MARLBOROUGH DISTRICT COUNCIL

RESOURCE CONSENT APPLICATION

U240451

Jonathan Blair Allan Tester, Ciaran Brian Hughes

Rams Head, Tawhitinui Reach,
Pelorus Sound/Te Hoiere

Submissions Close

5.00 pm Friday 26 July 2024

Beth Bovey-8156

From: Jonathan Tester <jonotester@gmail.com>
Sent: Thursday, 23 May 2024 5:59 am
To: RCInbox
Cc: Nigel McFadden; Ciaran Hughes
Subject: Resource Consent Application - Marine Farm Pelorus Sound
Attachments: 8645-AEE Final - Tester Hughes Consent Application.pdf

To whom it may concern,

Please find attached the required application form and supporting information for a Resource consent to relocate Marine Farm 8645 to West of Ramshead in Pelorus Sound.

The deposit fee shall be paid by direct credit.

Please provide confirmation of receipt of the application.

Kind Regards,

Jono

Application for Resource Consent or Fast Track Resource Consent

[illegible]

MARLBOROUGH DISTRICT COUNCIL

For Office Use

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[illegible]	
[illegible]	
[illegible]	
[illegible]	

Date Received:

Please read and complete this form thoroughly and provide all details relevant to your proposal. [illegible]

[illegible]

[illegible]

[illegible] Applicant Details *(If a trust, list full names of all trustees.)*

[illegible] *(full legal name)*: [illegible]

[illegible] *(if applicable)*:

[illegible]: [illegible]

[illegible] *(including post code)*: [illegible]

[illegible]: [illegible]

[illegible] Agent Details *(If your agent is dealing with the application, all communication regarding the application will be sent to the agent.)*

[illegible]:

[illegible]:

[illegible] *(including post code)*:

[illegible]: [illegible]:

□□ Type of Resource Consent Applied For

☒ **Coastal Permit** ☐ **Discharge Permit** ☐ **Land Use** ☐ **Subdivision** ☐ **Water Permit**

☒ **Fast Track Application**

☐ **opt out**

☒ **do not opt**

□□ Description of the Activity

The activity to which the application relates is as follows:

□□ Supplementary Information Provided?

☒ **Yes** ☐ **No**

Council has supplementary forms for some activities, such as moorings, water permits, domestic wastewater, discharge permits, to assist applicants with providing the required information.

□□ Site Details

The site to which the proposed activity is to occur is as follows:

(Attach a sketch of the locality and activity points. Describe the location in a manner which will allow it to be readily identified, e.g. house number and street address, Grid Reference, the name of any relevant stream, river, or other water body to which application may relate, proximity to any well known landmark, DP number, Valuation Number, Property Number.)

Please attach a copy of the Certificate of Title that is less than 3 months old (except for coastal or water permits).

Owners/Occupiers of the Site

Affected Persons

Please attach the written approval of affected persons/adjoining property owners and occupiers.

Note: As a matter of good practice and courtesy you should consult your neighbours about your proposal. If you have not consulted your neighbours, please give brief reasons on a separate sheet why you have not.

Assessment of Effects on the Environment (AEE) *(Attach separate sheet detailing AEE.)*

Note: Failure to submit an AEE will result in return of this application.

Part 2 of the Resource Management Act 1991

Section 104 of the Resource Management Act 1991

Other Information

Section 124 or 165ZH(1)(c)

This assessment should include more than stating a monetary value.

Fees

[X]

[X] [ ]

Declaration

please print name)

D

Notes to Applicant

You may apply for two or more resource consents that are needed for the same activity on the same form.
You must pay the charge payable to the consent authority for the resource consent application under the Resource Management Act 1991 (if any).

Privacy Information

The information you have provided on this form is required so that your application can be processed and so that statistics can be collected by Council. The information will be stored on a public register and held by Council. Details may be made available to the public about consents that have been applied for and issued by Council. If you would like access to or make corrections to your details, please contact Council.

Environmental Protection Authority

If you lodge the application with the Environmental Protection Authority, you must also lodge a notice in form 16A at the same time.
If your application is to the Environmental Protection Authority, you may be required to pay actual and reasonable costs incurred in dealing with this matter (see section 149ZD of the Resource Management Act 1991).

Fast Track Applications *(relates to a land use consent for a controlled activity)*

An electronic address for service must be provided if you are applying for a Fast Track consent.
Under the Fast Track resource consent process, notice of the decision must be given within 10 working days after the date the application was first lodged with the council, unless the applicant opts out of that process at the time of lodgement.
A Fast Track application may cease to be a Fast Track application under Section 87AAC(2) of the Resource Management Act 1991.

R

Marine Farm 8645 - Relocation
Resource Consent Application and Assessment of Environmental Effects
May 2024

FORM 9

APPLICATION FOR RESOURCE CONSENT

Sections 88 and 145, Resource Management Act 1991

To Marlborough District Council

1. Jonathan Blair Allan Tester & Ciaran Brian Hughes apply for the following type of resource consent:

A coastal permit to authorise conventional longline marine farming in the coastal marine area.

2. The activity to which the application relates (the proposed activity) is as follows:

Conventional longline marine farming of the following species:

a) Green shell mussel (Perna canaliculus)
b) Scallop (Pecten novaezelandiae)
c) Blue mussel (Mytilus edulis)
d) Flat Oyster (Tiostrea lutaria)
e) Pacific Oyster (Crassostrea gigas)
f) Macrocystis pyrifera
g) Ecklonia radiata
h) Gracilaria spp
i) Pterocladia lucida

3. The site at which the proposed activity is to occur is as follows:

The activity will occur at a 2.366 hectare site, which is located within Coastal Management Unit 28 Pelorus Sound.

The approximate grid reference of the proposed marine farm relocation site is E 1674806.25 N 5454774.71

4. The full name and address of each owner or occupier (other than the applicant) of the site to which the application relates are as follows:

The Crown.

5. No additional resource consents are required for the proposal to which this application relates.

6. I attach an assessment of the proposed activity's effect on the environment that-

(a) Includes the information required by clause 6 of Schedule 4 of the Resource Management Act 1991; and

(b) Addresses the matters specified in clause 7 of Schedule 4 of the Resource Management Act 1991; and

(c) Includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.

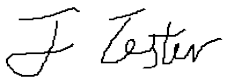
7. ☐ I attach an assessment of the proposed activity against the matters set out in Part 2 of the Resource Management Act 1991.

8. ☐ I attach an assessment of the proposed activity against any relevant provisions of a document referred to in section 104(1)(b) of the Resource Management Act 1991, including the information required by clause 2(2) of Schedule 4 of that Act.

9. ☐ The value of the investment of the existing consent holders is approximately $350,000.

10. ☐ I attach all information required to be included in this application by the Marlborough Sounds Resource Management Plan, the Proposed Marlborough Environment Plan, the Resource Management Act 1991, or any regulations made under that Act.

Date: 22 May 2024

Signature: 

Jonathan Tester

Address for Service: Jonathan Tester & Ciaran Hughes
26 Henry Street,
Blenheim 7201

Contact person: Jonathan Tester

Email: jonotester@gmail.com

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1. Introduction

1.1 Background

The applicants operate existing marine farm 8645 located in East of Lone Rock in Croisilles Harbour and lease several lines on several other farms within the sounds.
8645 requires relocation being deemed an inappropriate location for marine farming under Variation 1 of the Marlborough Environment Plan (MEP). No replacement space has been allocated as originally proposed under MEP Variation 1. To ensure continuity of their operation and to assist the Council in identification of equivalent space the applicants are seeking a replacement consent for Marine Farm 8645 at an alternative location to the West of Rams Head in Tawhitinui Reach, Pelorus Sound.
This resource consent application relates to relocation of marine farm 8645 (hereafter referred to as "8645 or "the farm").

Table 1: Key Details of Existing 8645 Consent

Existing Resource Consent/ Approval	Area
U170080	1.59Ha

The proposed relocation site of 8645 is illustrated below in Figure 1.

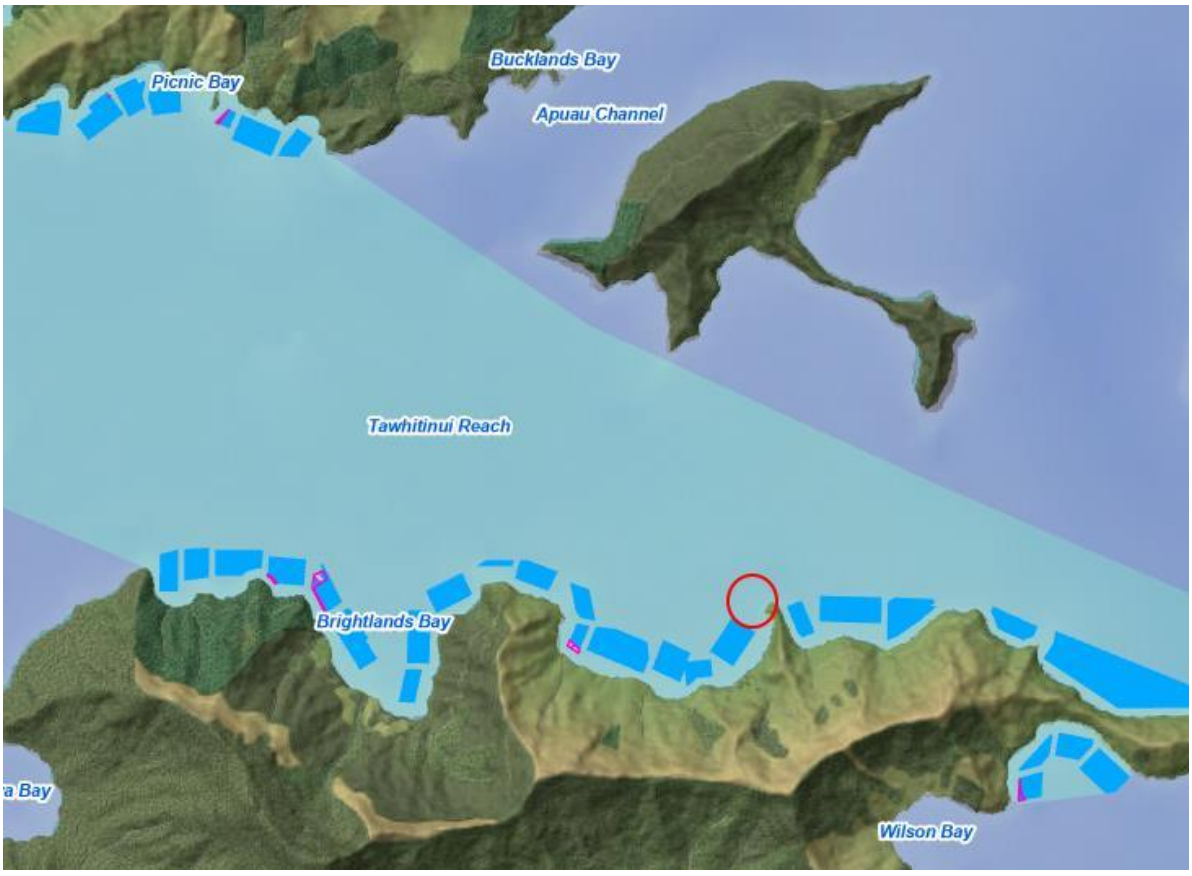

Figure 1. Proposed relocation site for Marine Farm 8645

This Assessment of Environmental Effects ("AEE") has been prepared in support of resource consent applications under the Resource Management Act 1991("RMA" or "the Act") to the Marlborough District Council ("the Council") to continue farming marine farm 8645 at a location which has been identified as in keeping with the objectives of Variation 1 of the PMEP.

To support this consent application, the applicants commissioned Davidson Environmental Limited to complete a benthic survey and assessment of the biological effects of the proposed relocation of 8645 ("the Biological Report"). A report has been prepared and is provided as Appendix A to this AEE.

The Biological Report has not identified any benthic issues at the site.

The applicants seek a consent term of 20 years.

1.2 The Applicants

Ciaran Hughes is a recent entrant to the industry and as part of the Tester Hughes Partnership currently farms 8645 along with several other leased lines in Beatrix Bay and Port Underwood.
Jonathan Tester is a second-generation marine farmer and his family have a long association with marine farming in Marlborough back to the early 1980s.
The farm is operated as part of wider family business consisting of 9 farms.

1.3 Report Structure

This AEE is set out in eight sections as follows:
Section 1: This Introduction
Section 2: A description of the existing environment
Section 3: A description of proposed relocation site for 8645;
Section 4: Identifies the consent requirements for the relocation of 8645;
Section 5: Assesses the effects of the proposed activities;
Section 6: Addresses the relevant **RMA** Matters**;**
Section 7: Addresses consultation; and
Section 8: Concluding Statement

2. Existing Environment

2.1 Environmental Setting

Rams Head is located in the central region of Tawhitinui Reach, a long body of water running east west that forms the central part of Pelorus Sound and is accessed by sea from Havelock and Elaine Bay.

Topographically, Tawhitinui Reach is the main route in and out of Pelorus Sound. It is accessed by sea from the north, east and west and is moderately used from a boating perspective.
The landward backdrop of the site consists of steep terrain with regenerating scrub/vegetation and patches of pasture extending approximately to the mean high water mark. There are no sandy beaches or beach area visible at high tide in the location, with the shoreline being mainly broken rock and cobbles. The site lies within the "working" environment of Tawhitinui Reach where marine farming, traditional pastoral farming and forestry have been practiced in the past.

There are a number of Marine farms along the north and south coasts of Tawhitinui Reach. The extent of this marine farming development in the area is evident from the plans and drawings provided in Figure 1.

The Marine Farms located on the southern side of the Reach shown in Figure 1 is reproduced from the Council's marine farm mapping system. These existing farms have been allocated AMAs under Variation 1 of the MEP indicating marine farming. There is a strong pattern of concentration of marine farms along the southern shore of Tawhitinui Reach.

Figure 2. Overview of Tawhitinui Reach AMAs (AMAs in Green)

There are no moorings in the vicinity of the site.

2.1.1 Proposed Marine Farm 8645 Relocation

The proposed relocation site for 8645 is illustrated in Figure 1 above and Appendix C.
The proposed site is located approximately halfway along the southern coast of Tawhitinui Reach to the west of Rams Head. The hillside adjacent to the marine farm is privately owned and covered in native regenerating scrub with patches of pasture.

Figure 3 provides an image of the proposed site

Figure 3. Looking south-west through the proposed relocation site

2.2 Zoning

The zoning of Pelorus Sound in the Marlborough Sounds Resource Management Plan ("Operative Plan" or "MSRMP") is Conservation Zone, Rural One Zone, and Sounds Residential Zone.
Under the Proposed Plan, the foreshore area is Open Space 3 (which is present through the entirety of the foreshore of the Marlborough Sounds), and adjacent land is Coastal Environment.
Under the Proposed Plan the following notations are identified over the proposed site:

- Marlborough Sounds High Amenity Landscape; and
- Marlborough Sounds Important Bird Area.

Table 2 below provides a comparison of the existing MSRMP and Proposed Plan zoning of the site.

MSRMP	PMEP
Coastal Marine Zone 2	Coastal Marine Zone

CMU 28 is identified/recognized by Variation 1 as an Enclosed Water CMU.

2.3 Biological Environment

A detailed description of the biological environment of the farms is contained in the attached Biological Reports (refer to Appendix A) and summarized in the following subsections below:

- The benthic environment.
- Significant biological sites.
- Marine mammals.
- Seabirds; and
- Aquatic species and communities.

2.3.1 The Benthic Environment

The benthic environment of the proposed 8645 relocation site and areas offshore was found to be characterized by silt and silt and clay with very little natural shell.
The Biological Report identified the following points of interest relating to proposed site:

- Benthic issues, including the presence of one area of natural shell rubble was observed inshore of the proposed consent. It is recommended a backbone exclusion area be established around this NES-MA feature. This area can be observed in Figure 6 and does not fall within the proposed backbone footprint.

2.3.2 Significant Biological Sites

The closest known significant site is located 1.2 km west of the proposed consent (Site 3.6)
As shown in Figure 4.

