management context. 'Efficiency' is also not limited to economic matters either. In its broad sense, it may require an evaluation of a specific proposal 'balancing' the issues and benefits in s 5 RMA.

Section 42A Report

488. The Section 42A Report writer identifies that Issue 5J relates to the fact that people want to be able to use and develop the CMA for private benefit. The resolution of the issue is in Objective 5.1 regarding the equitable and sustainable allocation of public space within Marlborough's CMA.

489. The report writer acknowledges the submissions made by AQNZ and MFA that the use of the term 'avoid' within the commentary of Objective 5.10 is most likely to be optimistic.[147] She recommends that replacing 'avoid' with 'manage conflicts between users' is more realistic. That wording acknowledges that there could be some conflicts between users of the CMA, however the allocation of space and the framework within the PMEP to control activities will assist in managing these conflicts. For this reason, the submission of AQNZ and MFA is recommended to be accepted in part.

490. How the objective is defined, thus giving a guide to what is considered 'equitable', is interpreted through Policies 5.10.1-5.10.8 where it is provided that there is no inherent right to occupy, that any allocation will occur on a first-in-first-served basis, and where space is allocated – that is, to an area that is *reasonably available* (our emphasis) for the activity to proceed. That concept is reflected in Policy 5.10.3.The report writer also refers to an Oxford Dictionary definition of the word 'equitable' as 'fair and impartial', and therefore what is an equitable method of determining allocation will take place. The word 'equitable' in Objective

[145] FNHTB (716.48).
[146] AQNZ, MFA Counsel's Submission, paragraphs 5-13.
[147] Section 42A Report (Plan), paragraphs 155-156.

5.10 provides an expectation that everyone will be entitled to the same impartial and fair *process* by which the level of allocation will take place within the CMA.

491. The report writer's conclusion is to emphasise that equitable is fair and impartial with the addition of an amended explanation.[148]

492. Te Ātiawa considers that the explanation to the objective, in spite of describing equitable/sustainable allocation in terms of public use and enjoyment, provides no consideration of cultural/spiritual values. The Panel questioned whether there would be merit in including a specific cross-reference in the relevant chapter to Chapter 3 Marlborough's Tangata Whenua Iwi that would reflect the importance of this topic to iwi. The report writer endorses this approach, agreeing that visibility within provisions to link the plan users to those provisions within Chapter 3 would be valuable.

Consideration

493. We do not consider 'efficiently' is necessarily an appropriate term by which to address the implications of equitable when it relates to COCs. In the case of the aquaculture industry group, counsel refers to in the application of *Queenstown Airport Corporation Limited.*[149] In addressing s 7(b) RMA 'The efficient use and development of natural and physical resources' the Environment Court held:

> *In these proceedings efficiency can be understood in terms of allocative, social and operational efficiency. Allocative efficiency seems to accord with the general rule of economics given by Mr Ballinger – an efficient level of any activity occurs where its marginal costs match its marginal benefits and social efficiency, where the external costs are identified and if possible quantified and brought to account.*[150]

494. In this case costs and benefits are not easily quantified in monetary terms.

495. The Panel accepts the term 'equitable' as impartial and fair, and aligns with the dictionary definition as identified by the report writer, and should be retained.

496. On the question of whether the phrase 'available to all that wish to occupy the space' should be retained, we concluded that it was unnecessary, given the competition in the CMA of Marlborough Sounds for space, and should be deleted. We consider too that the word 'avoids' should be replaced with 'manages' otherwise it sets the barrier too high for users to address.

[148] Section 42A Report (Plan), Reply to Evidence, pages 5-7.
[149] [2012] NZEnvC [206] [2012] 18 ERNZ 489 at [221].
[150] Ibid

497. In relation to Te Ātiawa's cultural/spiritual values within the objective's explanatory text, providing a cross-reference back to Chapter 3 is important because the reference in Objective 5.10 is to Marlborough's 'coastal marine area' which otherwise constrains iwi to apply to occupy under the definitions of s 2 RMA.

Decision

498. The explanation of Objective 5.10 is amended as follows:

Objective 5.10 – Equitable and sustainable allocation of public space within Marlborough's coastal marine area.

The control of the occupation of space in the coastal marine area is a specific function of the Council. The Council allocates or allows the right to use public resources for private benefit. This is within the Council's role of promoting the sustainable management of the natural and physical resources of the coastal marine area. The objective is therefore to ensure that the process of allocation of space within the coastal marine area is undertaken in a fair and impartial manner. The policies that follow outline how equitable allocation will be achieved. The objective is also intended to ensure that these resources and their associated qualities remain available for the use, enjoyment and benefit of future generations in a way that minimises adverse effects on the environment, ~~avoids~~ manages conflicts between users and ensures efficient and beneficial use.

In managing the allocation of space within the coastal marine area the Council must recognise and provide for the cultural and spiritual values of the coastal marine area to Marlborough's tangata whenua iwi. In particular, the importance of te moana for tikanga and the exercise of kaitiakitanga, and as a source of kaimoana. The provisions of Chapter 3 – Marlborough's Tangata Whenua Iwi must be applied when considering allocation within the coastal marine area.

Policy 5.10.2

The 'first in, first served' method is the default mechanism to be used in the allocation of resources in the coastal marine area. Where competing demand for coastal space becomes apparent, the Marlborough District Council may consider the option of introducing an alternative regime.

499. Two submitters support the policy as notified. One other seeks it be deleted. Others seek: amendments to support the policy in part but for these amendments to include an additional policy to read 'If alternative methods of allocation are considered these will be publicly notified and also discussed within the Sounds Advisory Group;[151] if mooring areas are

[151] QCSRA (504.13).

established, iwi should have space set aside for iwi use;[152] any alternative regime proposed by the Council around allocation of space should be publicly notified: see s 165G RMA;[153] the second sentence of the policy should be removed on the basis that an alternative regime could be referred to within the commentary;[154] the policy is opposed in respect of the allocation of resources in the CMA for mooring resource consent opportunities (latecomers cannot expect allocation of resources to wait around).[155]

Section 42A Report

500. In summary, the report writer identifies:

- QCSRA's submission is accepted in part to provide more guidance to plan users. However, any alternative method of allocation requires a First Schedule RMA plan change process, including public notification.
- The submissions of the aquaculture industry are acknowledged because an alternative regime for allocation is provided for within the RMA, but the policy as notified provides appropriate direction as to how the objective will be achieved. This reflects that this change may take place within the life of the Plan if considered necessary by the Council. The submissions of AQNZ and MFA are not supported.
- In response to the submissions by Ngāti Kuia, the provisions within the Plan do not manage the allocations of moorings within Mooring Management Areas (MMA). The provisions guiding MMAs provide for MMAs to be established where there is competing demand within the CMA to accommodate swing moorings. Policy 13.8.3 provides for the provision of moorings within MMAs as either a permitted activity (where a bylaw exists) or as a restricted discretionary activity (subject to matters of discretion, including location within the MMA, the type of mooring sought and the availability of space within the MMA). This is not a method of allocation but provides a management framework where there is capacity demand. The submission of Ngāti Kuia is not supported. The only way that iwi could secure moorings is for Council to purchase existing moorings or apply for and gain consent for a new mooring and then allocate it to iwi.[156]

[152] Te Rūnanga O Ngāti Kuia (501.20).
[153] QCSRA (504.13).
[154] AQNZ (401.36) and MFA (426.36).
[155] Michael Rothwell (1253.2)
[156] Section 42A Report (Plan), paragraphs 176-189.

