

DRAFT AUTHORISATION IMPLEMENTATION GUIDE

For the Proposed Aquaculture Provisions of the PMEP

1 This implementation guide is for marine farmers and people involved in the aquaculture industry

This authorisation implementation guide is mainly for marine farmers and people involved in the aquaculture industry, to explain how authorisations and marine space allocation will be carried out under proposed aquaculture provisions of the Proposed Marlborough Environment Plan.

This implementation guide is also a process guide for Marlborough District Council officers who will be responsible for offering the authorisations that allocate marine space.

Terms and abbreviations used in this implementation guide

AMA	-	Aquaculture Management Area or Finfish AMA
CMU	-	Coastal Management Unit
PMEP	-	Proposed Marlborough Environmental Plan
RMA or the Act	-	Resource Management Act 1991
MDC or the Council	-	Marlborough District Council

2 We will use an authorisation process to allocate marine farming space

This implementation guide describes the authorisation process, how space is allocated for marine farms, and any conditions or terms that authorisations will be subject to.

The proposed aquaculture provisions of the Proposed Marlborough Environment Plan (PMEP) have recently been notified. It is made up of two variations:

- Proposed Variation 1: Marine Farming amends the PMEP and contains objectives, policies and rules about how marine farming activities will be sustainably managed in the Marlborough district. It includes rules for allocating space in the common marine and coastal marine areas through an authorisation process.
- Proposed Variation 1A: Finfish Farming specifically addresses finfish farming in the district.

This guide should be read in conjunction with the variations. The variations also function to allocate coastal space to the activity of marine farming through aquaculture management areas. Authorisations will be used in the manner described in the variations policies and rules, and as further described in this guide, to provide access to the aquaculture management areas.

This is the first time the Marlborough District Council (MDC) will use an authorisation process to allocate space in the common marine and coastal marine areas. It is also the first time a rule

that offers authorisations for existing marine farms has been included in a coastal plan in New Zealand.

3 An authorisation gives marine farmers the right to apply for a resource consent

The Resource Management Act (RMA) defines an authorisation as the right to apply for a coastal permit (a resource consent to do something in a coastal marine area¹) in the common marine and coastal area².

Space in the common marine and coastal area, and the right to apply for a resource consent to operate in that space, will be allocated through an authorisation process. This means that marine farming space will be identified before the resource consent applications are made, making for a smoother process.

Many marine farm permits in Marlborough are due to expire within the next four years.

We have not yet decided on the exact order in which authorisations will be offered, and we might need to talk to people in the industry about that. We will probably:

- Prioritise authorisations for marine farms that are located in CMUs where the majority of coastal permits are due to expire the earliest. It is important to note that in reality, many CMUs contain marine farms with a range of coastal permit expiration dates. Therefore, it may not be possible to do this consistently.
- Offer authorisations for marine farms in CMUs that will remain in their current positions, for example Port Underwood, later in the process. This is because marine farms in these CMUs will be less affected by any new spatial allocation.
- Plan to offer authorisations for finfish farms closer to the time of coastal permit expiry.

This is what we refer to as the ‘first wave’ of allocation. Section 6.6 explains how we will assess the uptake of authorisations, which may lead to changes in the way we allocate space and result in a ‘second wave’ of allocation for marine farm space.

Here are the general rules around authorisations:

- Authorisations will only be given for space that is identified in Aquaculture Management Areas (AMAs)
- Authorisations will be given using the ‘modified grand parenting’ method
- If an authorisation is issued then the allocation of space resulting from that authorisation will only commence once the existing consent is either surrendered or expires.
- Where a marine farm is moving, existing coastal permits must be surrendered within 6 months of the new resource consents under the authorisation commencing

¹ See Section 87(c) of the RMA

² Section 165C of Subpart 1 of the Resource Management Act 1991

- Space will not be allocated by public tender (unless space becomes available because fewer authorisations were applied for than were offered, then Council could potentially welcome tenders)
- With the exception of relocated farms, for any AMAs created as a result of a submission on the proposed plan, authorisations will be offered by public tender
- For any new AMAs created by a request for plan change, authorisations will be offered to the person who requested the plan change
- Authorisations will be issued with terms (see section 6.7 for information on terms)