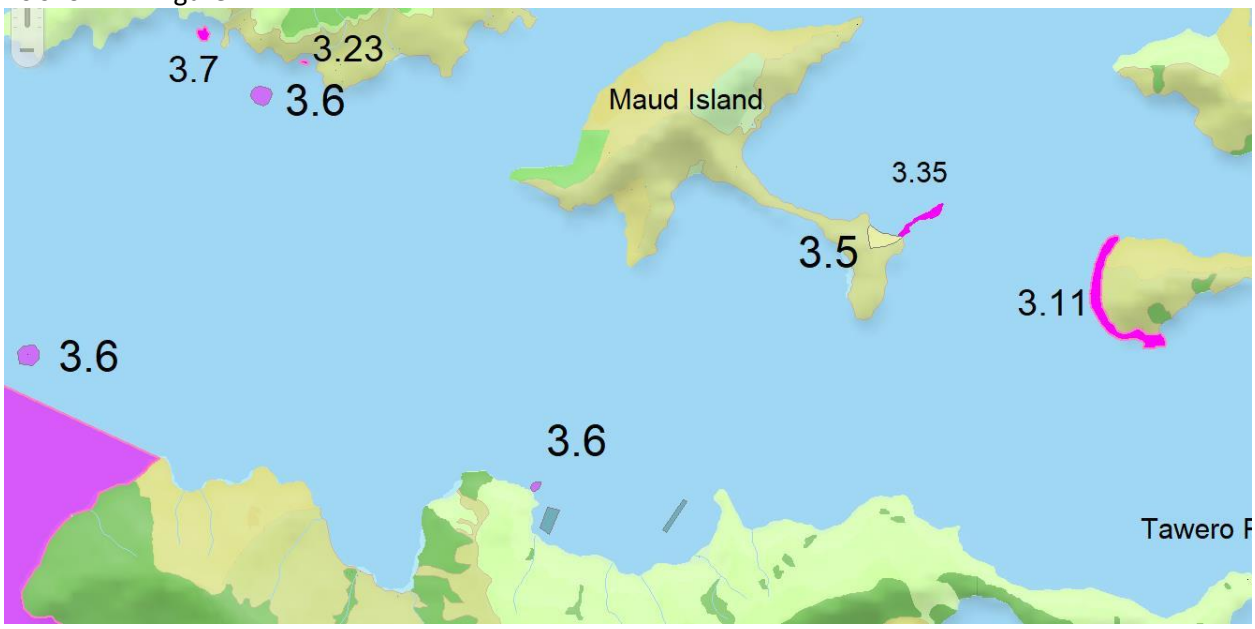

Figure 4. Closest Significant Biological Sites (shown in pink)

2.3.3 Marine Mammals

The Davidson Report (Appendix A) states:

" Tawhitinui Reach is visited by a range of dolphin species including bottlenose, orca, common and dusky (Author, pers. obs). Fur seals are occasionally observed along the coast or resting on marine farm floats."

The small size of the proposed farm is likely to have a less than a minor effect on the use of the area by marine mammals. Based on the location of this farm and known whale migratory patterns and behaviour, it is unlikely this farm represents a threat for migrating whales through Cook Strait region.

The present marine farm will use standard mussel farming structures that are under tension and therefore, present a low risk of entanglement to marine mammals."

No marine mammals were identified during the survey undertaken by Davidson Environmental.

2.3.4 Seabirds

The Davidson report notes that "During the present survey, three bird species (five individuals) were observed in the consent (pied shag, paradise duck and red-billed gull). Birds were flying through or on the water in the study area. The diversity and number of birds observed was low compared with many marine farms in the Sounds, likely due to the absence of marine farm structures.

The closest king shag colony is in Tawhitinui Bay, 5.5 km east of the study area. King shags are regularly seen in Tawhitinui Reach (Authors, pers. obs.) and they are likely to periodically forage in and around this consent. During the present farm survey, no king shag was seen in or near the consent.

Recent work has shown king shags regularly forage in and around marine farms (Bell, 2022), therefore the addition of a 2.366 ha marine farm is unlikely to have an adverse impact on these birds."

2.3.5 Other Aquatic Species

Aquatic species and communities observed during the survey undertaken by Davidson Environmental of the site included sea cucumber, cushion seastar, tubeworms (Chaetopterus and Spiochaetopterus sp.), opalfish, macroalgae and diatom mat.

2.4 Landscape and Natural Character Values

Table 3 below sets out the landscape and natural character values that are attributed to proposed site by the Operative and Proposed Plans.

Table 3: Landscape and Natural Character Values of Proposed Relocation Site for Marine Farm 8645

Operative Plan		Proposed Plan		
Natural Character	Area of Outstanding Landscape Value	Marlborough Sounds High Amenity Landscape	Natural Character	Outstanding Natural Feature/ Outstanding Natural Landscape
N/A	N/A	✓	N/A	N/A

3. The Proposed Activities

3.1 Location Details

Farm #	8645 - Relocation	
Location:	West of Rams Head, Pelorus Sound	
Coordinates	1674806.25 E	5454774.71 N

3.2 Currently Consented & Proposed Layouts

Copies of the existing authorised location and layout plans for 8645 are provided in Appendix B. The proposed location and layout plans for which consent is sought are provided in Appendix C. These are described further below.

As shown in Table 4, there is no proposed increase in total backbone/ production line length.

Table 4: Consented & Proposed Layout Requirements

Currently Consented Production Line Length	Proposed Production Line Length	Difference
1069m	1069m	0m

The proposed location and layout is illustrated in Figures 5 and 6.

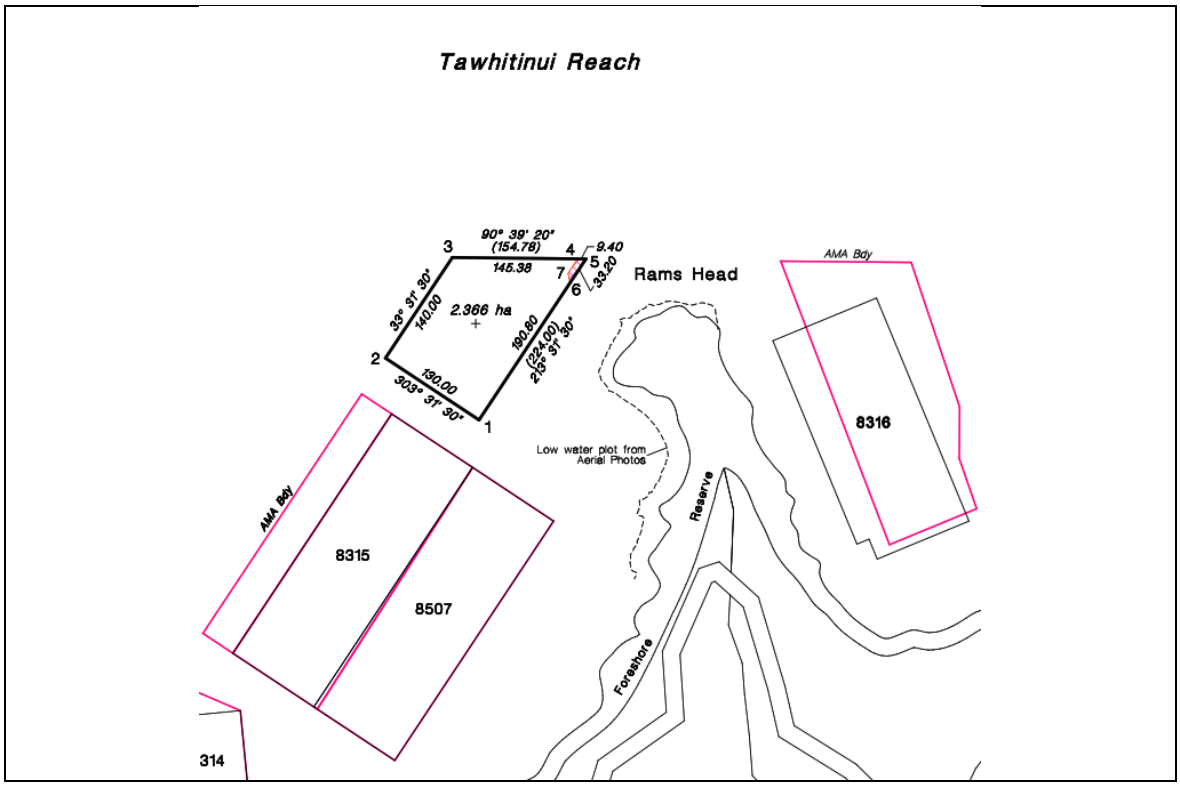

Figure 5. Proposed Relocation Site of Marine Farm 8645

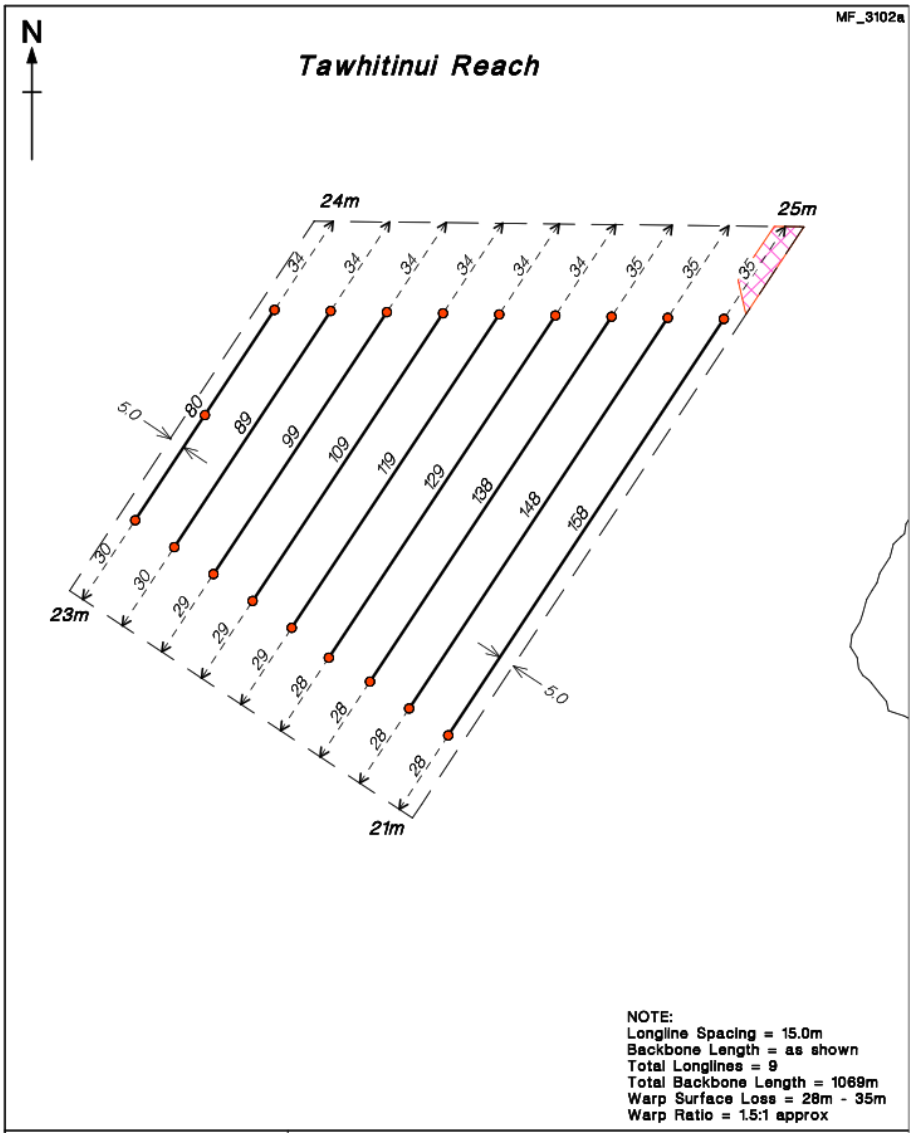

Figure 6. Proposed Layout of Relocated Marine Farm 8645

4. Status of Activity

Relevant rules for this application are contained in the Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 ("NESMA"), the MSRMP, and Variation 1 to the PMEP.

The activity status of the resource consent required for the proposed location and layout of the farm in each of the above documents is shown in Table 5 below.

Table 5: Activity Status of Resource Consent Requirements for the Preferred Location and Layout

NESMA	MSMRP	Variation 1/MEP	Section 87B(1)(c)
N/A	Non-complying (Rule 35.5)	Prohibited	Discretionary

The rules of the NESMA do not apply to 8645 relocation as the farm will be relocated from its currently consented location and into an area that is outside AMA and in turn the activities do not meet Regulation 16(1) as the relocated farm would be located within an inappropriate area (i.e. outside the Variation 1 AMA).

The non-complying status for proposed site under the MSRMP results from part of the farms being located either closer than 50 m to the mean low water mark, or more than 200 m offshore of the mean low water mark. These rules are an artifact of the management regime in the MSRMP which is to be replaced by Variation 1, and which directed marine farms in this location be located between 50 and 200m from mean low water mark.

The prohibited status of the proposed site under Variation 1 of the PMEP results from the Maud Island CMU being an enclosed water CMU, and the proposed relocation site for 8645 being located outside of a Variation 1 AMA. As the PMEP is not yet operative, section 87B(1)(c) of the RMA specifies that when considering the application under the Proposed Plan, it is to be treated as an application for a **Discretionary activity**.

4.1.1 Overall Assessment of Activity Status

The application is for a Non-Complying activity under MSRMP but **Discretionary** under S.87b(1)(c) as MEP is not operative.

5. Assessment of Effects

This section addresses the potential effects associated with the proposed marine farming activities.

In summary, Sections 5.1 to 5.10 address the following matters:

Section 5.1 Positive effects;

Section 5.2 Effects on tangata whenua values;

Section 5.3 Effects on benthic habitat;

Section 5.4 Effects on water quality and productivity;

Section 5.5 Effects on navigation and public access;

Section 5.6 Effects on natural character, landscape, and visual effects;

Section 5.7 Effects on biosecurity;

Section 5.8 Effects on Marine mammals;

Section 5.9 Effects on seabirds; and

Section 5.10 Heritage

Within these sections, a number of measures to avoid, remedy or mitigate the potential effects of the farms are identified. These measures form the basis of consent conditions proposed by the Applicants for the farm, which are attached as Appendix D to this AEE.

5.1 Positive Effects

The replacement of the resource consent for 8346 would authorize the continued operation of existing marine farming activities at Port Underwood.
The continued operation of 8645 in the proposed location will enable the applicant to continue to harvest, process and supply marine products for sale and consumption. In combination with other marine farms in Marlborough, the proposal will provide employment for locals and the generation of business development for subsidiary industries. It will also contribute to the economy of the wider community and to the social and cultural wellbeing of people and communities in Marlborough.

5.2 Effects on Tangata Whenua Values

The Applicants are not aware of any sites or areas of significance that would be adversely affected by the proposed activities.
The Applicants shall provide tangata whenua with a copy of this application and associated documentation . Any feedback provided by tangata whenua will be provided to the Council if and when it is received following submission of this application. The Applicants are also not aware of any specific issues which were raised in relation to marine farming in this area as part of process for Variation 1 of the PMEP.

5.3 Benthic Habitat

Table 6 below summarises the benthic habitat characteristics and qualities of the proposed relocation site identified in the Biological Report (see Appendix A) and identifies changes and solutions that are required to ensure benthic habitat is appropriately provided for.
The proposed relocation site for 8645 sits over low value benthic habitat considered suitable for marine farming, and the backbone footprint is suitably distant from any valued habitat such that the effects of the proposed activities on benthic habitat will be minor and acceptable.

Table 7: Benthic Characteristics and Qualities

Benthic Habitat Characteristics and Qualities	Issues Identified / Changes Required	Solutions to Identified Issues
• A dominance of silt and clay with very little natural shell within the proposed consent boundary.	• One area of natural shell rubble was observed inshore of the proposed consent.	• A growing structure/backbone exclusion area be established around this NES-MA feature.

5.4 Water Quality and Productivity

As a result of filter feeding shellfish consuming phytoplankton and zoo plankton present in the water column, and then releasing dissolved nitrogen back into the water column, it is possible that marine farming within the enclosed waters of the Marlborough Sounds may be having a cumulative effect on the water quality of the sounds.
This application seeks to continue marine farming of 8645 at the same level of intensity as is currently provided for by the existing resource consent, meaning any effects on water quality will not change.
It is probable that the farm will likely cause phytoplankton depletion inside the boundaries of the proposed site. However, the presence of phytoplankton is expected to slowly return to background

levels as water leaves the farms. This application proposes no change to the total backbone production line lengths of the farms, and therefore represents no change to phytoplankton predation and water flows in Wet Inlet.