- In terms of Mr Rothwell's submission, moorings outside the MMAs are considered through a resource consent process. Again, any alternative method of allocation considered by the Council will require a plan change in accordance with the First Schedule process of the RMA including public notification.

Decision

501. The explanation to Policy 5.10.2 is amended as follows:[157]

The default process for processing resource consent applications under the RMA is 'first in, first served.' The Council processes resource consent applications in the order they are received, provided they are accompanied by an adequate assessment of environmental effects. Using this approach the Council has to date effectively managed the demand for space in the coastal marine area. However, if competing demand for space becomes an issue, the Council may consider the introduction of other allocation methods. There may also be certain circumstances under which a specific allocation mechanism is introduced to address a specific issue. <u>If an alternative allocation method is introduced this would result in changes to the plan that would be subject to the plan change process under the RMA.</u>

Coastal occupation charging

502. The RMA provides for COCs in s 64A the enabling provisions of which in subsection (1) are set out above paragraph 342 of this Topic decision. The following operational provisions of s 64A are set forth below:

> **64A Imposition of coastal occupation charges**
>
> **… (2) Where the regional council considers that a coastal occupation charging regime should not be included, a statement to that effect must be included in the regional coastal plan.**
>
> **(3) Where the regional council considers that a coastal occupation charging regime should be included, the council must, after having regard to the matters set out in paragraphs (a) and (b) of subsection (1), specify in the regional coastal plan—**
>
> **(a) the circumstances when a coastal occupation charge will be imposed; and**
>
> **(b) the circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge; and**
>
> **(c) the level of charges to be paid or the manner in which the charge will be determined; and**
>
> **(d) in accordance with subsection (5), the way the money received will be used.**
>
> **(4) No coastal occupation charge may be imposed on any person occupying the coastal marine area unless the charge is provided for in the regional coastal plan. …**

[157] Queen Charlotte Sound Residents Association (504.13).

(5) Any money received by the regional council from a coastal occupation charge must be used only for the purpose of promoting the sustainable management of the coastal marine area.

503. The relevant Policy in the PMEP is as follows:

Policy 5.10.4 - Coastal occupancy charges will be imposed on coastal permits where there is greater private than public benefit arising from occupation of the coastal marine area.

504. Numerous submissions support the policy. Others seek: the policy be deleted;[158] there is a lack of clarity in the policy as to what the Council's intentions are – it is impractical to make an assessment on the basis of a benefit arising to the owner/occupier or loss to the public - having a boat on a mooring creates no material loss to the public - and the issue of lost benefit to the public is adequately catered for by the restrictions on the number of moorings in a bay.[159]

Section 42A Report

505. The report writer provides a lengthy response to Mr Bond's concerns, setting out the scheme of the provisions and methods relating to moorings and in the Reply to Evidence providing additional wording to make the explanation to the policy clearer.[160]

506. As at the date of hearing, the report writer details the steps the Council will take:

- Policy 5.10.4 needs to be read in conjunction with Policies 5.10.5-5.10.8 and Method 5.M.10, as collectively they provide the overall regime intended to apply to the COC regime.
- Coastal occupancy charges will be imposed on coastal permits where there is greater private than public benefit arising from occupation of the coastal marine area.
- The circumstances in which the Council will waive the requirement for a charge to be paid.
- The matters that will be considered in determining whether to approve applications to seek a waiver from the charging regime.
- The way in which the level of coastal occupancy charges will be calculated.
- The way in which money collected will be used in order to promote the sustainable management of the CMA.

[158] Ian Bond (469.1); D C Hemphill (648.11).
[159] Ian Bond (469.1).
[160] Section 42A Report (Plan), paragraphs 205-219.

- The level of charges will be set out in the Annual Plan (Method 5.M.11) and provisions relating to the imposition of charges and the waiver application process will be set out in regional rules in the Plan (Method 5.M.10).

507. Volume 2 PMEP Chapter 16 contains the provisions that manage moorings established within a Mooring Management Area, and swing moorings for waka in Waka Mooring Management Areas which are both provided for as permitted activities where a licensing system for the allocation and management of swing moorings in Mooring Management Areas has been established in a bylaw. A licence for the mooring is issued by the Mooring Manager prior to the establishment and occupation of the mooring.

508. If a bylaw is not in place to manage and allocate swing moorings within Mooring Management Areas and Waka Mooring Management Areas, consent for a restricted discretionary activity is required, and applications will be publicly notified. Mooring outside Mooring Management Areas require consent as a discretionary activity.[161]

509. Mooring Management Areas are located in areas where there is high demand for public space.

510. Section 64A RMA states that a COC, if deemed appropriate by the Council, shall be applied to persons who occupy any part of the common marine area. The second (COC) Section 42A Report identifies amendment to Policy 5.10.4 and its explanatory text to replace certain occurrences of the phrase 'coastal marine area', with 'common marine and coastal area', and vice versa, in order to align with s 64A(1) RMA, plan provisions and clause 16 First Schedule. As a result to refer to the charges being imposed on the consent holders of coastal permits where there is greater private rather than public benefit, as imposed on the coastal permits themselves.[162]

511. The report writer also references the matter of discretion considered for applications to establish moorings in MMAs for which a licensing system has not been established, including location, availability of space and the type and specifications of mooring, impacts on cultural and customary values.[163]

512. In terms of jetties, there was a great deal of concern about the use of private jetties and wharfs for public use when landowners do not have road access. For Mr Hemphill, who opposed Policy 5.10.4, the conditions of the resource consent for the wharf make it very

[161] Section 42A Report (Plan), paragraph 205.
[162] Section 42A Report (COC), s 64A(1) RMA, paragraphs 80-82.
[163] Section 42A Report (Plan), paragraph 213.

expensive to use. The Panel understands that where there is public access, COCs are abated for the relevant resource consent.

Consideration

513. The Panel notes that s 64A (1) RMA specifies that after considering public and private benefits a Council has to decide:

> ***…whether or not a coastal occupation charging regime applying to persons who occupy any part of the common marine and coastal area should be included***.