4 The use of authorisations to allocate marine farming space

There are different ways to manage marine space allocation. Provisions (objectives, policies, and rules) that address the effects of occupying the common marine and coastal area and manage competition for the allocation of space, can be included in a proposed regional coastal plan³. The Act says that a rule in a regional coastal plan may specify a method for allocating space in the common marine and coastal area⁴. While we were developing the proposed aquaculture provisions of the Proposed Marlborough Environment Plan (PMEP), we determined that an authorisation process would be the most efficient and beneficial method.

Policy 13.21.7 therefore outlines how we plan to allocate space in the common marine and coastal area - using a method known as 'modified grand parenting' allocation. This means that authorisations will be offered first to existing marine farmers operating within, partially within, or adjacent to Aquaculture Management Areas (AMAs), and the space allocated will generally reflect the existing use of space in the common marine and coastal area. Giving priority to existing marine farmers means they can apply for resource consent to continue to operate in the Sounds, without having to compete with new marine farmers for limited space. This is considered to be a fair approach as it recognises the existing investment in the current marine farm by the marine farmer.

By allocating space with a 'modified grand parenting' method, we can:

- Avoid applications for new marine farms in AMAs (because it is not possible for a marine farmer to apply for a resource consent without an authorisation) and
- Allocate space in AMAs in an orderly way, particularly where partial or full relocation of an existing farm is required.

5 Who will be allocated authorisations

We will offer authorisations as follows:

- To existing coastal permit holders for their marine farms that are currently located within, partially within, or adjacent to the AMA.

³ Section 165F of the RMA

⁴ Section 165G of the RMA

- Where an existing farm is not within, partially within, or adjacent to an AMA, we will offer an authorisation in the same CMU.
- In the small number of instances where neither of the above is possible, authorisations will be offered in a different CMU.

For many, this will mean partially moving their marine farm structure to occupy the area assigned to the AMA. For a few, this will mean the entire marine farm will need shifting.

You can access information on the location of the proposed AMAs relative to existing marine farms from the Council's Smart Maps:

<https://marlborough.maps.arcgis.com/apps/webappviewer/index.html?id=f065ea3bc5a44f489b540c883bfcabcd8>

For example, **Figure 1** shows how an existing marine farm can move so it is fully within an AMA.