5.5 Navigational and Public Access

The proposed layout, colour, positioning, density, lighting, and marking of the marine farm structures is considered appropriate for the following reasons:

- The proposed farm does not extend seaward of the existing line of farms
- With respect to public access, the proposed layout plan contains relatively conventional longline spacing which will allow small craft to maneuver within the farm site.
- Navigational safety will be ensured by marking and lighting the marine farming sites in accordance with the direction of the Harbour Master; and
- With respect to colour, as is common in Marlborough, except as required by the Harbour Master in the lighting and marking plan, all buoys used on the farms will be black in colour.

5.6 Natural Character, Landscape and Amenity Values

As set out in Section 2.4 above, the proposed relocation site for 8645 is not located directly in any high or outstanding natural character areas. All farms are subject to the Marlborough Sounds High Amenity Landscape overlay, which covers the entirety of the Marlborough Sounds.
Within this receiving environment as it currently exists, the adverse biophysical and sensory effects of the farm, including cumulative adverse effects which exist in conjunction with the other marine farms in Port Underwood, are not considered to be significant and are acceptable. This is reflected in Variation 1 providing AMAs for marine farming in these general locations.

5.7 Marine Mammals

With respect to marine mammals, no effects of concern have been identified, noting that:

- No marine mammals were observed at the proposed relocation site during the survey undertaken by Davidson Environmental;
- Tawhitinui Reach is visited by a range of dolphin species including bottlenose, orca, common and dusky (Author, pers. obs). Fur seals are occasionally observed along the coast or resting on marine farm floats;
- Based on the location of the proposed relocation site and known whale migratory patterns and behavior, it is unlikely that the farms represent a threat for migrating whales; and
- The utilisation of standard mussel farming structures that are under tension present a low risk of entanglement to marine mammals.

For these reasons it is considered that there are no unique circumstances or effects associated with the relocation of 8645 to the proposed site and effects on marine mammals which mean they need to be managed any differently to others in Marlborough through the imposition of additional resource consent conditions to address these matters.

5.8 Seabirds

With respect to seabirds, no effects of concern have been identified.

The Davidson Report (Appendix A) notes “During the present survey, three bird species (five individuals) were observed in the consent (pied shag, paradise duck and red-billed gull). Birds were flying through or on the water in the study area. The diversity and number of birds observed was low compared with many marine farms in the Sounds, likely due to the absence of marine farm structures.

The closest king shag colony is in Tawhitinui Bay, 5.5 km east of the study area. King shags are regularly seen in Tawhitinui Reach (Authors, pers. obs.) and they are likely to periodically forage in and around this consent. During the present farm survey, no king shag was seen in or near the consent.

Recent work has shown king shags regularly forage in and around marine farms (Bell, 2022), therefore the addition of a 2.366 ha marine farm is unlikely to have an adverse impact on these birds."

There are no unique circumstances or effects associated with the proposed relocation of 8645 which mean they need to be managed any differently to others in Marlborough in respect of their interactions with seabirds.

5.9 Biosecurity

There are no unique circumstances or effects associated with the proposed relocation site which requires the need to be managed any differently to others in Marlborough. It is anticipated that, if need be, the council may address this through the imposition of additional resource consent conditions.

5.10 Heritage

There are no historic heritage values attributed to the area which would be affected by the proposed activities.

5.11 Conclusion

For the reasons detailed in the sub-sections above, it is considered that the relocation of 8645 to the proposed site can occur in a manner that will ensure any effects will be appropriately avoided, remedied or mitigated.

A number of the measures that have been identified within this section for managing effects of the farm are reflected in the proposed resource consent conditions proffered in Appendix D to this AEE.

6. Resource Management Act Matters

6.1 Introduction

This section of the AEE assesses the proposed activities against the relevant statutory planning framework. This assessment is set out in the following sub-sections:

Section 6.2: Identifies the information requirements for the resource consent application in accordance with section 88 of the RMA;

Section 6.3: Addresses the matters the consent authorities must have regard to in accordance with section 104D of the RMA (because the proposal is a non- complying activity);

Section 6.4: Addresses the matters the consent authorities must have regard to in accordance with section 104 of the RMA; and

Section 6.5: Addresses Part 2 of the RMA.

6.2 Section 88

Section 88(2) of the RMA stipulates that a resource consent application must be made in the prescribed form and manner. It must also include an assessment of environmental effects in such detail as corresponds with the scale and significance of the effects that the activity may have in accordance with Schedule 4 of the RMA.

The resource consent applications for the proposed activities are in the prescribed form as set out in Form 9 of Schedule 1 to the Resource Management (Forms, Fees, and Procedure) Regulations 2003. The applicants have also complied with the application form requirements of the Council.

With respect to the information requirements in Schedule 4 of the RMA, it is noted that Clause (2), (3), (6) and (7) specify information requirements that are directly relevant to the resource consent application required for the relocation of 8645. These matters have been addressed throughout this AEE and in the relevant technical assessments.

6.3 Section 104D

As outlined in Section 4 of this AEE, marine farming in the proposed location is classified as non-complying under the MSMRP.

Section 104D of the RMA establishes restrictions on the ability of a consent authority to grant resource consents for non-complying activities. It states:

> *(1) Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –*
>
> *(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
>
> *(b) the application is for an activity that will not be contrary to the objectives and policies of –*
>
> *(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
>
> *(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
>
> *(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

The objectives and policies of the relevant plans are identified and assessed in Section 6.4.2 of this AEE. As is noted in that assessment, marine farming in the proposed locations would not be contrary to the relevant objectives and policies when considered in an overall way.

As such, the requirements of section 104D(1)(b) of the RMA are met. The resource consent application can therefore be considered in the broader context in accordance with section 104 of the RM

6.4 Section 104

Section 104 of the RMA identifies the matters that a consent authority must have regard to, subject to Part 2 of the RMA when considering an application for resource consent. It states:

> *(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to–*
>
> *(a) any actual and potential effects on the environment of allowing the activity; and*
>
> *(b) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
>
> *(c) any relevant provisions of–*
>
> *(i) a national environmental standard: (ii) other regulations:*
>
> *(iii) a national policy statement:*
>
> *(iv) a New Zealand coastal policy statement:*
>
> *(v) a regional policy statement or proposed regional policy statement: (vi) a plan or proposed plan; and*
>
> *(d) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
>
> *(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the pion permits an activity with that effect.*
>
> *(2A) When considering an application affected by section 124 or 165ZH(1)(c), the consent authority must have regard to the value of the investment of the existing consent holder.*
>
> *(2B) ...*

Section 104 of the RMA does not give primacy to any of the matters to which a consent authority is required to have regard. All of the relevant matters are to be given such weight as the consent authority deems appropriate in the circumstances, and all matters listed in section 104(1) are subject to Part 2 of the RMA.

An assessment of the proposed activity against the relevant matters set out in section 104 of the RMA is provided in the sub-sections below.

6.4.1 Actual and Potential Effects

The actual and potential effects of the proposed activities are set out in Section 5 of this AEE.

6.4.2 Relevant Provisions of the Planning Documents

When considering the proposed activities, relevant provisions are contained in:

- The PMEP, including Variation 1;
- The New Zealand Coastal Policy Statement 2010 ("NZCPS");
- The Marlborough Regional Policy Statement ("RPS"); and
- The MSRMP.

Of note, and in accordance with the findings of RJ Davidson Family Trust v Marlborough District Council [2017], in the context of this application the NZ CPS sets the overarching standards that are required to be given effect to when managing activities in the coastal marine environment. For the Marlborough Region, Variation 1 to the PMEP is the key statutory document that guides how this is to be done with respect to marine farming activities.

While Variation 1 to the PMEP remains subject to appeals, they relate to discrete items, and as such, in the context of this application the Variation 1 provisions should be given significant weight when considering the application.

As such, the assessment of relevant provisions of planning documents provided in the sub-sections below first considers Variation 1 to the PMEP, followed by the other statutory documents of relevance.

6.4.3 Variation 1 to the Proposed Marlborough Environment Plan

The Marlborough District Council has prepared Variation 1 to the **PMEP** to sustainably manage marine farming activities in Marlborough.
The Variation 1 provisions have been subject to a Council hearing process, and are subject to 31 notices of appeal.
Variation 1 contains three objectives and associated policies. They address:

- The appropriate location of marine farms
- The potential cumulative effects of marine farms and
- Managing the potential adverse effects of marine farming on other processes values and uses of the coastal environment.

The first objective and associated suite of policies which are most relevant to this application state:

> ***Objective 13.21 --*** *Provide for marine farming in appropriate locations while protecting and maintaining the values of Marlborough's coastal environment.*
>
> ***Policy 13.21.1 --*** *For the purpose of managing marine farming:*
>
> *(a) the coastal marine area is divided into coastal management units (CMU); (b) areas where marine farms are appropriate are identified as AMAs in accordance with Policies 13.21.3 and 13.21.4;*
>
> *(c) marine farms may be appropriate in the offshore CMU, and will be assessed under Policy 13.21.6;*

(d) Except as provided for in (b) or (c), aquaculture activities are inappropriate in the following zones:

(i) Coastal Marine Zone

(ii) Port Zone

(iii) Marina Zone

(iv) Port Landing Area Zone

(e) where possible, existing Marine Farms are provided for at their existing size and within the same locations or as near as possible to the same locations within **AMAs;**

(f) where it is necessary to relocate an existing marine farm, or part of an existing marine farm from its existing location to manage adverse effects on the natural and human use values of the coastal marine area, the equivalent amount of space is provided in an **AMA** in another location where possible.

(g) the allocation of space within an **AMA** created for relocation of existing marine farms from inappropriate locations is managed using the authorisations process set out in Part 7A of the RMA, guided by Policy 13.21.7 and implemented by rules.

Policy 13.21.3 – AMAs (other than ASAs) are established to provide for existing marine farms within the Enclosed Water CMUs.

AMAs within the Enclosed Waters CMUs are generally located:

(a) In the coastal ribbon between 100 and 300 metres from mean low water (other than those AMAs that provide for intertidal marine farms) in order to protect natural, recreational and amenity values of the coastal marine area of the Marlborough Sounds;

(b) To reflect a similar consented area and the consented total backbone length;

(c) 20 metres from reefs and other areas of significant marine biodiversity value in order to protect the biodiversity values of those habitats;

(d) Away from residences, publicly accessible boat launching facilities, jetties, publicly accessible beaches, moorings, anchorages of refuge and recognised navigational routes where this is necessary to maintain and enhance the recreational and amenity values of the Marlborough Sounds, by taking into account existing and future public need;

(e) To recognise and provide for the traditional and continuing relationship of Marlborough's tangata whenua iwi with the moana and sites of significance;

(f) Outside areas identified as having high, very high or outstanding levels of natural character in Appendix 2, and outside areas identified as outstanding natural features and outstanding natural landscapes in Appendix 1, (both shown on the maps in Volume 4), where this is necessary to avoid adverse effects on the characteristics and values of those areas;

(g) To avoid significant adverse effects on natural character, or on natural features and natural landscapes, where marine farms are located adjacent to areas of high, very high or outstanding natural character in Appendix 2 or areas of outstanding natural features and landscapes in Appendix 1, particularly where this will restore coastal natural character;

(h) Away from areas known to provide significant feeding or breeding habitat for New Zealand King Shag, elephant fish, dolphins and other important species in order to protect those species; and

(i) Outside ecologically significant marine sites identified in Appendix 27 and shown on the Volume 4 planning maps.

The proposed activities align with these provisions insofar as:

- The proposed relocation of 8645 to this location, would achieve better alignment with the direction that marine farms be located within a strip 100 -- 300 meters from mean low water springs, and for the reasons set out in Section 5 of this AEE it would sit comfortably with the other direction in Policy 13.21.3 for where marine farms/AMAs should be located; and

- The proposal would provide for the same backbone length as the existing consented activity at 8645s present location.

The objective and most relevant policies which address the potential cumulative effects of marine farming state:

> ***Objective 13.22 –*** *To understand and address the cumulative effects of marine farming in the enclosed waters of the Marlborough Sounds.*
>
> ***Policy 13.22.1*** *-- Develop a state of the environment programme to monitor and assess the cumulative water column effects of marine farming in the enclosed waters of the Marlborough Sounds.*
>
> ***Policy 13.22.2 –*** *To develop a cultural monitoring programme in partnership with Marlborough's tongoto whenuo iwi, to identify and assess the cumulative effects of marine farming on the relationship of Marlborough's tongoto whenuo iwi with the moono, sits of significance and their cultural values.*

These provisions, and their associated methods, require the Council:

- In collaboration with Marlborough's tangata whenua iwi, science providers and the community, to develop and implement a state of the environment program to monitor and assess the cumulative effects of marine farming in the enclosed waters of the Marlborough Sounds; and
- To report, at least every 5 years, to the public on the results of the monitoring programmes and any management changes that are required in response to that monitoring information

Should the Council decide management changes are required in response to the monitoring results it could implement those changes by reviewing the resource consents of the relevant marine farms or reviewing the PMEP provisions themselves.
The proposed consent conditions set out in Appendix D provide for this to occur by including a condition which would allow the Council to review the conditions on the consent for marine farm 8645 under s128 of the RMA should the need arise.
The objective and most relevant policies which address managing the potential adverse effects of marine farming on other processes, values, and uses of the coastal environment state:

> ***Objective 13.23*** *-- Marine farms are operated sustainably, kept in good order, and adverse effects of the farm operations are avoided, remedied or mitigated.*
>
> ***Policy 13.23.2 –*** *For the duration of any coastal permit issued for a marine farm, the consent holder and/or operators of the marine farm shall:*
>
> *(a) avoid the loss of marine farming related non-biodegradable debris and litter, and any associated adverse effects, from their marine farming operation;*
> *(b) regularly monitor and collect marine farming related non-biodegradable debris and litter from the adjacent shoreline and surrounding coastal marine area; and*

(c) *dispose of marine farming related non-biodegradable debris and litter at an appropriate facility.*

Policy 13.23.3 – *The layout, positioning, design and operation of marine farms and associated structures must ensure:*

(a) *for marine farms using conventional long line structures, the lines are generally positioned parallel to the shoreline, unless there is a reason related to the geography or bathymetry or hydrology of the location this is not practicable;*

(b) *in Enclosed Water CMUs, for marine farms using conventional long line structures, the lines are generally positioned with a 15-20 metre space between each line;*

(c) *existing gaps between adjacent blocks of backbone within the same **AMA** are maintained to allow for public access between marine farms to the foreshore (including for recreational access and access for other boating traffic);*

(d) *that the colour, reflectivity and finish of structures avoids, remedies or mitigates effects on visual amenity values, and that this is maintained throughout the term of the consent;*

(e) *adequate buoyage, anchoring and lighting systems are provided to protect the safety of commercial, recreational or residential navigation;*

(f) *the loss of structures, lines, ropes and buoys and other material from the marine farming activity is avoided, remedied or mitigated.*

(g) *noise and odour from the operation of the marine farm has no more than minor effects on coastal amenity values; and*

(h) *any stock, structures or other materials relocated from another region do not create a biosecurity risk or allow the release or spread of harmful aquatic organisms.*

Policy 13.23.4 – *Enable a change to the layout of structure for a marine farm using conventional longline structures or intertidal structures within an AMA, where there is no increase to the total consented area occupied by structures and no increase in the total consented length of backbone or intertidal structures.*

The proposed activities sit comfortably with the provisions as:

- Proffered by the proposed consent conditions, monitoring and collection of marine farming related non-biodegradable debris will take place in accordance with Policy 13.23.2;
- The layout of the proposed relocation site will be in general accordance with Policy 13.23.3 (refer to Section 3.2 of this AEE), noting in particular that they will include:
  a) Conventional long line structures generally positioned parallel to the shore, with a spacing of 15m; and
  b) One block of 9 back bones with a gap of no less than 50m between the boundary of the proposed site and that of the adjacent marine farm; and
- There are no unique biosecurity circumstances or effects associated with the relocation of 8645 to this site which would require it to be managed any differently to others in Marlborough. If need be in future, the council may address this through the imposition of additional resource consent conditions.

Summary

The relocation of 8645 to the location proposed in this application and in accordance with the proposed conditions would implement and is entirely consistent with the provisions of Variation 1 to the PMEP, and is not contrary to its provisions.

6.4.4 New Zealand Coastal Policy Statement

The NZCPS contains higher level planning provisions which are relevant to this type of activity, including provisions which:

- Recognise the contribution that marine farming makes to the regional and national economy; and
- Direct how the effects of the activity should be managed.