In other words charges are applied on persons rather than structures. It is therefore necessary to add 'consent holders of' prior to 'coastal permits'. Consequential amendments also apply.[164]

514. Further, the explanation to the policy is not consistent with Policy 5.10.5(c) which makes it clear that COCs will apply to moorings in the MMA. It is appropriate to add 'and the occupiers of permitted activity moorings in a Mooring Management Area' after 'the consent holders of coastal permits' in the explanation to make it consistent with Policy 5.10.5(c). Also add 'and the occupiers of permitted activity moorings in a Mooring Management Area' after 'coastal occupations' in the recommended wording to replace the current explanatory text for Method 5.M.10 to make it clearer to the user of the plan and consistent with Policy 5.10.5(c).

Decision

515. Policy 5.10.4 is amended as follows:

Policy 5.10.4 – Coastal occupancy charges will be imposed on <u>the consent holders of</u> coastal permits <u>and the occupiers of permitted activity moorings in a Mooring Management Area</u> where there is greater private than public benefit arising from occupation of the coastal marine area.

516. Amend the explanatory statement to Policy 5.10.4 as follows:

The RMA enables the Council to apply a coastal occupancy charge to ~~activities occupying~~ <u>persons who occupy space</u> within the coastal marine area, after having regard to the extent to which public benefits from the coastal marine area are lost or gained and the extent to which private benefit is obtained from the occupation of the coastal marine area. The Council has considered the private and public benefits associated with coastal occupations <u>and the occupiers of permitted activity moorings in a Mooring Management Area</u> and has determined that where the private benefit is greater than the public benefit, charging for occupation of

[164] Section 42A Report (COC), paragraph 84(b).

coastal space is justified. The assessment of benefits (private/public) is directed to those arising or lost as a consequence of the structure occupying coastal space, not the associated activity that may be facilitated by the structure being present.

Policy 5.10.5

The Marlborough District Council will waive the need for coastal occupancy charges for the following:
(a) public wharves, jetties, boat ramps and facilities owned by the Marlborough District Council and the Department of Conservation;
(b) monitoring equipment;
(c) activities listed as permitted, except for moorings in a Mooring Management Area;
(d) retaining walls; and
(e) port and marina activities where resource consents authorised under Section 384A of the Resource Management Act 1991 are in place until such time as those resource consents expire.

517. Numerous submitters supported the policy as notified. Many others sought exemptions for private jetties and moorings, Maori interests, boating clubs, protection structures and stormwater outfalls, ports and marinas, public structures, retaining walls.[165]

Section 42A Report

518. With regard to the various exemptions sought, the following are the recommended amendments by the report writers for the reasons listed in the reports:

- Change Policy 5.10.5 to make it clear that the structures listed are *exempt* from the COC rather than the COC being waived in accordance with Clause 16 First Schedule. This is because the use of the word 'waive' implies that a person will need to make an application for the waiver (and it is addressed by Policy 5.10.6) whereas exemptions from the regime at the outset fall into a different category.[166]
- The port-related commercial undertakings that have been granted coastal permits under Section 384A of the RMA are exempted from attracting coastal occupancy charges until after 30 September 2026.[167]
- A new exemption for coastal protection structures and stormwater outfalls is recommended.[168]

[165] Michael and Kirsten Gerard (424.10); PMNZ New Zealand Limited (433.14); Department of Conservation (479.50); Pinder Family Trust (578.3); Judy and John Hellstrom (688.34); The Fishing Industry Submitters (710.10); Guardians of the Sounds (752.3); Sea Shepherd New Zealand (1146.3); The Bay of Many Coves Residents and Ratepayers Association Incorporated (1190.28); The Marlborough Environment Centre Incorporated (1193.39).
[166] Section 42A Reports (COC), paragraphs 83-84(c); (Plan), paragraphs 235, 243.
[167] Taurewa Lodge Trust (1185.2), Brent Yardley (258.2), Queen Charlotte Sound Residents Association (504.15), PMNZ (433.15).
[168] Section 42A Report (Plan), paragraphs 243-244.

- Replace the term 'public infrastructure' with the recommended wording 'regionally significant infrastructure', and replace 'other government agencies' with 'other providers of regionally significant infrastructure'.
- In terms of PMNZ's infrastructure, clarify that exemption under s 384A RMA which applies to port-related commercial undertakings by amending Policy 5.10.5(e) and the accompanying explanation.[169]
- Given the provisions of s.64A(4A) RMA which reads:

(4A) A coastal occupation charge must not be imposed on a protected customary rights group or customary marine title group exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011.

this policy should be amended to include a specific exemption from the proposed charging regime for customary marine title or customary rights groups (see recommended amendment Policy 5.10.5.X).[170]

519. The Waikawa Boating Club considered Policy 5.10.5 should include a pre-determined waiver for a substantial number of permanent moorings where they are provided by membership-based boating clubs such as Waikawa. The concern indicated by this submitter that fishermen and those for whom the moorings provide a safety network, and the many others who are freeholding, contribute nothing to the consents or upkeep of the club's moorings.[171]

520. The report writer does not accept that these club facilities should have pre-determined waiver (exemption). Their use is still exclusive of non-members. The option to apply for a full or partial waiver is still available to this category, allowing consideration of the matters listed in Policy 5.10.6.[172]

521. The report writer accepts the point made in answer to questioning that the waiver process will require time and resources, but it is likely to be less cost than a resource consent process, and an applicant should not repeatedly have to turn up for answers because it is a regulatory issue and one that is efficient. In addition, once a consent holder (or an organisation) has qualified for any reduction in a coastal occupancy charge, and unless circumstances change, that reduction may well prevail into future imposition of the annual charges (and might not need to be repeatedly argued).[173]

[169] Section 42A Report (Plan), paragraphs 253-266(b).
[170] Totaranui Limited (233.12), Section 42A Report (Plan), paragraphs 223-232, 266.
[171] Waikawa Boating Club, Paul Williams oral evidence.
[172] Section 42A Report writer oral evidence.
[173] Section 42A Report (COC), Reply to Evidence, paragraph 2. Oral Evidence.

Decision

522. Policy 5.10.5 is amended as follows:

Policy 5.10.5 – The Marlborough District Council will ~~waive the need for coastal occupancy charges for~~ exempt the following from any requirement to pay coastal occupancy charges:

(a) public wharves, jetties, boat ramps and facilities owned by the Marlborough District Council and the Department of Conservation;

(b) monitoring equipment;

(c) activities listed as permitted, except for moorings in a Mooring Management Area;

(d) retaining walls; ~~and~~

(e) (e) coastal protection structures and stormwater outfalls for the purpose of enabling the provision and operation of public regionally significant infrastructure;

(f) (f)~~(e)~~ port ~~and marina activities where~~ related commercial undertakings authorised via resource consents ~~authorised~~ under Section 384A of the Resource Management Act 1991 ~~are in place~~ until such time as those resource consents expire~~.~~; and

(g) (g) protected customary rights groups or customary marine title groups exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011.