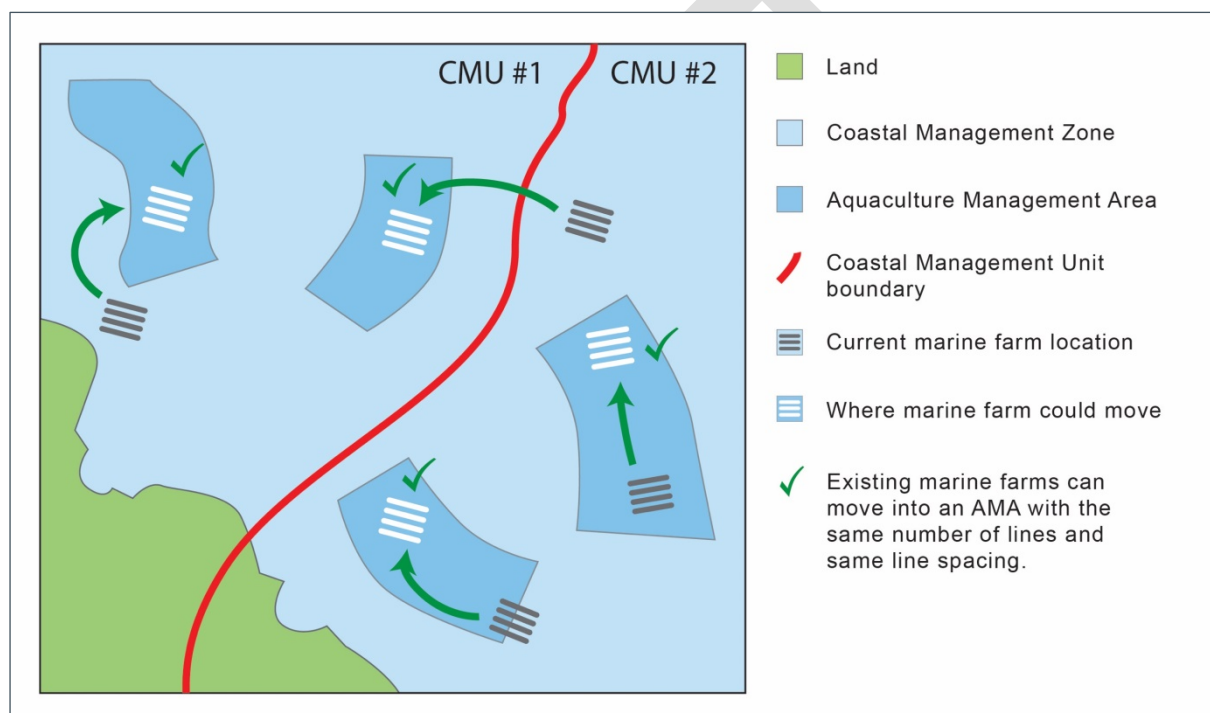


Figure 1: How existing marine farms could be authorised to move between Aquaculture Management Areas and Coastal Management Units.

An authorisation for an existing marine farm will be issued for the *equivalent* space within an AMA that was approved in the farm's earlier resource consents. This way the space will accommodate the same area and total backbone length or, in the case of intertidal oyster racks, the same area and length of racks.

6 The authorisation process

Subpart 1 of Part 7A of the RMA provides the statutory framework that makes allocating space through authorisations possible. This is described in more detail in section 9.

Subpart 1 of Part 7A also gives the council discretion to decide how to implement the authorisation process.

Figure 2 shows the authorisation process we will follow.