As is outlined above the provisions of Variation 1 of the PMEP outline how the NZCPS provisions are to be achieved with respect to marine farming in Marlborough.
With respect to the management of effects, the NZCPS includes directive provisions to protect indigenous biological diversity by avoiding adverse effects of activities on certain values, including threatened species. No change in adverse effects on any of these species are expected, and it is considered the NZCPS provisions do not present a barrier to granting replacement consents on the terms sought. There are also no other provisions in the NZCPS which present a barrier to granting the replacement consent on the terms sought.

6.4.5 Marlborough Regional Policy Statement

The RPS is dated, and is given effect to by the Operative Plan, which is addressed in detail in Section 6.4.2.4 below. The RPS is not addressed further, other than to note there are no provisions in it which present a barrier to granting the replacement consents on the terms sought.

6.4.6 Marlborough Sounds Resource Management Plan

The MSRMP provisions that are relevant to these applications are contained in:

- Chapter 2 Natural Character;
- Chapter 4 Habitats of Indigenous Fauna;
- Chapter 8 Public Access; and
- Chapter 9 Coastal Marine.

Each is addressed below.

Chapter 2 Natural Character
The objectives and policies relevant to marine farming at the proposed site state:

> ***Objective 1***
>
> *The preservation of the natural character of the coastal environment, wetlands, lakes and rivers and their margins and the protection of them from inappropriate subdivision, use and development.*
>
> ***Policy 1.2***
>
> *Appropriate use and development will be encouraged in areas where the natural character of the coastal environment has already been compromised, and where the adverse effects of such activities can be avoided, remedied or mitigated.*
>
> ***Policy 1.3***
>
> *To consider the effects on those qualities, elements and features which contribute to natural character, including:*
>
> *a) Coastal and freshwater landforms;*
>
> *b) Indigenous flora and fauna, and their habitats;*
>
> *c) Water and water quality;*
>
> *d) Scenic or landscape values;*

e) Cultural heritage values, including historic places, sites of early settlement and sites of significance to iwi; and

f) Habitat of trout.

Policy 1.5

Promote an integrated approach to the preservation of the natural character of the coastal and freshwater environments of the Marlborough Sounds.

Policy 1.6

In assessing the appropriateness of subdivision, use or development in coastal and freshwater environments regard shall be had to the ability to restore or rehabilitate natural character in the area subject to the proposal.

Granting consent to relocate 8645 to the proposed location on the terms sought by the Applicants would sit comfortably with these provisions noting that:

- The proposed relocation is located in and area which is already significantly modified by marine farming and other uses;
- The area is characterized under Variation 1 as an area in which marine farming is appropriate to occur considering effects on natural character as evidenced by the concentration of AMAs;
- The proposed design and layout of the relocated farm aligns with the key PMEP directives (see Policy 13.23.3 above) for how effects of marine farms on natural character in this location are to be managed; and
- In the context of Policy 1.6, marine farm activities are not permanent alterations to the coastal marine area.

Chapter 4 Habitats of Indigenous Fauna

Chapter 4 of the Operative Plan addresses 'Indigenous Vegetation and Habitats of Indigenous Fauna'. Objective 4.3.1 relates to the protection of significant indigenous flora and fauna and their habitats from the adverse effects of use and development; and Policy 4.3.1.2 refers to avoiding, remedying or mitigating the adverse effects of water use on areas of significant ecological value.

The granting of the resource consent for the relocation of 8645 sits comfortably with these provisions, noting the matters set out in Sections 5.3, 5.8, and 5.9.

Chapter 8 Public Access

Chapter 8 of the Operative Plan addresses public access.

Objective 8.3.1 seeks that public access to and along the coastal marine area be maintained and enhanced. The associated policies seek that adverse effects on public access from the construction of marine farms should, as far as practicable, be avoided, and where complete avoidance is not practicable, the adverse effects should be mitigated, and provision made for remedying those effects to the extent practicable. The proposed activities undertaken in accordance with the proposed conditions is generally consistent with this directive, noting, in particular, the assessment in Section 5.5.

Chapter 9 Coastal Marine Area

Chapter 9 contains provisions which address:

- The occupation of coastal space; and
- Effects on the foreshore and seabed.

Each is addressed below.

Occupation of Space

The provisions which address the occupation of coastal space state:

Objective 1

The accommodation of appropriate activities in the coastal marine area whilst avoiding, remedying or mitigating the adverse effects of those activities.

Policy 1.1

Avoid, remedy and mitigate the adverse effects of use and development of resources in the coastal marine area on any of the following:

a) Conservation and ecological values;

b) Cultural and iwi values;

c) Heritage and amenity values;

d) Landscape, seascape and aesthetic values;

e) Morine habitats and sustainability;

f) Natural character of the coastal environment;

g) Navigational safety;

h) Other activities, including those on land;

i) Public access to and along the coast;

j) Public health and safety;

k) Recreation values; and

l) Water quality.

Policy 1.2

Adverse effects of subdivision, use or development in the coastal environment should as for as practicable be avoided. Where complete avoidance is not practicable, the adverse effects should be mitigated and provision mode for remedying those effects to the extent practicable.

Policy 1.14

To enable a range of activities in appropriate places in the waters of the Sounds including marine forming, tourism and recreation and cultural uses.

The occupation of coastal space by the relocation of 8645 sits comfortably with these provisions, noting that:

- These provisions seek to accommodate appropriate activities in the coastal marine area, including marine farming;
- These provisions explicitly direct that a range of appropriate activities such as marine farming be enabled; and
- No effects of concern of the operation of a marine farm in the proposed relocation site have been identified, noting that the proposed location is in an area predominantly identified as appropriate for marine farming in Variation 1 (see Section 6.4.2 above).

Effects of the Foreshore or Seabed

The provisions which address effects on the foreshore and seabed state:

Objective 1

Protection of the coastal environment by avoiding, remedying or mitigating any adverse effects of activities that alter the foreshore or seabed.

Policy 1.1

Avoid, remedy or mitigate the adverse effects of activities that disturb or alter the foreshore and/or seabed on any of the following:

a) Conservation and ecological values;

b) Cultural and iwi values;

c) Heritage and amenity values;

d) Landscape, seascape and aesthetic values;

e) Marine habitats and sustainability;

f) Natural character of the coastal environment;

g) Navigational safety;

h) Other activities, including those on land;

i) Public access to and along the coast;

j) Public health and safety;

k) Recreation values; and

l) Water quality.

Policy 1.7

Recognising (by way of controlled activity status) the importance of renewing the majority of existing marine farms authorised by applications made before 1 August 1996 while mitigating adverse effects on the environment by way of conditions.

Policy 1.9

Enable the adverse visual or ecological effects of particular farms to be addressed when the rules expressly provide for that.

The occupation of coastal space by the relocation of 8645 to the proposed site sits comfortably with these provisions, noting that:

- No effects of concern arising from the relocation of 8645 to the proposed location have been identified.

Summary

The relocation of marine farm 8645 to the proposed site in the manner proposed sits comfortably with the objectives and policies of the Operative Plan, and there is nothing in the Operative Plan which means the applications cannot be granted on the terms sought.

6.4.7 Proposed Marlborough Environment Plan

The Proposed Plan provisions that are relevant to these applications are contained in:

- Chapter 6 Natural Character;
- Chapter 7 Landscape;
- Chapter 8 Indigenous Biodiversity; and
- Chapter 13 Use of the Coastal Environment and Allocation of Coastal Space.

Each is addressed below.

Chapter 6 Natural Character[1]

[1] Complete Chapter subject to appeal by Marine Farming Assn Inc & Aquaculture NZ ENV-2020-CHC-74, The New Zealand King Salmon Co. Limited ENV-2020-CHC-51 and others for specific objectives and policies.

As set out in Section 2.4 above, the marine farm site is not directly attributed high, very high or outstanding natural character values. There is no Outstanding Natural Features/Landscape mapping in this area. The entirety of the Marlborough Sounds is mapped as having high amenity in the MEP. The area has a primary production character. There are existing marine farms and pastoral farming activities occurring. There are no dwellings in the area.

The objectives and policies most relevant to marine farming at the proposed site state:

> ***Objective 6.2***
>
> *Preserve and promote the restoration of the natural character of the coastal environment, and lakes and rivers and their margins, and protect them from inappropriate subdivision, use and development.*
>
> ***Policy 6.2.2***
>
> *Avoid the significant adverse effects of subdivision, use or development, and otherwise avoid, remedy or mitigate adverse effects on the characteristics that contribute to natural character, having regard to the significance criteria in Appendix 4, within:*
>
> *(a) all areas of the coastal environment outside of areas of outstanding natural character; and*
>
> *(b) lakes and rivers, and their margins of high and very high natural character.*
>
> ***Policy 6.2.4***
>
> *Recognise that development in ports of the coastal environment and in those rivers and lakes and their margins that hove already been modified by post and present resource use activities is less likely to result in adverse effects on natural character.*
>
> ***Policy 6.2.6***
>
> *In assessing the cumulative effects of activities on the natural character of the coastal environment, or in or near lakes or rivers, consideration shall be given to:*
>
> *(a) the effect of allowing more of the same or similar activity;*
>
> *(b) the result of allowing more of a particular effect, whether from the same activity or from other activities causing the same or similar effect; and*
>
> *(c) the combined effects from all activities in the coastal or freshwater environment in the locality.*

Granting consent for the relocation of 8645 to the site proposed by the Applicants would sit comfortably with these provisions, noting that:

- The proposed site is not located within an area recognized as being of high natural character;
- The proposed site is located in an area which are already significantly modified by marine farming and other uses; and
- The vicinity of the proposed site has been acknowledged as appropriate for marine farming as evidenced by the AMAs proposed under Variation 1 of the PMEP in terms of considering effects on natural character.

Chapter 7 Landscapes[2]
As set out in Section 2.4 above, the application site is located within the Marlborough Sounds High Amenity Landscape overlay in the decisions version of the **PMEP**.

[2] Complete Chapter subject to appeal by Marine Farming Assn Inc & Aquaculture NZ ENV-2020-CHC-74, The New Zealand King Salmon Co. Limited ENV-2020-CHC-51 and others for specific objectives and policies

The objectives and policies most relevant to marine farming at the proposed site state:

Objective 7.2

Protect outstanding natural features and outstanding natural landscapes from inappropriate subdivision, use and development and maintain and enhance landscapes with high amenity value.

Policy 7.2.3

Control activities that have the potential to degrade the amenity values that contribute to those areas of the Marlborough Sounds High Amenity Landscape not identified as being an outstanding natural feature and outstanding natural landscape by:

(a) using a non-regulatory approach as the means of maintaining and enhancing landscape values in areas of this landscape zoned as Coastal Living;

(b) setting permitted activity standards/conditions that ore consistent with the existing landscape values and that will require greater assessment where proposed activities and structures exceed those standards; and

(c) requiring resource consent for new plantation forestry planting and harvesting.

Policy 7.2.4

Where resource consent is required to undertake on activity within on outstanding natural feature and outstanding natural landscape, or a landscape with high amenity value:

(a) hove regard to the potential adverse effects of the proposal on the values that contribute to the landscape;

(b) hove regard to the location, scale, design and operation of the proposed activity;

(c) recognise that areas contain ongoing use and development that were present when the area was identified as outstanding or having high amenity value, or hove subsequently been lawfully established;

(d) recognise that where policy direction requires adverse effects to be avoided, minor or transitory adverse effects may not need to be avoided;

(e) hove regard to any restoration and enhancement of the landscape proposed; and

(f) recognise that some activities, including regionally significant infrastructure, may hove a functional or operational requirement to be located within on outstanding natural feature or outstanding natural landscape, or a landscape with high amenity value.

Policy 7.2.5

Except as provided for by Policy avoid adverse effects on the values that contribute to outstanding natural features and outstanding natural landscapes in the first instance. Where adverse effects cannot be avoided and the activity is not proposed to toke place in the coastal environment, ensure that the adverse effects ore remedied.

Policy 7.2.7

Avoid significant adverse effects and ovoid, remedy, or mitigate other adverse effects on those natural landscape values that contribute to the Marlborough Sounds High Amenity Landscape ...

Policy 7.2.8

Protect the values of outstanding natural features and outstanding natural landscapes and maintain and enhance the high amenity values of the Woirau Dry Hills and the Marlborough Sounds High Amenity Landscapes by:

(a) In respect of structures:

(i) avoiding visual intrusion on skylines, particularly when viewed from public places;

(ii) avoiding new dwellings adjacent to the foreshore, excluding burgess used for aquaculture;

(iii) using reflectivity levels and building materials that complement the colours in the surrounding landscape;

(iv) limiting the scale, height and placement of structures to minimise intrusion of built form into the landscape;

(v) recognising that existing structures may contribute to the landscape character of an area and additional structures may complement this contribution;

(vi) making use of existing vegetation as a background and utilising new vegetation as a screen to reduce the visual impact of built form on the surrounding landscape, providing that the vegetation used is also in keeping with the surrounding landscape character; and

(vii) encouraging utilities to be co-located wherever possible; whilst recognising the functional and operational needs of regionally significant infrastructure.

Policy 7.2.13

In assessing the cumulative effects of activities on outstanding natural features and outstanding natural landscapes, and landscapes with high amenity values, consideration shall be given to:

(a) the effect of allowing more of the some or similar activity;

(b) the result of allowing more of a particular effect, whether from the some activity or from other activities causing the some or similar effect; and

(c) the combined effects from all activities in the locality.

Granting consent for the relocation of 8645 to the site proposed by the Applicants would sit comfortably with these provisions, noting that:

- The proposed site is located in an areas which are already significantly modified by marine farming and other uses; and
- The Variation 1 AMAs located adjacent to the proposed relocation site have been identified as appropriate areas for marine farming activities to occur considering effects on natural landscapes.

Chapter 8 Indigenous Biodiversity

The objectives and policies most relevant to marine farming at the proposed site state:

Objective 8.1

Marlborough's remaining significant indigenous biodiversity in terrestrial, freshwater (including wetlands) and marine environments ore protected and other indigenous biodiversity is maintained and enhanced.

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 ore 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 ore mopped as significant wetlands or Category A and B Ecologically Significant Morine sites in the Marlborough Environment Pion; or

(c) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects where the areas, habitats or ecosystems ore those set out in Policy 11(b) of the New Zealand Coastal Policy Statement 2010.

(d) creating a buffer to manage activities in proximity to on Category A and B Ecologically Significant Morine Sites in order to ovoid adverse effects on the Ecologically Significant Morine Site.

Policy 8.3.4

In the context of Policy 8.3.1 and Policy 8.3.2, adverse effects may include but ore not limited to:

(a) fragmentation of or a reduction in the size and extent of indigenous ecosystems and habitats;

(b) fragmentation or disruption of connections or buffer zones between and around ecosystems or habitats;

(c) changes that result in increased threats from pests (both plant and animal) on indigenous biodiversity and ecosystems;

(d) the loss of a threatened or at risk species or their habitats and species that ore rare within the region or biogeogrophic area;

(e) loss or degradation of wetlands, dune systems or coastal forests; (f)

loss of mouri or toongo species;

(g) impacts on habitats important as breeding, roosting, nursery or feeding areas, including for birds;

(h) impacts on habitats for fish spawning or the obstruction of the migration of fish species;

(i) impacts on any marine mammal sanctuary, marine mammal migration route or breeding, feeding or haul out area;

0J a reduction in the abundance or natural diversity of indigenous vegetation and habitats of indigenous fauna;

(k) loss of ecosystem services;
(l) effects that contribute to a cumulative loss or degradation of habitats and ecosystems;

(m) loss of or damage to ecological mosaics, sequences, processes or integrity; (n)

effects on the functioning of estuaries, coastal wetlands and their margins;

(o) downstream effects on significant wetlands, rivers, streams and lakes from hydrological changes higher up the catchment;

[3] Subject to appeal by Marine Farmers Assn Inc & Aquaculture NZ ENV-2020-CHC-74, and The New Zealand King Salmon Co. Limited ENV-2020-CHC-51.

(p) natural flows altered to such an extent that it affects the life supporting capacity of waterbodies;

(q) a modification of the viability or value of indigenous vegetation and habitats of indigenous fauna as a result of the use or development of other land, freshwater or coastal resources;

(r) a reduction in the value of the historical, cultural and spiritual association with significant indigenous biodiversity held by Marlborough's tangata whenua iwi;

(s) a reduction in the value of the historical, cultural and spiritual association with significant indigenous biodiversity held by the wider community; and

(t) the destruction of or significant reduction in educational, scientific, amenity, historical, cultural, landscape or natural character values.