These ~~waivers~~ exemptions exist because the facilities owned by the Council, ~~and~~ the Department of Conservation and other providers of regionally significant infrastructure provide a significant level of public benefit as they are used by and available to many people. Retaining walls generally do not occupy significant areas of the coastal marine area to the exclusion of other users, while monitoring equipment is generally very small and often temporary. There are few permitted activities that involve occupation and those that are permitted tend to have a more significant element of public benefit, e.g. navigation aids or public and safety information signs. Although moorings in a Mooring Management Area identified through rules are provided for as a permitted activity in the Coastal Marine Zone (where a relevant bylaw is in place), these moorings are for private benefit and therefore will attract a coastal occupation charge.

Certain occupation rights are granted to port companies under Section 384A of the RMA. These occupation rights originate from the purchase of the assets comprised in the port-related commercial undertakings by the Port Companies from the former Harbour Boards. In Marlborough the resource consents granted under this section of the RMA relate to port

related commercial undertakings being carried out in the areas of Picton (excluding the area of port in Shakespeare Bay), Waikawa, Havelock, Elaine and Oyster Bays. ~~The~~ Due to the purchase of these assets by the Port Companies, the port-related commercial undertakings that have been granted coastal permits under Section 384A of the RMA ~~appears to exempt these resource consents~~ are exempted from attracting coastal occupancy charges until after 30 September 2026 (being the expiry date of those coastal permits).

Policy 5.10.7

The manner in which the level of coastal occupancy charges has been determined is as follows:
(a) the expenditure related to the Marlborough District Council's role in the sustainable management of Marlborough's coastal marine area has been established;
(b) the anticipated exemptions and waivers from coastal occupancy charges has been considered;
(c) the beneficiaries and allocation of costs fairly and equitably amongst beneficiaries has been decided; and
(d) the appropriate charge for the differing occupations to recover costs has been determined.

523. Some submitters support the policy.[174] One submitter considers that the charging regime is full of flaws and inequitable;[175] others query the appropriateness of basing the charges on a per square metre rate versus a per hectare rate;[176] while mussel farms are charged approximately 1 cent per square metre;[177] others consider it is unfair that the COCs for jetties, moorings and boatsheds should be linked to the management of Marlborough's coastal resources unless the charges are equitable (based on area, size of structures – particularly in relation to marine farms);[178] another considers the charging regime should be based on a fixed administration cost per structure, plus a per square metre charge divided by a factor reflecting the utility provided for the benefit of the general public;[179] one submitter considers that the marine farms should be charged on a per tonne harvested basis.[180]

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524. The issue arises from this policy as to what is a total amount required for the sustainable management of the coastal marine area. Policy 5.10.7(a) states that the expenditure 'has been determined', which implies pre-determination in the allocation of coastal changes. MFA

[174] Michael and Kirsten Gerard (424.12); Pinder Family Trust (578.5); the Fishing Industry Submitters (710.12); Guardians of the Sounds (752.5); Sea Shepherd New Zealand (1146.5); Marlborough Environment Centre (1193.41).
[175] Taurewa Lodge Trust (1185.4).
[176] Thomas Norton Te Awaiti Ltd (203.1).
[177] Brent Yardley (258.3).
[178] Judy and John Hellstrom (688.35).
[179] EBCS (100.8).
[180] Mt Zion Charitable Trust (515.8).

and AQNZ submit that using the phrase 'will be determined' is more transparent and reflective of future coastal occupancy charges.181

525. This amendment is agreed to by the report writer but even if this is accepted, he identifies the policy still does not state the process by which this will occur nor the frequency for determination.

526. The explanatory text to Policy 5.10.7 as notified states that the Council has decided that the allocation of costs between ratepayers and coastal occupiers should be 25% and 75% respectively, but does not state *how* the allocation of costs among the various types of coastal occupiers will be determined.

527. If this option is preferred, the report writer recommends that the 25/75 split is referenced in the policy as well as the explanatory text. He recommends that Policy 5.10.7 be amended to state that this cost will be determined in the Annual Plan process.

528. A further issue arises as to the manner in which the charge for each type of eligible coastal occupation is determined. Policy 5.10.7(d) states that the appropriate charge for the differing occupations to recover costs will be determined but also does not describe how.

529. The report writer poses several options as to how this allocation may occur:

- this decision will be based on the relative benefit that ratepayers and coastal occupiers each derive from the spend; or
- the split of the costs between ratepayers and occupiers; or
- the split of the costs between ratepayers and each type of coastal occupation; or
- the charges will be based on the types of occupation, number of occupations in each group and the characteristics of those occupations e.g. area of occupation.

530. The report writer's conclusion after traversing these options is to avoid any great level of detail of the methodology in the content of the amended provisions of the PMEP but rather that level is set via the Annual Plan.[182]

Consideration

531. The Panel queried how the 25/75 share of funding was arrived at. We were advised the allocation of costs is apportioned between ratepayers and all coastal occupiers. There was full community involvement in a process that began in 2007.

[181] AQNZ and MFA, Counsel Submission, paragraph 27.
[182] Section 42A Report (COC), paragraph 107.

532. Edward Culley, General Manager for Sanford, identified there is broad conditional support for a 48% contribution from the aquaculture industry. This in turn was the generally accepted ballpark figure in the 2013 Executive Finesse Report.[183] The witness also identified the costings awaiting the industry on the substantial re-consenting of the NPS, contracting NIWA scientific research such as acidification as well as meeting many of the community aspirations.

533. The 75% share is apportioned based on what types of occupation benefit from the different elements of the annual expenditure that is allocated on sustainable management terms.

534. The report writer identifies the 'default position' in the RMA with regard to the rights of public access to structures in the CMA. The default position was identified in a 2000 case in the Court of Appeal[184] which clearly sets the parameters around council occupancy charging. It does not provide blanket exemption of facilities from the charging regime for private jetties. Consent holders may instead be required to seek a waiver/exemption from the charge in accordance with the circumstances authorised in Policy 5.10.6.

535. The Court considered that 'Parliament seems to have gone out of its way to state that the default position (i.e. the position in the absence of an express provision or necessary implication) is that public use and access is permitted. The default position is demonstrably not that the public are excluded in the absence of express or implied permission.'

536. The Court stated that there are two ways in which a coastal permit may give rights of exclusion of others from use and occupancy of a structure: when the permit expressly provides for such rights of exclusion; or when the exclusion of others (or a degree of exclusion) is reasonably necessary to achieve the purpose of the permit.

537. The Panel agrees with the report writer's bottom line throughout his commentary of COCs that it is the relative (public vs private) benefit that will determine the outcome for an imposition of a COC.[185]

538. The legal submissions from the aquaculture representatives indicate that the industry is supportive of the broad thrust of the Council's proposal, and generally supportive of the general direction that the Council has taken over environmental monitoring and management.