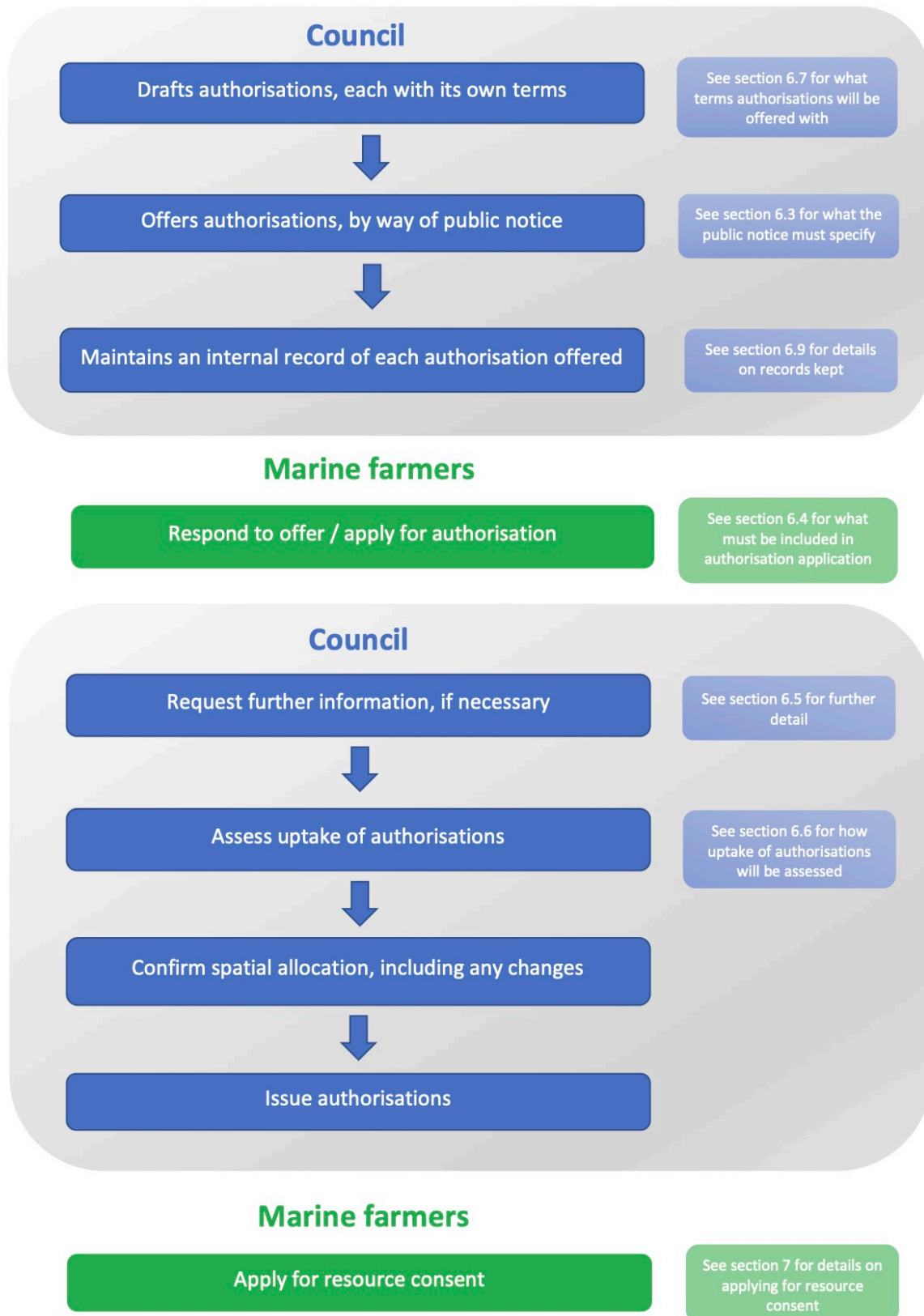


Figure 2: How authorisations will be offered, applied for, and issued under the PMP.

6.1 Terminology used to describe the authorisation process

Offer	Council offers authorisations in accordance with the allocation rule under s165I of the Act
Application	Is when a marine farmer responds to the offer of allocation by requesting an authorisation for that space. This is call an ‘offer for an authorisation’ in the RMA (but we don’t use that term because it is easily confused with the offer of authorisations by the Council) in accordance with s165V
Accept	Council may accept an application under s165X of the Act
Issue	Council may grant an authorisation, under s165Y of the Act

6.2 Authorisations will be offered in groups/stages to coastal permit holders of existing marine farms

The authorisations will be offered in groups and/or stages where possible to keep the numbers and timeframes manageable. Authorisations may be offered for a:

- Single AMA
- Group of AMAs in a CMU
- An entire CMU, or
- Group of AMAs from more than one CMU.

We have not yet decided on the exact order in which authorisations will be offered, and we might need to talk to people in the industry about that. We will probably:

- Prioritise authorisations for marine farms that are located in CMUs where the majority of coastal permits are due to expire the earliest. It is important to note that in reality, many CMUs contain marine farms with a range of coastal permit expiration dates. Therefore, it may not be possible to do this consistently.
- Offer authorisations for marine farms in CMUs that will remain in their current positions, for example Port Underwood, later in the process. This is because marine farms in these CMUs will be less affected by any new spatial allocation.
- Plan to offer authorisations for finfish farms closer to the time of coastal permit expiry.

6.3 Authorisations will be offered through public notice

Once the aquaculture provisions of the PMEP are made operative, we will be able to offer authorisations via public notice, as required by s165I(1) RMA,⁵. We also must give the Minister of Conservation 4 months’ notice before we offer authorisations⁶.

⁶ In accordance with s165I(3) of the RMA

The public notice will⁷:

- Describe the size and location of the space the authorisation is for
- Include any requirements under section 165K of the RMA (such as a maximum term for any future coastal permit)
- Specify:
 - Activities any authorisation might cover
 - The maximum duration of any future resource consent
 - The closing date for offers
 - How to accept an offer
 - Criteria that Council will use to decide and issue authorisations
 - Any other matter Council considers appropriate
 - Any fees

The notice may also specify conditions or terms for the authorisation, which could include:

- An authorisation lapse date (if the lapse date is different to the default 2 years from when it was issued)
- Restrictions on transferring authorisations.