Policy 8.3.5[7]

Take into account that king shag could feed in the coastal marine area within 25km of the breeding sites recorded as Ecologically Significant Marine Sites 1.6, 2.11, 2.14, 2.21, 3.3 and

Granting consent for the relocation of 8645 to the site proposed sits comfortably with these provisions given the limited effects it would have on ecological values, as set out in Section 5.

Chapter 13 Use of the Coastal Environment and Allocation of Coastal Space
The objectives and policies most relevant to marine farming at the proposed site state:

Objective 13.2

Subdivision, use or development activities take place in appropriate locations and forms and within appropriate limits.

Policy 13.2.1

The appropriate locations, forms and limits of subdivision, use and development activities in Marlborough's coastal environment are those that recognise and provide for, and otherwise avoid, remedy or mitigate adverse effects on the following values:

(a) the characteristics and qualities that contribute to natural character, natural features and landscape of an area;

(b) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, w~ahi tapu and other taonga;

(c) the extensive area of open space within the coastal marine area available for the public to use and enjoy, including for recreational activities;

(d) the importance of public access to and along the coastal marine area, including opportunities for enhancing public access;

(e) the dynamic, complex and interdependent nature of coastal ecosystems;

(f) the high level of water quality generally experienced in Marlborough's coastal waters; and

(g) those attributes that collectively contribute to coastal amenity values.

Policy 13.2.2

In addition to the values in Policy 13.2.1, the following matters shall be considered by decision makers in determining whether subdivision, use and development activities in Marlborough's

coastal environment are appropriate at the location proposed and of an appropriate scale, form and design:

(a) the contribution the proposed subdivision, use or development activity makes to the social and economic wellbeing of people and communities;

(b) the efficient use of the natural and physical resources of the coastal environment;

(c) whether the efficient operation of established activities that depend on the use of the coastal marine area is adversely affected by the proposed subdivision, use or development activity;

(d) whether there will be an increase in the risk of social, environmental or economic harm from coastal hazards as a consequence of the subdivision, use or development activity;

(e) whether there will be a contribution to the restoration of the values of the coastal environment at the site, where these may have been adversely affected in the past;

(f) whether the activity results, either individually or cumulatively, in sprawling or sporadic patterns of subdivision, use or development that would compromise the values and matters of Policies 13.2.1 and 13.2.2;

(g) whether the proposed subdivision, use or development activity contributes to the network of regionally significant infrastructure identified in Policy 4.2.1;

(h) whether the subdivision, use or development activity creates a demand for services or infrastructure that may result in a financial cost to the wider community and/or whether the safety and efficiency of the road network is affected;

(i) functionally, whether some uses and developments can only be located on land adjacent to the coast or in the coastal marine area; and

(j) whether the effects of an activity on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse, and therefore a precautionary approach needs to be adopted.

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, except in the case of marine farms where the lapse period will be no more than three 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.

Policy 13.2.4

Attributes that may be considered when assessing any effects on coastal amenity value in a particular location include natural character, biodiversity, public access, visual quality, high water quality, recreational opportunities, structures and activities, open space, tranquillity and peacefulness.

Policy 13.2.5

[4] Subject to appeal by Apex Marine Farm Limited ENV-2020-CHC-63, Marine Farming Assn Inc & Aquaculture NZ ENV-2020-CHC-74 and The New Zealand King Salmon Co. Limited ENV-2020-CHC-51.

Amenity values of the coastal environment can be maintained and enhanced by: (a)

recognising the contribution that open space and natural character make to amenity values and ensure open space areas are maintained and enhanced; (b)

maintaining and enhancing coastal and freshwater quality;

(c) maintaining or enhancing areas with indigenous biodiversity value;

(d) maintaining or enhancing sites or areas of particular value for outdoor recreation;

(e) making use of suitable development setbacks to avoid a sense of encroachment or domination of built form, particularly in areas of public open space and along the coastal edge;

(f) managing forms and location of development that effectively privatise the coastal edge and discourage or prevent access to and use of the coast;

(g) recognising that areas derive their particular character and amenity value from a predominance of structures, modifications or activities, and providing for their appropriate management;

(h) establishing standards for activities within the coastal environment; (i)

clustering together of structures and activities;

(j) managing the establishment of activities resulting in high traffic generation;

(k) ensuring the operation and speed of boats does not detract from people's enjoyment of the coastal marine area or cause navigational safety issues;

(l) requiring the removal of derelict or redundant structures within the coastal marine area; or

(m) encouraging appropriate design of new structures and other development in form, colour and positioning that complement, rather than detract from, the visual quality of the location.

Policy 13.2.6

In determining the extent to which coastal amenity values will be affected by any particular subdivision, use and/or development, the following shall be considered:

(a) [deleted];

(b) the amenity related attributes of the area; and

(c) in regard to the changing nature of the coastal environment, the extent to which amenity values would be so affected by the proposed subdivision, use or development that those values could no longer be maintained or enhanced.

The occupation of coastal space by the proposed relocation of 8645 sits comfortably with these provisions, noting that:

- Marine farming has a functional need to be located within the coastal marine area;
- The proposed relocation site is located within a long-standing marine farming area of the Marlborough Sounds and the surrounding area has numerous sites that are identified as appropriate locations for continued marine farming in Variation 1 by virtue of the majority of the existing farm areas being attributed AMAs (see Section 6.4.2 above);
- Marine farming at through the relocation of 8645 makes a positive contribution to the social and economic wellbeing of people and communities;

- While the presence and operation of 8645 at the proposed relocation site includes structures located in the consent area which impact on unimpeded boat access through the farm site, they do not present a navigational issue;
- The proposed relocation site is not located within any outstanding natural landscapes;
- Effects on biological values are all considered to be acceptable; and
- A consent term of 20 years is sought which accords with Policy 13.2.3.

Summary
The relocation of 8645 in the manner proposed sits comfortably with the objectives and policies of the PMEP, and there is nothing in the Proposed Plan which means the application cannot be granted on the terms sought.

6.5 Part 2

By way of summary, it is concluded that the proposed activities would promote the sustainable management of natural and physical resources in the context of Part 2 of the RMA, noting that:

- The ongoing operation of 8645 at the proposed relocation site will enable the applicant to continue to provide for the social, economic, and cultural wellbeing of people and communities through the jobs this will create, and the revenue generated in the community; and
- The adverse effects of the ongoing operation of 8645at the proposed location will be avoided, remedied, or mitigated in accordance with the expectations of the relevant planning documents and sections 6, 7, and 8 of the RMA.

7. Consultation

On the applicant shall provide a draft copy of this application to:

- Te Runanga o Nga Wairiki Ngati Apa;
- Te Runanga O Ngati Kuia;
- Ngati Koata Trust;
- Te Runanga o Ngati Rarua;
- Te ROnanga o Toa Rangatira;
- Ngati Whaoa Runanga Trust;
- Te Ronanga o Rangitane o Wairau; and
- Te Atiawa o Te Waka-a-Maui

Any feedback provided by tangata whenua will be provided to the Council if and when it is received following submission of this application.

8. Notification

8.1 Section 95A Public Notification

Section 95A requires a council to follow specific steps to determine whether to publicly notify an application. The following is an assessment of the application against these steps:

Step 1-- Mandatory public notification:
An application must be publicly notified if, under section 95A(3), it meets any of the following criteria:

(a) the applicant has requested that the application be publicly notified:

(b) public notification is required under section 95C:

(c) *the application is made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977.*

It is not requested that the application be publicly notified, and the application is not made jointly with an application to exchange reserve land. Therefore, Step 1 does not apply, and Step 2 must be considered.

Step 2 -- Public notification precluded:

An application will not be publicly notified if, under section 95A(5):

(a) *the application is for a resource consent for 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes public notification:*

(b) *the application is for a resource consent for 1 or more of the following, but no other, activities:*

(i) *a controlled activity:*

[Repealed]

(ii) *a restricted discretionary, discretionary, or non-complying activity, but only if the activity is a boundary activity:*

(iv) [Repealed]

The rules applicable to the application do not preclude public notification, and the application is not for a controlled activity or a boundary activity. Therefore, public notification is not precluded under Step 2 and Step 3 must be considered.

Step 3-Public notification required in certain circumstances:

An application is required to be publicly notified if one of the following circumstances are met, under section 954A(8):

(a) *the application is for a resource consent for 1 or more activities, and any of hose activities is subject to a rule or notional environmental standard that requires public notification;*

the consent authority decides, in accordance with section 95D, that the activity will hove or is likely to hove adverse effects on the environment that ore more than minor.

In this case, the relevant rules do not require public notification. All effects have also been assessed to be less than minor for the reasons set out in Section 5 of this AEE. Therefore, Step 3 does not apply, and Step 4 must be considered.

Step 4- Public Notification in special circumstances:

Section 95A(9) states that a council must publicly notify an application for resource consent if it considers that 'special circumstances' exist, notwithstanding that Steps 1 to 3 above do not require or preclude public notification of the application in whole.

Special circumstances are not defined in the RMA. Case law though has identified special circumstances as something outside the common run of things which is exceptional, abnormal or unusual, but less than extraordinary or unique. A special circumstance would be one which makes notification desirable despite the general provisions excluding the need for notification. The council should be satisfied that

public notification may elicit additional information on the aspects of the proposal requiring resource consent.
There are no special circumstances which apply to this application, noting in particular:

- The effects of the proposal will be less than minor;

8.2 Section 95B Limited Notification

If the application is not publicly notified, a consent authority must consider the steps in section 95B to determine whether to give limited notification of an application.

Step 1- Certain affected groups and affected persons must be notified:
The application must be limited notified to the relevant persons if the following are determined, as specified by section 958(2) and (3):

Section 95B(2)

(a) affected protected customary rights groups; or

(b) affected customary marine title groups (in the case of on application for a resource consent for on accommodated activity).

Section 95B(3)

(a) whether the proposed activity is on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement mode in accordance with on Act specified in Schedule 11; and

(b) whether the person to whom the statutory acknowledgement is mode is on affected person under section 95E.

There are no protected customary rights groups, nor affected customary marine title groups, nor is the application for an 'accommodated activity' therefore section 958(2)(a) and (b) are not applicable here.
As noted in Section 7, the Applicants have provided a copy of this application to tangata whenua. No response has been provided by tangata whenua to date. However, should correspondence be received in relation to the proposed relocation of the marine farms following the submission of this application, the Applicants will provide this to the Council.

Step 2-if not required by Step 1, limited notification precluded in certain circumstances:
In the following circumstances, an application must not be limited notified to any persons, as specified by section 95B(6):

(a) the application is for a resource consent for 1 or more activities, and each activity is subject to a rule or notional environmental standard that precludes limited notification:

(b) the application is for a controlled activity (but no other activities) that requires a resource consent under a district pion (other than a subdivision of land.

The rules applicable to the application do not preclude limited notification, and the application is not for a controlled activity. Therefore, limited notification is not precluded under Step 2 and Step 3 must be considered.

Step 3-if not precluded by Step 2, certain other affected persons must be notified:
Other affected persons must be notified in the following circumstances specified by section 958(7) and (8):

(7) in the case of a boundary activity, determine in accordance with section

95E whether an owner of an allotment with an infringed boundary is an affected person;

(8) In the case of any other activity, determine whether a person is an affected person in accordance with section 95E.

The proposal is not a boundary activity.
Under section 95E, a person is considered "affected" if the adverse effects of the activities on that person are minor or more than minor (but are not less than minor).
In deciding who is an affected person under section 95E, a council under section 95E(2):

(a) may disregard an adverse effect of an activity on a person if a rule or national environmental standard permits an activity with that effect (i.e., council may consider the "permitted baseline");

(b) must disregard an adverse effect that does not relate to a matter for which a rule or environmental standard reserves control or restricts discretion; and

(c) must have regard to every relevant statutory acknowledgement made in accordance with a statute set out in Schedule 11 of the Act.

As outlined in Section 5, the proposal is not considered to give rise to any potential or actual adverse effects to persons at a minor or more than minor extent.

For the reasons outlined in Section 5.2 the Applicants are not aware of any cultural effects of concern with the proposal.

Step 4- Further notification in special circumstances:
As required by section 958(1), the Council must determine the following:

(10) whether special circumstances exist in relation to the application that warrant notification of the application to any other persons not already determined to be eligible for limited notification under this section (excluding persons assessed under section 95E as not being affected persons)

For the reasons set out above, no special circumstances apply to this application.

8.3 Notification Conclusion

In accordance with the assessments under s95A and s95B of the RMA above it is assessed that the application does not require public or limited notification, noting in particular that:

- The effects of the proposal will be less than minor;

Based on correspondence to date, the Applicants are also not aware of any reason why limited notification of these applications to tangata whenua is required.

9. AEE Conclusion

The relocation of 8645 to the proposed site will enable the Applicants to continue to provide for the social, economic, and cultural wellbeing of their families and the wider community through the jobs this will create, and the revenue generated in the community.

The effects of the operation of relocating 8645 to the proposed site will be avoided, remedied, or mitigated in accordance with the expectations of the relevant planning documents.

Overall, it is considered that the relocation of 8645 to this site will promote the sustainable management of natural and physical resources.

Appendix A: Biological Report – Davidson Environmental Ltd

Biological report for the proposed relocation of marine farm 8645 to Rams Head, Tawhitinui Reach, Pelorus Sound

Survey and monitoring report number 1245

A report prepared for:
Jonathan Tester & Ciaran Hughes
PO Box 184,
Blenheim 7240

May 2024

Bibliographic reference:
Davidson, R.J. and Richards, L. 2024. Biological report for the proposed relocation of marine farm 8645 to Rams Head, Tawhitinui Reach, Pelorus Sound. Prepared by Davidson Environmental Ltd. for Jonathan Blair Allan Tester & Ciaran Hughes. Survey and monitoring report no. 1245.

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May 2024

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1.0 Summary

The present report provides biological information for an area proposed as a relocation site for an existing marine farm located in Croisilles Harbour (farm 8645). The proposed new site is located immediately west of Rams Head, Tawhitinui Reach (Figure 1). Background biological information for Tawhitinui Reach is summarised in Appendix 2.

The adjacent hillside is privately owned and is mostly clad in early regenerating vegetation with patches of pasture (Plate 1, Figure 1).

Figure 1. Proposed relocation site (red circle) west of Rams Head, Tawhitinui Reach.

Marine farm number:	8645
Owners:	Jonathan Tester & Ciaran Hughes
Location pf proposed site:	Rams Head, Pelorus Sound
MPI exclusion area present:	No
Proposed size:	2.366 ha
Issues & recommendations:	The proposed consent area was dominated by silt and clay with very little natural shell. One area of natural shell rubble was observed inshore of the proposed consent. It is recommended a backbone exclusion area be established around this NES-MA feature.

Plate 1. Looking south-westward through the proposed relocation site immediately west of Rams Head.

2.0 Historical reports

One historic biological report was found in the MDC database in relation to this marine farm site.

Orbit Environmental Services (2000) conducted a dive survey for a proposed farm. The authors conducted two manta board swims and sampled three transects that extended from the western side of Rams Head into the proposed site. The authors reported:

- No significant hard or soft shore habitats were found within the proposed farm or within the proposed farm's area of influence.
- Hard shore habitats and communities extended a maximum of 35-40 metres from MLW.
- Low numbers of brachiopods (*Waltonia inconspicua*) were found dispersed widely over mud and shell down transects 1 (~ 9 individuals) & 2 (4-6 individuals).
- Those benthic species/communities occurring at the site are well represented and/or common in the wider Marlborough Sound area. Marine farm effects arising from the proposed marine farm operation will not smother any significant and/or rare benthic community.
- This report recommends no alteration to the layout and position of structures as proposed by the application.

3.0 Methods (present survey)

The area was investigated on 10th May 2024. Before fieldwork, the consent corners were plotted onto mapping software (TUMONZ Professional). The laptop running the mapping software was linked to a Lowrance HDS-12 Gen2 with an external Lowrance Point 1 high sensitivity GPS, allowing real-time plotting of the corners of marine farm surface structures and was used to pinpoint drop camera stations in the field. This GPS system has a maximum error of +/- 5 m.

The corners of the existing marine farm surface structures were surveyed by positioning the survey vessel immediately adjacent to the corner floats and the position plotted. It is noted that surface structures can move due to environmental variables such as tidal current and wind. The plot of surface structures is variable from day to day and throughout tidal cycles. These data should not, therefore, be regarded as a precise measurement of the position of surface structures, but rather an approximate position.