539. The concern from the submitters is how the Council proposes to implement the charging regime with them asserting:

[183] Executive Finesse Limited Coastal Occupancy Charges Report 2013, Discussion Paper 4 *The Future of the Marlborough Sounds,* Marlborough District Council in Report for Public Consultation on Proposed Framework to Introduce Coastal Occupation Charges (2014).
[184] *Hume v Auckland Regional Council* CA262/01 at [25].
[185] Section 42A Report (COC).

- the method of calculating the COC should be specified in the MEP and the Council's Annual Plan;
- those who pay should have a say on how the money is spent (marine farmers should have a representative on the Council to determine how the funds are spent).

540. Section 64A(3) RMA requires regional councils to 'specify' in their regional coastal plans the level of charges to be made or the manner in which the charges will be determined. Counsel submits that Policy 5.10.7's method of implementation 'describes' rather than 'specifies'.[186]

541. In view of the presumption in the provisions of s 64A(3)-(c), the Executive Finesse Limited report suggests the Annual Plan process is the appropriate method for Council to adopt. It picks up on the second provision of s 64A(3)(c) 'the *manner* (our emphasis) in which the charge shall be determined'. It recommends that 'the Council outline how the methodology charges will be determined in the Council's Coastal Plan and link this to the Council's Annual Plan where the charges will be stipulated. This would enable an annual review of charges together with consultation with the community ensuring that the charge maintains a relationship with Council's expenditure. In the event that the charge was stipulated in the PMEP then it should include an 'adjustment for inflation'.

542. The aquaculture industry seeks that the level of charges be written into the PMEP in an appendix. In the alternative, the percentage contributions of the various sectors could be detailed in a commentary.[187]

543. The Panel queried whether the 25/75 split should be in Policy 5.10.7 rather than in the explanation. The report writer acknowledges if the Panel is to retain a commitment to the 25/75 split he would recommend that it is incorporated into the wording of Policy 5.10.7 rather than relying on an explanation.

544. The report writer provided three options[188] as to the manner in which the charge is determined, assessing each option, its advantages and disadvantages. The Panel preferred Option 2b which recommends: 'The amendment to Policy 5.10.7 to state that this cost will be determined each year via the Annual Plan process.' This provides clarity as to the manner in which this step of the charging methodology will be undertaken. It also retains the ability for the Council to set this amount on an annual basis in response to changes in its work

[186] AQNZ and MFA, Counsel Submissions. See Policy 5.10.7 – Coastal occupancy charges, generally, paragraphs 27-35, 38.
[187] AQNZ (401.40), Counsel Submissions, paragraphs 33-41, 44. QCSRA, Brent Yardley, Evidence, pages 13-19.
[188] Section 42A Report (COC), Reply to Evidence. Table: Overview of Options attached. Options to amend MEP provisions, pages 5-4-5-5.

programme, priorities, and changing or emerging trends that relate to the CMA and require management by the Council. The 25/75 apportionment is referred to in Policy 5.10.7 provides specificity and certainty to the allocation of costs between ratepayers and coastal occupiers. It also ensures that the PMEP provisions reflect this key principle of the proposed charging regime.

545. The Panel was satisfied with both the analysis undertaken by the Council with the support of the experts and consider it provides the most appropriate way to proceed.[189] There were several iterations attached to the final report. This decision incorporates option B.

Decision

546. Policy 5.10.7 is amended as recommended:

Policy 5.10.7 – The manner in which the level of coastal occupancy charges ~~has been~~ will be *determined is as follows:*

(a) the expenditure related to the Marlborough District Council's role in the sustainable management of Marlborough's coastal marine area ~~*has been established*~~ *will be determined on an annual basis through the Annual Plan process;*

~~*(b) the anticipated exemptions and waivers from coastal occupancy charges has been considered;*~~

~~*(c) the beneficiaries and allocation of costs fairly and equitably amongst beneficiaries has been decided; and*~~

(b) the annual costs required to fulfil Marlborough District Council's role in the sustainable management of Marlborough's coastal marine area will be allocated between the beneficiaries from the sustainable management of the coastal marine area on the following basis:

(i) Ratepayers: 25 per cent

(ii) Coastal occupiers: 75 per cent

(c) the charges that will be issued to eligible coastal occupiers to meet the annual costs required to fulfil Marlborough District Council's role in the sustainable management of Marlborough's coastal marine area will be based on:

(i) the types of occupations;

(ii) the characteristics of the types of occupations; and

[189] Section 42A Report (COC), Reply to Evidence, pages 12-17.

(iii) the number of occupations in each group.

(iv) The relative benefit allocations, including expenditure on environmental science and monitoring, policy development, compliance and education.

~~*(d) the appropriate charge for the differing occupations to recover costs has been determined.*~~

(d) coastal occupancy charges will only be imposed upon coastal occupations that are not exempt from the charging regime on the basis of the circumstances set out in Policy 5.10.5.

(e) the Council will maintain records of all coastal occupiers who have sought and obtained a waiver from the base charge for their type of coastal occupation. This waiver will be reflected in the final charge that is issued to those coastal occupiers.

547. The explanation to Policy 5.10.7 is amended as follows:

In deciding how to set charges, the Council ~~has used~~ will use as its starting point the actual expenditure considered necessary to promote the sustainable management of the coastal marine area. The budgeted expenditure for this is described year to year in the Council's Annual Plan for the Environmental Science and Monitoring Group, Environmental Policy Group and Environmental Compliance and Education Group.

… In determining who should meet the cost of sustainably managing the coastal marine area ~~environment~~, an allocation of costs needs to occur between beneficiaries. The Council has considered that a contribution towards the costs should be made by ratepayers (25%) as well as those benefitting from the occupation of public space (75%). The Council ~~has also given~~ will give consideration to ~~anticipated~~ exemptions and waivers that ~~may be~~ have been granted and the number and size of the various occupations. From this assessment, a schedule of charges ~~has been~~ will be derived and ~~is~~ set out in the Council's Annual Plan

Policy 5.10.8

Any coastal occupancy charges collected will be used on the following to promote the sustainable management of the coastal marine area:

(a) implementation of a Coastal Monitoring Strategy;

(b) State of the Environment monitoring;

(c) research in relation to the state and workings of the natural, physical and social aspects of the coastal marine area;

(d) education and awareness;

(e) habitat and natural character restoration and enhancement;

(f) managing marine biosecurity threats;

(g) maintaining and enhancing public access; and

(h) formal planning in the Resource Management Act 1991 planning context and strategic planning and overview in relation to the coastal environment.