6.4 Submit an application form to apply for authorisation

We will send out an application form to existing coastal permit holders in the area we are offering authorisations.

When we offer you an authorisation, you can accept the offer by submitting the application form. The form will ask for:

- Your contact details
- The location of your marine farm, and
- The activity or range of activities you are seeking an authorisation for (this will be set out in the public notice or your existing coastal permit), and
- The exact area in an AMA that you are seeking an authorisation for.

If you do not submit an application form, we will consider this to mean that you do not wish to apply for an authorisation.

6.5 The council may request further information from the applicant

If you submit an application form to apply for an authorisation, we'll contact you if we need more information. You'll need to supply this further information within a reasonable amount of time, otherwise your application may be declined.

⁷ In accordance with s165U of the RMA

6.6 Uptake of authorisations will help us review the allocation process

When the period for responding to offers of authorisations for an AMA(s) or CMU(s) has closed (the date will be specified in the public notice), we will assess if enough authorisations have been taken up for the spatial allocation to be deemed effective and efficient.

It is important to assess the uptake of authorisations at this point, because if there is insufficient uptake, this can result in a haphazard spatial configuration that is not the most optimal use of space and could negatively impact public access and recreational activities.

Table 1 Uptake of authorisation scenarios

If there is sufficient uptake, we will:	If there is inadequate uptake, we will:
1. Accept the applications for which authorisations were offered ⁸ and issue authorisations ⁹	1. Delay issuing authorisations
2. Send a notice to all successful authorisation applicants in the AMA(s) or CMU(s) for which authorisations were offered, to explain that they can now proceed to the next step, which is the application for resource consents	2. Send a notice to all marine farmers who applied for an authorisation in the AMA(s) or CMU(s) for which authorisations were offered, to explain that there will be a delay in the issuing of authorisations while the spatial allocation is being reviewed.
	3. Consult with the aquaculture industry, marine farmers, and the community on whether to: Option A Change the configuration of marine farms within AMAs to make the structure more logical and space evenly distributed Option B Leave the space unallocated, in its current configuration, or Option C Offer authorisations for an extension of an existing marine farm, or a new farm.
	4. We will consider the views of the aquaculture industry, marine farmers and the community when making our decision.
	5. If we decide to go with: Option A change the configuration of marine farms within the AMA to make the structure more logical and space evenly distributed:

⁸ In accordance with s165X(1(a) of the RMA

⁹ In accordance with s165Y of the RMA

	<p>We will take into consideration the views of the aquaculture industry, marine farmers and the community when making our decision as to the exact new layout and the way to best utilise the available space. Council may negotiate with marine farmers with the view of reaching an agreement on the location of their marine farm¹⁰.</p> <p>When a decision has been made, we will notify authorisation applicants of the decision and the reasons behind it. We will then accept the applications for which authorisations were offered¹¹, and issue authorisations¹² in line with the revised configuration.</p> <p>Option B leave the available space unallocated:</p> <p>We will notify authorisation applicants of our decision, accept applications which were made¹³ and will issue authorisations in line with the spatial allocation layout that reflects the uptake of authorisations offered.</p> <p>Option C We will offer authorisations to others. How we may allocate this extra space is described in more detail in section 6.8.</p>
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6.7 Authorisations will be issued with terms

Each authorisation will be issued with terms. Any future resource consent must reflect the terms of the authorisations.

Terms will include:

- The type of marine farming authorised for the site (for example, mussels or finfish)
- The location and exact space the marine farm will occupy (which includes anchoring structures) defined by map co-ordinates or GPS
- The requirement that existing marine farm coastal permits are surrendered within 6 months of the new resource consents under the authorisation commencing, and
- The duration of any future resource consent.

6.8 Council will keep internal records of authorisations

We will maintain an internal record of authorisations and keep detailed information on:

¹⁰ In accordance with s165X(1)(d) of the RMA

¹¹ In accordance with s165X(1)(a)

¹² In accordance with s165Y of the RMA

¹³ In accordance with s165X(1)(a)

- The offer of authorisations
- Applications made for authorisations
- Requests for further information from the applicants
- Further information received by applicants
- The transfer of authorisations and
- The issue of authorisations.