3.1 Sonar imaging

Sonar investigations of the area were conducted using a Humminbird Solix 15 SI+ mega imaging unit. This unit provides right and left side imaging as well as down imaging. A Lowrance HDS 12 Gen2 unit fitted with a high definition 1kw Airmar transducer was used to collect traditional sonar data from the site.

Before the collection of underwater photographs, the boundaries of both the consent area and the marine farm surface structure area were investigated using sonar. Any bottom abnormalities such as reefs, hard substrata or abrupt changes in depth were noted for inspection using the drop camera (see sections 3.2 & 4.4).

3.2 Drop camera stations, mussel debris and low tide

A total of 16 drop camera photographs were collected from the proposed consent and the area immediately inshore. At each drop camera station, an underwater splash camera fixed to an aluminium frame was lowered to the benthos and an oblique still photograph was collected where the frame landed.

The cover of benthic mussel shell from drop camera photographs was estimated by a trained observer viewing drop camera photographs.

The location of photograph stations was selected to obtain a representative range of habitats and depths within the survey area. Additional photographs were taken when any features of interest (e.g. mussel shell, reef structures, cobbles) were observed on the remote monitor on-board the survey vessel. All photographs collected during the survey have been included in Appendix 1.

Low tide was determined at strategic locations inshore of the consent. The survey vessel was positioned over the low water mark and the position plotted using the mapping software. Low tide was determined by a combination of depth (i.e. the known state of the tide at the time of the inspection) and the visual transition between intertidal and subtidal species).

4.0 Results

On the day of the survey, the tide was high at 10.33 am (2.6 m) and low at 4.30 pm (0.4 m). During fieldwork, the tide was outgoing with no obvious current observed.

4.1 Consent corners and surface structures

The seafloor under the study area comprised a nearly flat gradient benthos (Figure 2). Areas immediately inshore of the proposed consent were located at or near the base of the shore slope. Depth were 20.4 m and 22.5 m at inshore proposed consent corners and 21.8 m and 23.2 m at offshore corners (Table 1, Figure 2).

The distance between low tide and the proposed consent boundary was measured on the adjacent shoreline. The distance to the inshore boundary from low tide 1 was 74 m and at low tide 2 was 84.7 m. The distance to the offshore boundary from low tide 1 was 211 m and at low tide 2 was 216 m (Plate 2, Figure 2).

Table 1. Depths at the proposed consent corners (grey) and low tide (orange). Depths have been adjusted to datum. Coordinates = NZTM (Northing/Easting).

Depth (m)	Coordinates
1, 20.4m	1674810.18,5454662.95
2, 21.8m	1674701.81,5454734.75
3, 23.2m	1674779.13,5454851.46
4, 22.5m	1674933.90,5454849.69
Low tide 1	1674978.6,5454784.6
Low tide 2	1674946.4,5454715.7

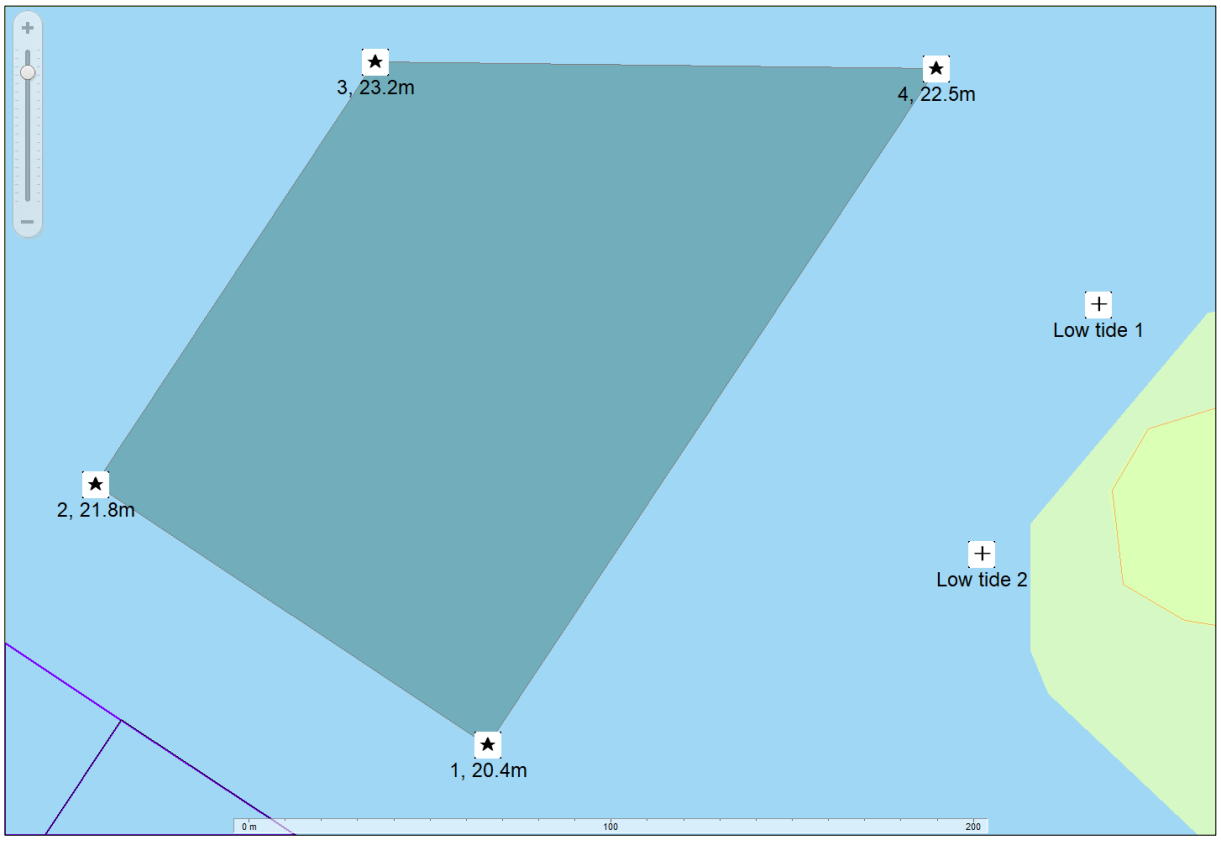

Figure 2. Depths of the proposed consent (teal). Low tide locations are plotted as crosses.

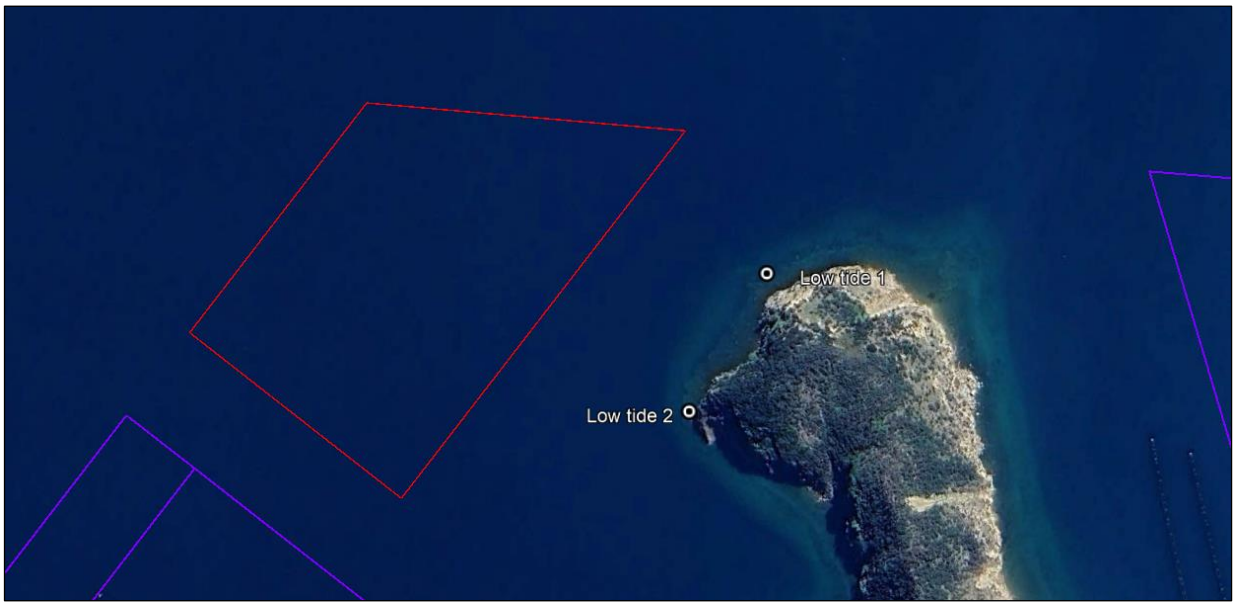

Plate 2. Aerial view of low tide GPS locations relative to the proposed consent (red). Adjacent farm AMA's are shown in purple.

4.2 Wildlife observations in the consent

During this site survey, three bird species were observed within the proposed consent area (Table 2). Two paradise ducks were seen flying while one red-billed gull and two pied shags were seen swimming in the proposed consent. Overall, five birds were seen in the proposed consent. No marine mammals were seen during the survey.

Table 2. Wildlife observations within the proposed farm (species status from Robertson *et.al*., 2021).

BIRDS	Species	NZ status	Total number	Floats (foraging)	Floats (roosting)	Flying	Water (swim)	Water (foraging)
Little shag	*Phalacrocorax melanoleucos brevirostris*	Relict						
Little black shag	*Phalacrocorax sulcirostris*	Naturally uncommon						
Pied shag	*Phalacrocorax varius varius*	Recovering	2				2	
Spotted shag	*Stictocarbo punctatus*	Nationally vulnerable						
King shag	*Leucocarbo carunculatus*	Nationally endangered						
White fronted tern	*Sterna striata striata*	Declining						
Caspian tern	*Hydroprogne caspia*	Nationally vulnerable						
Black-backed gull	*Larus dominicanus dominicanus*	Not threatened						
Black-billed gull	*Larus bulleri*	Declining						
Red-billed gull	*Larus novaehollandiae scopulinus*	Declining	1				1	
Arctic skua	*Stercorarius parasiticus*	Non-resident native						
Australasian gannet	*Morus serrator*	Not threatened						
Variable oyster catcher	*Haematopus unicolor*	Recovering						
Mallard duck	*Anas platyrhynchos*	Introduced						
Paradise duck	*Tadorna variegata*	Not threatened	2			2		
Little blue penguin	*Eudyptula minor minor*	Declining						
Reef heron	*Egretta sacra sacra*	Nationally endangered						
White-faced heron	*Egretta novaehollandiae*	Not threatened						
Total number of species			**3**			**1**	**2**	
Total number birds			**5**			**2**	**3**	

4.3 Sonar imaging

The downscan sonar run collected along the inshore proposed boundary was very flat (Figure 3a). The sounder return was relatively weak but did indicate some shell material (i.e. orange-red colour). Side-imaging sonar showed rocky areas, comprising boulder, cobbles and a rock outcrop, were well inshore of the proposed consent (Figure 3b).

Multibeam data confirmed the presence of rocky substrata including a rock outcrop well inshore of the proposed consent (Figures 4a & 4b). Multibeam also confirmed the proposed consent supported no upright or three-dimensional structures.

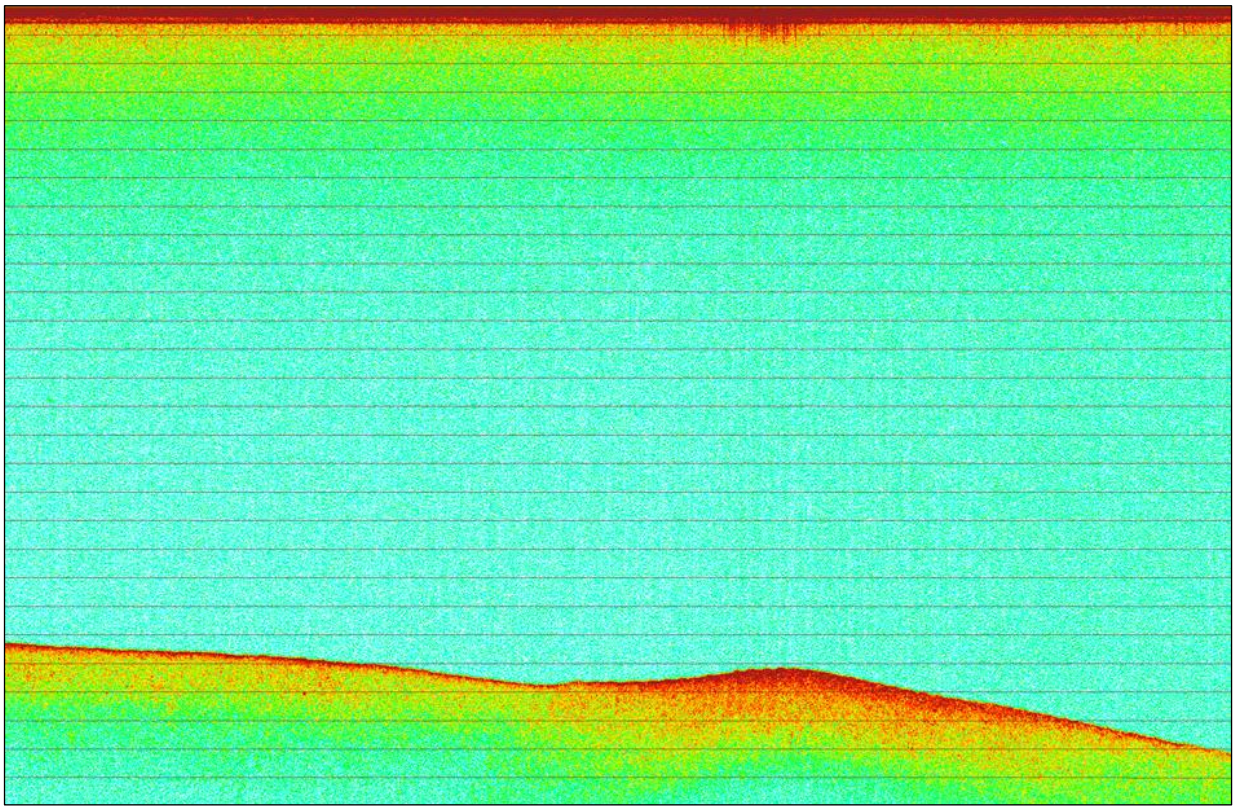

Figure 3a. Downscan along the inshore boundary of the proposed consent.

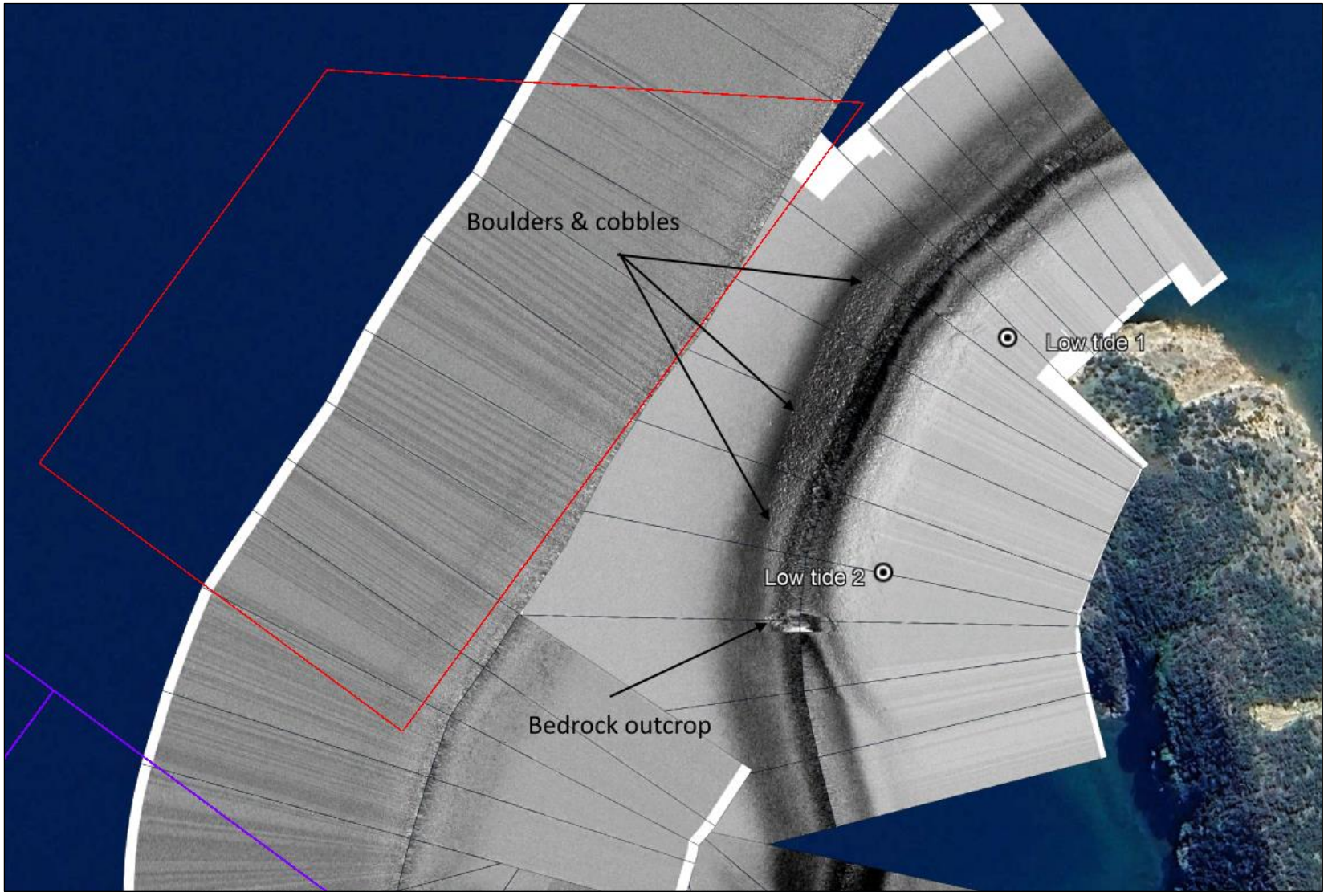

Figure 3b. Sidescan sonar transects along the inshore areas of the proposed consent and areas inshore of the proposed consent. Red polygon = proposed consent, purple lines = adjacent farm AMAs. The shoreline is located at the right of the image (Rams Head).