548. A number of submitters support Policy 5.10.8. Others seek: that it should be amended in order that all monitoring results and reports are made public;[190] recognition that coastal occupiers are only one of the sectors involved in sustainably managing the coastal environment and seek an amendment which suggests 'Any coastal occupancy charges will ~~be used on~~ contribute towards the following to promote the sustainable management of the coastal marine area';[191] consider long term management plan; oversight committee;[192] location of reinvestment funds;[193] contribution to club moorings;[194] contributions from other organisations – PMNZ, forestry and fishing industries, tourist industries.[195]

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549. The report writer acknowledges that revenue from the proposed coastal charging regime is not the sole source of funding towards fulfilling Council's role in the sustainable management of the CMA. Rather than amending the policy to this effect, it is recommended that the explanatory text is amended to identify this fact.

Consideration

550. The Panel is advised that other Marlborough organisations will contribute by way of rates and if they are the holders of structures, they are likely to contribute to the COC where related to the CMA.

551. Also, it is important to take account of the interests of Marlborough's tangata whenua iwi and include 'cultural' in (c) of the policy as follows:

> *(c) research in relation to the state and workings of the natural, physical~~, and~~ social and cultural aspects of the coastal marine area;*

Decision

552. Policy 5.10.8(c) is amended as follows:

> *(c) research in relation to the state and workings of the natural, physical~~, and~~ social and cultural aspects of the coastal marine area;*

553. The explanation to 5.10.8 is amended as follows:

> *… The RMA requires that in implementing a coastal occupancy charging regime, any money collected must be used to promote the sustainable management of the coastal marine area.*

[190] Elie Bay Residents (697.3); Kroon, Hanneke and Jansen Joop (808.3).
[191] Marlborough Berth and Mooring Association (960.3).
[192] Brent Yardley (258.4).
[193] Sanford Limited (1140.5, .6, .7, .8, .9).
[194] Waikawa Boating Club (1233.2) and Pelorus Boating Club Incorporated (1246.2).
[195] Taurewa Lodge Trust (1185.5).

Revenue from the coastal occupancy charging regime is not the only source of funding that is available to promote the sustainable management of the coastal marine area, which may also come from general rates. Other agencies may also spend money on the sustainable management of the coastal marine area. The policy describes those matters on which the revenue collected from imposing charges is to be used, as required by the RMA. Greater detail on these matters can be found in a number of the subsequent chapters of the MEP, including Chapter 6 - Natural Character, Chapter 7 - Landscape, Chapter 8 - Indigenous Biodiversity, Chapter 9 - Public Access and Open Space, Chapter 10 - Heritage Resources, Chapter 13 - Use of the Coastal Environment and Chapter 15 - Resource Quality (Water, Air, Soil).

Amongst the broader considerations, the Council will be informed by community input, including from Marlborough's tangata whenua iwi, through its annual plan submission processes when making its decisions on how money collected from the charging regime will be spent.

Methods of Implementation

5.M.10 Regional Rules

554. The wording of this method went through several iterations from the notified method before the final amendment as proposed below, if accepted, approves the position advanced by Counsel for the aquaculture industry in legal submissions, that is, the MEP simply needs to 'declare' that a charge will be payable unless otherwise exempted or waived.

Consideration

555. The Panel accepts Counsel's submission on the suggested amendment. It removes any uncertainty around how and what should be communicated in imposing COCs.[196]

Decision

556. 5.M.10 is amended as follows:

5.M.10 ~~Regional Rules~~ Imposing coastal occupation charges

Include provisions relating to the requirement for coastal occupation charges for port facilities where appropriate, moorings, marinas where appropriate, marine farms, jetties, wharves, boat ramps and slipways, boatsheds and other structures and utilities. Rules will also require discretionary activity applications to be made to enable an assessment of whether an exemption or waiver of any charge should be granted.

[196] AQNZ (401.43), MFA (426.43). Counsel Submissions.

Coastal occupancy charges will be imposed on the consent holders of all eligible coastal occupations and the occupiers of permitted activity moorings in a Moorings Management Area, taking into account any exemptions or waivers from the charges that have been obtained by the consent holder.

Policy 13.10.15

557. There were several submitters to Policy 13.10.15 who raised concerns that, in reducing the visual effects of jetties, the policy may create safety issues for jetty users. In particular, East Bay Conservation Society and John and Judy Hellstrom raised concerns with respect to (b) and (d). Their concern was that the clear preference for floating jetties and the discouragement of jetties that run parallel to the shore would make the jetties dangerous to use. George Elkington raised similar issues and also questioned the limit of 2 metres in (a) of the policy. East Bay is in the outer Sounds. The Hellstrom's live in Endeavour Inlet and George Elkington has a strong affinity with D'Urville Island, both also in the outer Sounds. All submitters raised the influence of exposed locations on the ability to use jetties safely.

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558. The report writer undertook a site visit and on viewing the coastal structures that are utilised in the Marlborough Sounds formed the view that (b) and (d) appropriately act to reduce the visual effects of jetties. She recommended the submissions be rejected on this basis.

Consideration

559. The Panel accepted the submissions and evidence from the submitters, as all have experience of the use of jetties and adverse weather conditions in the Marlborough Sounds. Mr Denize for the East Bay Conservation Society attended the hearing and provided video and photographic evidence of the rough sea conditions that can exist in East Bay. That included photographs of a boat tied at a jetty in a heavy sea state. There is no doubt that sea conditions that can only be described as "wild" can occur in this exposed part of the Marlborough Sounds.

560. In fact, the Panel experienced those wild sea conditions itself when a very strong north-west wind blew up while undertaking a site visit, ironically in East Bay. The Panel was forced to cut short its site visit as a result.

561. The Panel found the evidence on safety concerns compelling, especially after its own experience. However, the NZCPS requires the Council to consider how adverse visual impacts of development can be avoided in sensitive areas (Policy 6) and avoid, remedy, or mitigate

adverse effects of activities on natural features and natural landscapes in the coastal environment (Policy 15).

562. The use of jetties for access purposes is common in the Marlborough Sounds and in the Panel's view it is necessary to mitigate the visual effects of jetties in order to maintain amenity values. For this reason, the policy direction was considered to be appropriate: (a) to (i) identify means by which the visual effects can be mitigated.

563. The Panel also took into account that not all parts of the Marlborough Sounds are as exposed as East Bay and other parts of the outer Sounds. In fact, in many locations the enclosed nature of bays affords protection to those using boats in adverse weather conditions. Removing (b) and (d) would remove two valid methods of mitigating visual effects in more sheltered locations.

564. However, the practicality of applying the policy direction in particularly (b) and (d) does need to take into account these very real safety concerns. On careful consideration of the above matters, the Panel believes that an adjustment to the policy is necessary to allow this to occur. The adjustment involves the insertion of "where practicable having regard to public and boat safety" at end of the statement of the policy, with a consequential removal of "where practicable" from (b). Additional explanation is also to be added to the policy to recognise the influence of exposure to adverse weather conditions to safety, especially in the outer Sounds and the main channels.

565. In conclusion, the Panel's view was that this policy was too definitive and impracticable particularly in more exposed or isolated settings.