6.9 Council will keep a public register of authorisations

A public register (which would be hosted on the MDC website) will contain important details of each authorisation that is issued. Each authorisation will be issued with a unique identifier (ID). For each authorisation, we will keep the ID number, details of the authorisation holder, the space to which the authorisation applies to and the terms of the authorisation.

The register will be frequently updated to reflect changes, such as the transfer of any authorisations between marine farmers.

7 Applying for resource consent

7.1 An authorisation gives the right to apply for a resource consent

A marine farmer must have an authorisation to apply for resource consent. If you do not have an authorisation, you cannot apply for a resource consent to operate your marine farm.

However, until the aquaculture provisions of the PMP are made operative and the allocation rule is operative, existing marine farmers can continue to apply for replacement resource consents in their existing location, without the need for an authorisation.

7.2 Authorisation holders must apply for resource consent within two years

Marine farmers that are issued authorisations must apply for resource consent within two years (unless an alternative timeframe is specified) or the authorisation will expire.

If your authorisation expires, you cannot apply for a resource consent. You will need to wait for the council to offer a new authorisation. However, there is no guarantee that (or how) the council will offer authorisations in the future, after the initial allocation.

7.3 Resource consent applications must relate to the authorisation terms

An application for resource consent must:

- Include the authorisation ID number
- Be made under the terms of the authorisation. For example, if an authorisation is specifically for mussel farming, the application for resource consent must only be for a mussel farm.

See section 6.7 for a list of terms that could apply to an authorisation.

7.4 Resource consents will have conditions attached

We will process resource consent applications for marine farm activities just like any other resource consent application and follow our typical council processes.

There will be conditions placed on marine farm consents. These will be directed by the policies of the aquaculture provisions and will be used to manage the adverse effects of the marine farms.

The terms of the authorisation will also influence the conditions that will be placed on your resource consent. Therefore, you can expect to see a suite of conditions that reflect the terms of your authorisation. Some conditions will be:

- Requiring you to surrender the old resource consent for your existing marine farm within 6 months of the start of your new resource consent under the authorisation and
- A specific expiration date for the resource consent.

We have not yet decided on the most appropriate duration for marine farm coastal permits.

7.5 Resource consents can lapse

Under Section 125 the RMA, a resource consent for aquaculture activities in the coastal marine area lapses if the consented activity is not started by the date specified in the consent. If no date is specified in the consent, it would lapse three years after the consent commences.

Therefore, it is important to be ready to move to your new site promptly, so that you can be established before your authorisation lapses.

8 Frequently asked questions

Q. Can I apply for space in a different location than my offer of authorisation says?

A. Yes, you can.

However, your application is unlikely to be accepted. We have put careful consideration into our spatial allocation decisions. Our first preference is to provide space to the marine farmers that are already existing in the space, or nearby.

In order to ensure that you are provided space for your marine farm, you should apply for your current or adjacent space that was outlined in your offer of authorisation.

Q. Can I negotiate with other marine farmers on marine farm space?

A. Yes, you can.

If you would like to negotiate with neighbouring marine farmers about applying for authorisations for particular space, you have every right to do so.

Q. Can I apply for an authorisation for a larger space than I currently occupy?

A. Yes, you can.

But there is no guarantee that an authorisation application for a larger space will be accepted.

It is important to note that an authorisation only gives you the right to apply for a resource consent. It does not guarantee the resource consent will be granted.

If you apply for a resource consent for space (total backbone length or intertidal structures) that is greater than what was consented for the existing marine farm, this will be a restricted discretionary activity (Rule 16.5.4) and therefore can be declined.

Q. Can I apply for space that is outside of an Aquaculture Management Area (AMA)?

No, you cannot.

Marine farming within the enclosed waters CMUs or the near shore CMU, that is outside of an AMA, is a prohibited activity. This is Council's way of sending a clear message that marine farming outside of AMAs is inappropriate once the rule is operative. No resource consent can be sought or granted for a prohibited activity.