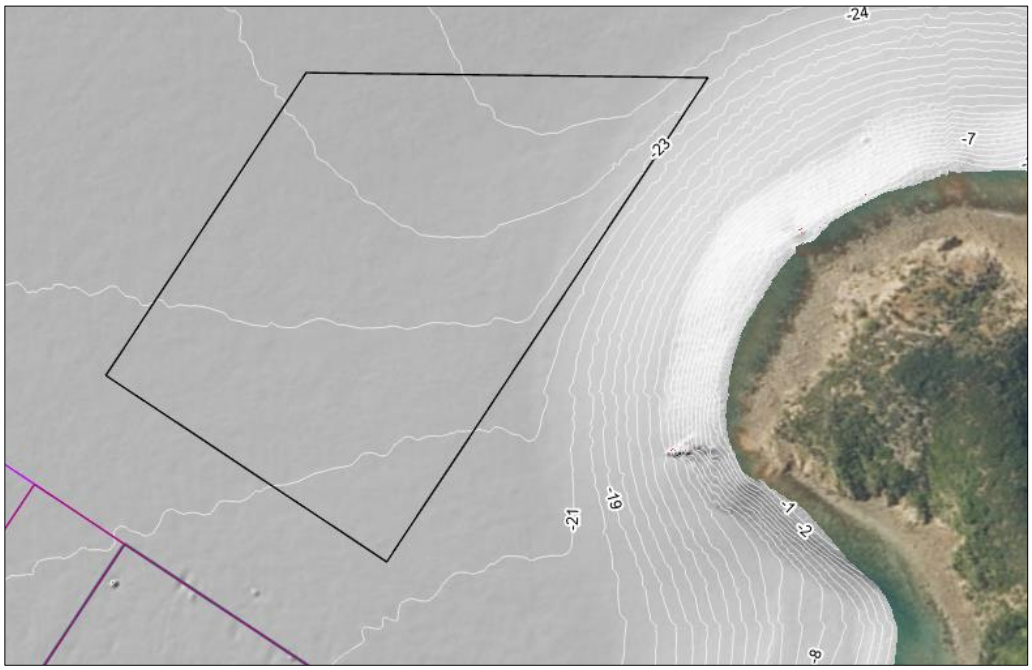

Figure 4a. Multibeam (hillshade effect) relative to the proposed consent (black).

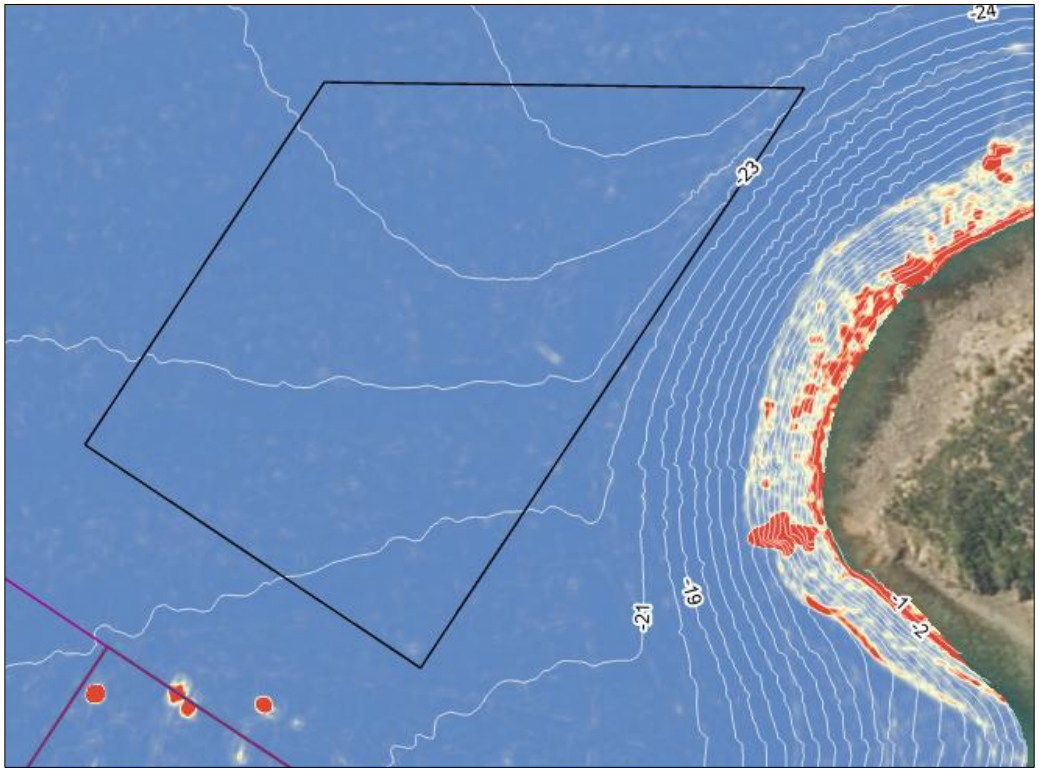

Figure 4b. Multibeam (rugosity effect) relative to the proposed consent (black).

4.4 Drop camera images

Drop camera photographs were taken inshore and throughout the proposed consent (Table 3, Figures 5 & 6, Appendix 1). Photographs were used to describe the substrata, cover of mussel shell debris and the presence of biological characteristics.

Within the proposed consent area

The proposed consent was located over a flat benthos offshore of the shore slope. All photos collected in the proposed consent were dominated by silt and clay with a minor component of natural shell (Plates 3 & 4, Figure 6). No mussel shell debris was present.

Inshore of the proposed consent

Photos collected inshore of the proposed consent varied from north to south. Photos in the north had a strong component of natural shell with one station supporting 40% cover of natural shell (Plate 5). Further south, the benthos was comparable to the proposed consent being dominated by silt and clay with a minor component of natural shell (Plate 6, Appendix 1).

Mussel shell

Mussel shell was not observed from any photos collected in the study area.

Epibenthic flora and fauna

Conspicuous species observed within and around the proposed consent included sea cucumber, cushion seastar, *Chaetopterus* sp., *Spiochaetopterus* sp., opalfish, red macroalgae and diatom mat (Table 3, Appendix 1).

Plate 3. Silt and clay with a minor component of natural shell in the proposed consent (photo 6, 20.8 m depth).

Plate 4. Silt and clay with a minor component of natural shell in the proposed consent (photo 16, 23 m depth).

Plate 5. Natural shell rubble with silt inshore of the proposed consent (photo 1, 19.5 m depth).

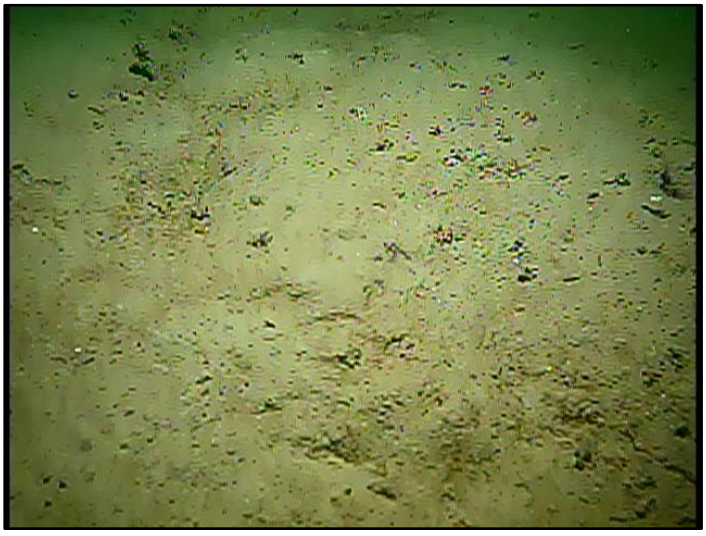

Plate 6. Silt and clay inshore of the proposed consent (photo 4, 20.9 m depth).

Table 3. Coordinates of drop camera stations relative to the marine farm consent. Colours: grey = within the proposed consent area, blue = outside consent area. Depth, substratum, shell debris and percentage cover are listed.

Depth (m)	Coordinates (NZTM)	Location	Substratum	Notable species	% mussel shell	% natural shell	% macroalgae
1, 19.5m	1674938.0,5454830.2	outside consent,no structures,	silt & clay,nat. shell,	cushion star,cucumber,opalfish,	0	40	0
2, 17m	1674915.6,5454786.4	outside consent,no structures,	silt & clay,nat. shell,	Chaetopterus sp.	0	2	0
3, 21m	1674881.5,5454751.7	outside consent,no structures,	silt & clay,nat. shell,	Chaetopterus sp.	0	2	0
4, 20.9m	1674857.9,5454713.4	outside consent,no structures,	silt & clay,		0	0	0
5, 20.1m	1674828.1,5454661.1	outside consent,no structures,	silt & clay,	Spiocheatopterus, diatom mat	0	0	0
6, 20.8m	1674794.6,5454698.1	consent,no structures,	silt & clay,	Spiocheatopterus,opalfish,	0	0	0
7, 21.7m	1674741.5,5454742.8	consent,no structures,	silt & clay,	red alg	0	0	3
8, 21.9m	1674791.6,5454760.7	consent,no structures,	silt & clay,		0	0	0
9, 21.4m	1674839.8,5454729.2	consent,no structures,	silt & clay,		0	0	0
10, 22.4m	1674845.2,5454771.4	consent,no structures,	silt & clay, natural shell	Spiocheatopterus,	0	1	0
11, 22.2m	1674752.0,5454773.7	consent,no structures,	silt & clay,		0	0	0
12, 23.2m	1674812.5,5454805.1	consent,no structures,	silt & clay, natural shell	Spiocheatopterus,	0	1	0
13, 22.5m	1674887.0,5454795.6	consent,no structures,	silt & clay,	Spiocheatopterus,	0	0	0
14, 23.3m	1674915.3,5454845.7	consent,no structures,	silt & clay, natural shell		0	1	0
15, 23.2m	1674798.6,5454834.2	consent,no structures,	silt & clay,		0	0	0
16, 23m	1674899.9,5454818.9	consent,no structures,	silt & clay,		0	0	0

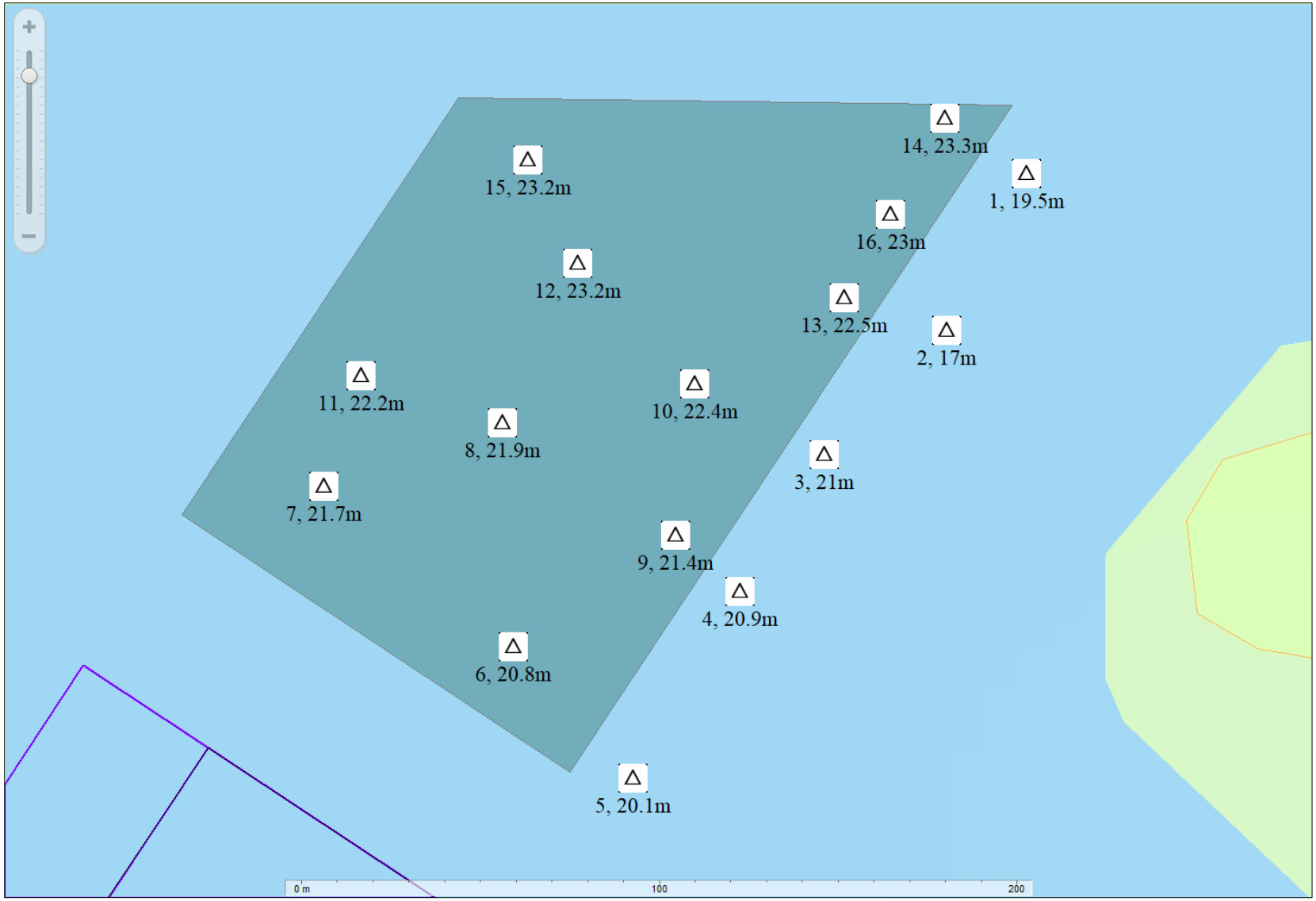

Figure 5. Drop camera stations in the proposed consent (teal) and adjacent area. Numbers are photo and depth.