Decision

566. Policy 13.10.15 is amended as follows:

Policy 13.10.15 – Reduce the visual impact of jetties on the coastal environment, <u>where practicable having regard to public and boat safety,</u> by :

(a) limiting the width of jetties to two metres;

(b) ~~where practicable,~~ using floating jetties, which tend to have a lower profile than fixed jetties and provide easier access to the shore;

(c) limiting the size, colour and height of mooring piles associated with the jetty;

(d) discouraging the use of jetties (or parts of jetties) that run parallel to the shore, as they can cause greater visual impact than jetties perpendicular to the shore;

(e) avoiding the use of boatlifts alongside jetties for boat storage;

(f) avoiding locating lights on jetties (other than those required to facilitate access);

(g) encouraging new jetties, link spans and piles to be built from materials that are non-reflective or painted in non-reflective colours;

(h) avoiding the use of highly-coloured fenders; and

(i) avoiding signs on jetties other than those assisting emergency services.

As jetties can have an impact on visual amenity and landscape values, this policy sets out matters that can help to reduce these impacts. Decision makers should therefore have regard to these matters, including consideration of the scale of a jetty in relation to the proposed location.

The safety of people boarding and disembarking boats, and the safety of those boats accessing the jetties, are important considerations when implementing this policy. This is because sea conditions can be extreme in the main channels of the Marlborough Sounds and in the outer Marlborough Sounds. The exposure to extreme weather at these locations may make it inappropriate to implement some of the matters listed in this policy.

Light spill in the coastal environment

567. The Port Underwood Residents Association, and Ken and Sarah Roush, submitted on the impact of light spill on the night sky in Marlborough's coastal environment. In doing so, they emphasised that Policy 13 of the NZCPS requires the preservation and protection of the natural darkness of the night sky.

568. The relief requested was twofold. Firstly, in relation to Policy 13.10.15 and 13.10.22, the submitters sought that the policies be extended to require lights that are necessary on jetties and boatsheds be fully shielded to prevent light spillage above the horizontal plane of the light source. Secondly, the submitters sought that the notified permitted activity standard for lighting in many zones[197] be extended as follows:

> *xxxx Light spill onto an adjoining residential site must not exceed 2.5 Lux spill (horizontal and vertical). All external lighting shall be fully shielded to prevent any light spillage above the horizontal plane of the light source.*

569. Mr Roush appeared at both the Topic 11 hearing and the Topic 18 (Nuisance) hearing and spoke passionately about the importance of the night sky, the impact of light pollution, the

[197] Urban Residential 1, 2 and 3, Coastal Living, Rural Living, Port, Port Landing Area, Open Space1, 2, 3 & 4 and Coastal Marine

implications of inaction from his perspective and the practicalities of achieving the relief requested (in terms of shielding).

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570. The report writer for Topic 11 concurred with the submitters and recommended that the relief requested for Policies 13.10.15 and 13.10.22 be accepted. Policy 13 of the NZCPS was influential in the report writer making this recommendation. They recommended that the notified (f) of both policies be extended as follows:

> *avoid locating lights on jetties (or boatsheds) other than those required to facilitate access. Where lighting is required for access, ensure that lighting is designed to minimise lightspill.*

571. The report writer for Topic 18 assessed the proposed addition to the lighting standards. He expressed concern that the requested standard would require extensive mitigation measures for each light and require rigorous enforcement. He also noted the practical issues raised by further submitters. The relief requested was not supported. Instead, the report writer suggested that the issue of protecting the night sky could be pursued through "a more holistic approach" by the Council (as opposed to responding through light standards only).

Consideration

572. The starting point for considering the relief requested by the submitters was the NZCPS. Like the submitters and the report writer, the Panel noted that Policy 13 specifically identifies that the natural character of the coastal environment includes the darkness of the night sky.

573. Jetties and boatsheds are normally located on or adjacent to the foreshore. Lighting in such locations could be particularly obtrusive given the considerable open space associated with the marine environment.

574. The Panel recognises that lighting is necessary and appropriate on coastal structures for reasons of public safety. However, and as Mr Roush pointed out, lighting can be shielded to reduce upwards light spill.

575. The intent of the recommended additions to the policies is supported by the Panel. The additions to the policies, however, should be more prescriptive in order to provide direction on the means of minimising light spill. For this reason, the wording sought by the submitters was favoured.

576. The Panel has considered the merits of the addition to the lighting standards sought by the submitters. For the same reasons outlined above for jetties and boatsheds, the standard is warranted in the Coastal Marine Zone due to the large areas of open space. On land, the

greatest risk of light spill exists in the Coastal Living Zone. This is because the zone is specifically created for residential purposes. The addition to the standard is therefore warranted in the Coastal Living Zone in order to give effect to Policy 13 of the NZCPS. In the Coastal Environment Zone and Rural Zone, the density of development is not considered to be sufficient to warrant a significant risk to the night sky. In urban zones (including the Port Zone and Port Landing Zone), the standard would not make a meaningful contribution to mitigating current light spill as the standard would only apply to new development in areas that already have extensive outdoor/street lighting.

Decision

577. Amend policies 13.10.15 and 13.10.22 as follows:

… (f) avoiding locating lights on jetties (other than those required to facilitate access.) Where lighting is required for safe access, ensure that the lights are designed to minimise light spill and be fully shielded to prevent any light spillage above the horizontal plane of the light source.

578. Insert a new standard as 7.2.3.x for the Coastal Living Zone, as follows:

7.2.3.x All external lighting shall be fully shielded to prevent any light spillage above the horizontal plane of the light source.

579. A new standard is added to Chapter 16 Coastal Marine Zone (Volume 2) as follows.

16.2.8 Use of external lighting

16.2.8.1 All external lighting on jetties and boatsheds shall be fully shielded to prevent any light spillage above the horizontal plane of the light source.

Fishing Interests

Integrated management of the Marlborough environment

580. The Fishing Industry raised concerns that the PMEP failed to mention the role of the Fisheries Act 1996 in the integrated management of natural and physical resources. It requests that specific reference be made to the Fisheries Act 1996 within Chapters 2, 4, 5, 8 and 13 of the PMEP.[198]

581. The industry sets out in oral evidence the specific reasons for including a reference to the Fisheries Act 1996 within Objective 5.10 and Policy 5.10.1.[199]

[198] Fishing Industry (710.7). Speaking notes, MEP Hearing 29 April 2019: Miscellaneous Topics.
[199] Fishing Industry speaking notes, pages 1-2.

582. The report writer assesses these issues together. But first of all, we wish to provide her 'General Reasons' as background information to her recommendations.

General reasons

583. Under this heading the report writer identifies further the Council's role in the sustainable management of fisheries.

584. As outlined within the original Section 42A Report for Topic 13 Use of the Coastal Environment,[200] the Council's role in the sustainable management of fisheries is the management of the environment where the fish exist (water and ecosystems), together with the management of activities within the CMA that may affect this environment.