You can, however, apply for space in the Open Coastal CMU.

Q. Will there be a fee for authorisations?

A. Although no decision has been made it is very likely that a fee for the application will be charged to cover administrative costs. The fee will be listed in the public notice that offers the authorisation.

Q. How do we ensure that authorisations will not overlap or inadvertently allocate too much space?

A. Each authorisation will define the allocated space carefully and accurately, with GPS coordinates.

This will ensure that no overlap or increases in marine farm sizes will occur.

Q. Can I transfer my authorisation to someone else if I do not want it?

A. If a marine farmer is issued an authorisation but they do not want to use it, they can transfer the authorisation for either the entire space, or part of the space, to another marine farmer.

If you want to transfer your authorisation to another marine farmer, you can arrange this between yourselves and give the council written notice of the agreement to transfer. The written notice must include contact details of the marine farmer who was originally issued the authorisation, and who it is being transferred to.

Entire space

If a transfer of an authorisation is for the entire space, the transfer takes effect as soon as Council receives the written notice. After that, we will respond to both parties to confirm:

- The written notice of transfer has been received, and
- Terms of the authorisation.

We will then update our internal record of authorisations, and the public register.

It is important to note that while an authorisation can be transferred to another marine farmer, the terms of the authorisation will remain the same, and cannot be changed.

Part of the space

A single authorisation only provides a single marine farmer the right to apply for a resource consent. Therefore, when an authorisation is transferred for only part of the space, two new authorisations will be created, each with their own unique identification number.

If a transfer of an authorisation is for part of the space, written notice to Council must include:

- Accurately defined spatial boundaries of the new divided authorisation, which clearly identifies the two new sub parts of the space that is authorised, and
- Details of the authorisation holders for each sub part.

A restriction on the transfer of authorisations¹⁴ (identified in the public notice for the offer of authorisations) means that the transfer of an authorisation for part of the space will not take effect until Council confirms that written notice has been received, and that we consider it complete.

We will then:

- Confirm the conditions that apply to each part of the authorisation
- Re-define the spatial extent of the newly divided new authorisations
- Generate new ID numbers for each of the new authorisations, and
- Update both Council's internal record of authorisations, and the public register.

We will then respond to both parties to confirm everything.

Q. My coastal permit does not expire for another 10 years. Why do I have to apply for an authorisation for new space?

A. We have decided to change the spatial allocation of marine farming in the Sounds for several reasons:

- Improve public access to the foreshore
- Restore biodiversity to the foreshore euphotic zone (the upper layer of a waterbody where photosynthesis happens)
- Reduce effects on coastal values
- Improve amenity values
- Ensure navigable boat routes are maintained.

The reason we are offering authorisations and need existing marine farmers to apply for authorisations for new space now, is so that uptake of the new spatial allocation is done in an orderly fashion. This means that the benefits of a considered, structured, and cohesive spatial allocation can be seen.

If all authorisations are not offered in an organised manner, or there is no obligation for existing marine farmers to apply for their authorisation within a certain timeframe, we run the risk of having a spatial allocation that is uneven and unattractive and the benefits of the reallocation to the environment and community will not be realised.

¹⁴ In accordance with s165S(2)

In order to make the process as easy as possible for marine farmers, provided that the activity and the size of the marine farm remains the same, resource consents for existing coastal permit holders are a controlled activity.

We hope that this will minimise disruption and reduce costs to marine farmers currently operating in the Sounds.

Q. If my marine farm is located in an AMA or CMU, but will be moving to a new AMA or CMU under Council's new spatial allocation, will the authorisation for my marine farm be offered at the same time as the marine farms in my current location or the new AMA or CMU I am relocating into?

A. If a marine farm is moving from one AMA or CMU to another, we will offer an authorisation for the marine farm at the same time as the adjacent marine farmers in its current location.

We hope that this will provide certainty to existing coastal permit holders of marine farms that have been earmarked as likely to be relocated.

9 The authorisation process is established under the RMA

Subpart 1 of Part 7A of the RMA provides the statutory framework that makes allocating space through authorisations possible. This is illustrated in **Figure 3**.