585. The report writer acknowledges in this chapter that the fisheries resource itself is managed by other non-RMA methods including those in the Fisheries Act 1996. The s 32 report for this topic[201] considers, for example, that '*under the Fisheries Act 1996, the Ministry of Primary Industries has the primary role in managing, conserving and enhancing fisheries, there are significant restrictions on the Council's ability to control outcomes for fisheries management*'.

586. The Council's role also in the integrated management of fisheries (being the natural resource) is through the management of the environment and control over activities (through Plan provisions) that may cause adverse effects on the marine environment that the fish inhabit. This in turn will contribute to maintaining and enhancing the fisheries resource.

587. The NZCPS is also identified in the report writer's general assessment as it outlines how the purpose of the Act will be achieved in respect of the Coastal Environment. Policy 4 – Integration requires '*working collaboratively with other bodies and agencies with responsibilities and functions relevant to resource management*.'

588. While Chapter 13 under Method 13.M.9 Advocacy/Support assigns to the Minister of Fisheries the task 'that both commercial and recreational fishing be further regulated within the enclosed waters of the Marlborough Sounds to enhance natural fisheries'. The anticipated result from this method 13.AER.16 indicates as an anticipated result 'Integrated management of fisheries and natural and physical resources'.

[200] Section 42A Report, Topic 13, paragraphs 364-374.
[201] Section 32: Chapter 13 – Appropriate activities, recreation, fishing, residential, shipping, Lake Grassmere (page 29).

The Fishing Industry's concerns

Objective 5.10 - Equitable and sustainable allocation of public space within Marlborough's coastal marine area.

Policy 5.10.1 – Recognition that there are no inherent rights to be able to use, develop or occupy the coastal marine area.

Objective 5.10

589. The submitter considers that the explanatory text of Objective 5.10 needs to be narrowed to:

- refer to public space and not natural and physical resources generally, or to
- identify the role of other complementary management regimes in the coastal marine area (in particular the role of MPI under the Fisheries Act 1996).

Section 42A Report

590. In terms of Objective 5.10, the report writer notes the explanation states that allocation of public resources is within the Council's role and functions in promoting sustainable management of natural and physical resources. The explanation does not state that this is the ***only*** way of promoting sustainable management. It is but one of the Council's roles and functions.

591. As Objective 5.10 is focused on allocation of space in the CMA, the report writer considers it inappropriate to specifically mention the 'allocation of fisheries'. This is a role that remains outside of the functions of the Council and the RMA. The report writer recommends in the Section 42A Report that the submission is rejected.

Consideration

592. In terms of the Fishing Industry's original submission on the allocation of public resources and the concern that the PMEP makes no specific reference to Chapters 2, 4, 5, 8 and 13, the Panel notes that under this heading the report writer refers to two other chapters which reference fishing, the fishing industry and their joint activities. The first is Chapter 13 Use of the Coastal Environment, and the second is Chapter 2 Background to the PMEP. One assesses integrated management; the other strategies and plans.

Policy 5.10.1

593. The Fishing Industry's main concern in this submission is the failure within the PMEP to acknowledge and reference the role of the Fisheries Act 1996 in the integrated management of natural and physical resources.

594. The industry states that the RMA is not the only Act that allocates use and access to resources in the CMA and other pieces of legislation (such as the Fisheries Act) address sustainable management and therefore should be included.

Section 42A Report

595. The report writer responds that as highlighted within the hearing, Policy 5.10.1 and explanation refer to use, development and occupation of the CMA but these activities are limited by s 12 RMA, which requires express permission by a rule in the plan or by resource consent to undertake activities. The policy and explanation do not refer to any other activities outside the scope of s 12 that may be provided for within the CMA by other legislation.

596. As a result, the report writer confirms her Section 42A Report recommendation that this submission be rejected.[202]

Decisions on Objective 5.10 and Policy 5.10.1

597. The report writer recommends no change to the Topic 13 Miscellaneous report recommendations on Objective 5.10 and Policy 5.10.1, with which the Panel agrees for the reasons given.

The importance of PMEP Chapter 2 Background: Integrated management of the Marlborough Environment

Volume Two Chapter 2 Background sets out the requirements of integrated management. It includes:

(b) The need for cooperation and coordination between the multiple agencies that have statutory roles and responsibilities for the management of natural and physical resources.

(c) The effect of statutory documents prepared by the Council and others with functions under legislation relating to the management of natural and physical resources, but which is not the RMA.[203]

598. Chapter 2 Background also acknowledges that there are other statutory agencies that have responsibilities that overlap with the RMA's principle of sustainable management. The report writer notes that in this section of the PMEP there is specific reference to MPI and several other statutory agencies who play a role in the integrated management of resources within the region.

[202] Section 42A Report, Reply to Evidence, page 23.
[203] PMEP, Chapter 2, page 2-2.

599. The PMEP clearly identifies the roles of the Council and other agencies in integrated management, but it is not specific to all agencies. The report writer in assessing the issues in Chapter 2 considers the role of strategies under the fisheries legislation should be recognised. Given the importance of fisheries to Marlborough, however, the report writer recognises that drawing attention to the role of MPI under the Fisheries Act 1996 would be beneficial within the PMEP in terms of the allocation of resources.

600. For these reasons the report writer recommends that the fifth paragraph under the heading 'Integrated management of the Marlborough environment' is amended to read:[204]

Many agencies share responsibility for ensuring Marlborough's natural and physical resources are sustainably managed. Of particular note in Marlborough is that approximately 45% of all land is managed by the Department of Conservation (on behalf of the Crown) for conservation purposes. In addition, the Ministry of Primary Industries under the Fisheries Act 1996 has the primary role in managing, conserving and enhancing fisheries. It is therefore important that the various authorities have a common understanding of resource issues and that the responsibility for sustainable management is shared.

Decision

601. Under the heading 'Integrated management of the Marlborough environment' in Chapter 2 Background[205], the fifth paragraph is amended to read:

Many agencies share responsibility for ensuring Marlborough's natural and physical resources are sustainably managed. The Council's role is to promote the sustainable management of land, water, air, soil, biodiversity and the built environment. Of particular note in Marlborough is that approximately 45 percent of all land is managed by the Department of Conservation (on behalf of the Crown) for conservation purposes. In addition, the Ministry of Primary Industries under the Fisheries Act 1996 manages, conserves and enhances fisheries. It is therefore important that the various authorities have a common understanding of resource issues and that the responsibility for various aspects of sustainable management is shared.

National Grid Issues – Cook Strait Submarine cables

Transpower made a number of submissions in respect of the Cook Strait submarine cables both in this Topic and the Utilities Topic. The Panel has decided the decisions on those issues are best dealt with all at the same place in the Utilities Topic.

[204] Section 42A Report, Reply to Evidence, pages 25-26.
[205] PMEP, Volume One, page 2-3.