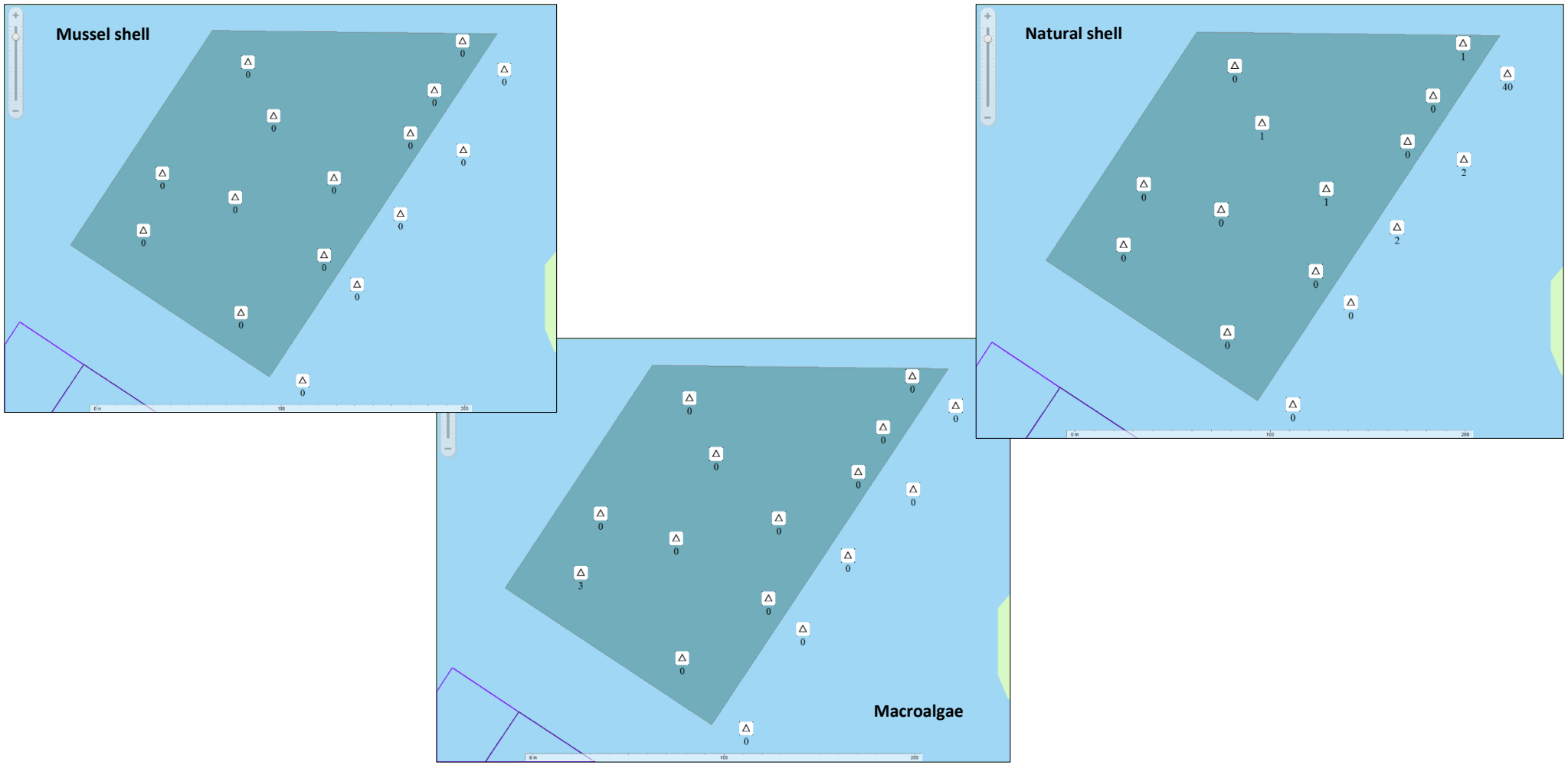

Figure 6. Estimated percentage cover of mussel shell, macroalgae (excluding drift & filamentous algae) and natural shell (left to right) from drop camera stations and proposed consent area (teal). The numbers are the estimated % cover on seafloor.

5.0 Conclusions

5.1 Seabirds and marine farms

The mussel industry's Environmental Management System (EMS), formally known as the Environmental Code of Practice, seeks to minimise risks to wildlife. Risks are likely to be minimal on well-maintained farms (Keeley *et al*., 2009).

Based on the few studies that have investigated the interactions between mussel farms and birds, mussel aquaculture can potentially affect seabirds by altering their food resources, cause disturbances (e.g. noise), and/or introduce possible entanglement risks. The structures associated with aquaculture may also provide benefits including additional perching and feeding opportunities.

Overall, New Zealand (Butler, 2003) and overseas studies (Ross *et al*., 2001; Roycroft *et al*., 2004; Kirk *et al*., 2007) suggest that the general attraction of particular seabirds to mussel farms is likely due to increased foraging success on fish and biofouling, and even on the cultured stock itself. The consequences of this attraction will likely depend on the species' dietary preferences and response to both direct and indirect ecosystem changes induced by mussel cultivation.

Birds are potentially at risk from operational by-products of farms, including ties and plastics. Butler (2003) found young and adult Australasian gannets (*Morus serrator*) in the Marlborough Sounds entangled in discarded rope ties from mussel farms that had been incorporated into nests by parents. Gannet colonies are established at Farewell Spit, Waimaru Peninsula within Beatrix Complex, and Papakura Point in Anatohia Bay. A variety of penguin, shag and gull species are also present in the Sounds and may potentially use ties as nesting material. It is therefore important that marine farmers minimise the introduction of ties into the marine environment.

McClellan *et al.* (2020) conducted a pilot study comparing seabird use at paired sites with and without mussel farms. Each of eight paired sites in Pelorus Sound were observed for two days (approximately 14 hours), except for one paired site, which was only observed for one day, as a harvesting vessel arrived on the morning of the second day. Counts were made of seabird species present in the farm and control sites at 15-minute intervals throughout each two-day

period. General notes were made on the behaviour of those bird species at the sites; for example, foraging between backbone ropes, feeding on algae and other biota associated with backbone ropes, roosting on buoys, resting on the sea surface, etc. McClellan *et al.* (2020) found 11 species of birds used mussel farms (mean = 7.6 species per farm; standard error = 0.4) compared to five species of birds that used the associated control sites (mean = 1.0 species per control; standard error = 0.5).

Rams Head proposed farm

During the present survey, three bird species (five individuals) were observed in the consent (pied shag, paradise duck and red-billed gull). Birds were flying through or on the water in the study area. The diversity and number of birds observed was low compared with many marine farms in the Sounds, likely due to the absence of marine farm structures.

5.2 King shags and marine farms

In relation to the interaction between mussel farms and foraging king shags, Bell (2022) reported:

> "Of the 43 birds tracked, 56% foraged within a mussel farm, although this was influenced by the extent of mussel farming in proximity to the colony birds were tracked from. For example, there was little mussel farming in Tōtaranui/Queen Charlotte Sound. From birds fitted with GPS devices where data was recovered, most king shag from Duffers Reef (10 of 13 birds tracked) and Tawhitinui (11 of 11) foraged within farms, whereas only a single bird from North Trio Island and The Twins foraged within farms. Both later sites have little mussel farming within foraging range proximity to the colony. Considering differences in the length of time a bird was tracked, king shag spent on average 31% ± 39% SD (range 0-100%) of their foraging time within marine farms; with females on average spending slightly more time than males foraging in marine farms (female average 33% ± 40% SD range 0-100%; male average 31 ± 38% SD range 0-100%) per day tracked. However, there was a high degree of variation between individuals, and daily plasticity amongst birds.

This is the first quantitative data on king shag foraging within mussel farms and shows that mussel farms do not cause habitat exclusion. It is expected that mussel farms have a neutral impact on king shag.

All king shag foraging in areas of mussel farms roosted on mussel farm buoys between foraging bouts. In areas with mussel farms, king shag appeared to prefer to roost on floats than on the shore. Potentially, being surrounded by water, floats provided safer roosting locations for king shag."

Rams Head proposed farm

The closest king shag colony is in Tawhitinui Bay, 5.5 km east of the study area. King shags are regularly seen in Tawhitinui Reach (Authors, pers. obs.) and they are likely to periodically forage in and around this consent. During the present farm survey, no king shag was seen in or near the consent.

Recent work has shown king shags regularly forage in and around marine farms (Bell, 2022), therefore the addition of a 2.366 ha marine farm is unlikely to have an adverse impact on these birds.

5.3 Marine mammals and marine farms

International research demonstrates that the nature and scale of any direct displacement or avoidance vary greatly between culture methods and marine mammal species (MPI, 2013). While particular species of whales or dolphins will be highly sensitive to disturbance, other species (such as bottlenose dolphins) and pinnipeds may be attracted to the structures (Lopez, 2012; Clement and Halliday, 2014; Davidson and Richards, 2017; Methion and Lopez, 2019).

For mussel farming, occupied farm areas may be perceived by some marine mammals (particularly those that echolocate) as a physical, visual or acoustic obstruction within their habitat. Based on research to date in Admiralty Bay, dusky dolphins appear unable to cooperatively herd schooling fish when adjacent to or within mussel farm structures (see Pearson *et al*., 2012). Clement and Halliday (2014) also noted the reluctance of common dolphins to enter or feed near farm structures within the Admiralty Bay region. Over the course of five consecutive winters between 1998 and 2002, Markowitz *et al.* (2004) found

that dolphins spent significantly less time in areas occupied by mussel farms than other parts of the inner bay. Pearson *et al*. (2012) also reported similar findings from tracking dolphin groups both inside and outside of mussel farms across all of Admiralty Bay during the winters and springs of 2005-2006. To test specifically whether these results were due to the fact that dusky dolphins might not use habitats closer to shore in general, rather than avoiding the farm areas themselves, Markowitz's study looked at the amount of time groups spent near farms (<200 m) and Pearson's study looked at time spent within the nearshore zone (<400 m of the shoreline) around inner and all of Admiralty Bay, respectively. Both studies found dolphins frequented areas occupied by mussel farms significantly less often than similar areas near farms or within the general nearshore zone.

The significance of such 'disruptions' to their foraging and feeding success over time may range from minor, (i.e. they simply employ other foraging strategies or move to other sources) to major implications (i.e. the loss of a primary food source begins to have population-level effects, such as reduced reproduction rates). It is difficult to assess whether these foraging limitations are impacting on the survival and reproduction of these dolphins at the population level and research can take several decades to determine population dynamics (e.g. closed versus open structure) can affect the efficiency with which data can be collected (D. Clement, pers. comm.).

Displacement

Some species such as NZ fur seals may be attracted to mussel farms as hauling outs (Clement and Halliday, 2014; Davidson and Richards, 2017). Farm structures may also attract bottlenose dolphin and possibly killer whales, due to these species' curious natures and the associated aggregations of possible prey species under and near farms. Bottlenose dolphins have been frequently recorded 'sweeping' through mussel farms in the Sounds (D. Clement, pers. comm; Authors, pers. obs.).

Entanglement

Globally, 15 whales have been recorded as being entangled and/or damaging marine farms but only six of these have been in mussel farms with the remainder interacting with salmon farms (Clement & Elvines, 2019). There are two reported incidences of dolphin entanglement and death at a salmon farm in New Zealand, both from the Marlborough Sounds (M. Aviss, MDC). In one, an unidentified dolphin species became trapped while a predator net was being

replaced, and in the other case, a Hector's dolphin became trapped under a predator net. Internationally, fatal entanglements of dolphins in predator nets on finfish farms have been reported from Australia (Kemper and Gibbs, 2001; Kemper *et al*., 2003) and Italy (Díaz López and Bernal Shirai, 2007). This may reflect the attraction of dolphins to a food source (Kemper and Gibbs, 2001) although such interactions between finfish farms and cetaceans have not been proven (Kemper *et al*., 2003).

There is also one record of a marine mammal becoming trapped or tangled in a mussel farm (i.e. a Bryde's whale; Wursig and Gailey, 2002). The low incidence of mussel farm entanglements is probably related to warps and backbones being under tension thereby reducing the chance of entanglement. This is in stark contrast to lobster pots that have a single line to the surface. This line is usually under little or no tension. Whales migrating up the east coast of the South Island pass hundreds of lobster lines that present a serious entanglement threat. A humpback first spotted by DOC staff near Banks Peninsula with a cray pot buoy line tangled around its tailstock and flukes then became entangled in mussel floats when it swam alongside a farm in Tory Channel several days later. This animal was cut free from the cray pot lines by a mussel farmer (Scott Madsen) and was released alive.

Wursig and Gailey (2002) stated that entanglements by larger whales in aquaculture facilities are relatively rare events.

Rams Head proposed farm

Tawhitinui Reach is visited by a range of dolphin species including bottlenose, orca, common and dusky (Author, pers. obs). Fur seals are occasionally observed along the coast or resting on marine farm floats.

The small size of the proposed farm is unlikely to have more than a minor effect on the use of the area by marine mammals. Based on the location of this farm and known whale migratory patterns and behaviour, it is unlikely this farm represents a threat for migrating whales through Cook Strait region.

The present marine farm will use standard mussel farming structures that are under tension and therefore present a low risk of entanglement to marine mammals.

5.4 Biosecurity issues

Most major marine farm contactors, harvesters and major companies are members of the A+ programme (http://www.aplusaquaculture.nz/farmers-information). The A+ programme promotes good environmental practices. In particular, the A+ programme has a major objective that "farming activities do not cause an unacceptable biosecurity risk". All A+ members are also required to recognise the Biosecurity Act 1993, as well as the Hazardous Substances and New Organisms Act 1996.

5.5 Benthic habitats and substratum

Mud (i.e. silt and clay) are the most common subtidal habitat in sheltered areas of the Marlborough Sounds (McKnight and Grange, 1991) and has been traditionally targeted for marine farming activities. This substratum type is suitable for consideration for marine farming activities in the Marlborough Sounds. Unlike mud, rocky substratum is not traditionally considered suitable for marine farming activities as it can be smothered by silt and shell debris and therefore may no longer function as hard substratum habitat. Warps and anchors, however, do not have adverse impacts on the benthos (Davidson *et al*., 2024; Davidson and Richards, 2014).

Rams Head proposed farm

The consent area was characterised by silt and clay with a very minor component of natural shell. No rocky substrata were seen in or near the proposed consent.

Natural shell reached 40% cover inshore of the proposed consent.

5.6 Species, communities and significant sites

During the present study, conspicuous surface-dwelling species in the area included sea cucumber, cushion seastar, tubeworms (*Chaetopterus* and *Spiochaetopterus* sp.), opalfish, macroalgae and diatom mat. No ecologically significant species, communities or biogenic habitats were recorded during the present study.

The closest known significant sites are located 1.2 km west of the proposed consent (Site 3.6) (Appendix 2).

5.7 Mussel farming impacts

5.7.1 Benthic impacts

After establishing the importance of percent shell cover as an indicator of effects on epibenthic species and the potential threshold for epibenthic impacts at ≤ 7% mussel shell cover above which the benthos may be impacted, Davidson *et al.* (2024) analysed mussel shell spread data from many mussel farms in the Marlborough Sounds. These analyses showed that mean percent of mussel shell beneath backbones ($\bar{x}$ = 29.5%, range = 0 to 100%) exceeded that beneath warps ($\bar{x}$ = 2.3%) and at reference sites ($\bar{x}$ = 0.08%). The authors showed that shell spread and deposition decreased appreciably with distance from the innermost backbone towards shore and shell cover of ≤ 7% extended on average 7.5 m and 18.5 m away from backbones towards the shore when farms were located in shallow (depth <12 m) or deep water (depth >20 m), respectively.

Davidson *et al.* (2024) also analysed data collected under a relocated farm for an 11-year period. The mean percent of the seabed covered by mussel shell under backbones declined from 38% to 0% after 11 years while deposition of shells beneath warps was low (<4%) and resembled that at reference sites after only three years. One month following farm closure, mean species densities beneath warps, where the upper confidence limit of mean percent shell cover was 7%, did not differ to reference sites. By contrast, mean densities of two macrobenthic species beneath backbones exceeded that at reference sites whereas densities of three species were less than that at reference sites. Mean densities of the remaining three species did not differ (P>0.05) between backbones, warps and at reference sites. Mean abundance of invertebrates was significantly and positively (three species) or negatively (three species) related to percent shell cover on the seabed. Recovery of four epibenthic species was rapid, with mean densities beneath backbones similar to reference sites after one to two years following farm closure. Densities of the fifth species resembled that at reference sites after 10 years while the remaining three species did not differ from controls.

Rams Head proposed farm

The proposed consent area has not been previously farmed and as expected no mussel shell was detected on sonar or drop camera images.

Should a mussel farm be established at this site, it is expected that impacts will be consistent with those reported by Keeley *et al.* (2009), Hartstein and Rowden (2004) and Davidson *et al.*

(2024). Mussel shell and pseudofaeces will be deposited onto the benthos. For mussel shells, deposition will occur up to 20 m distance from the backbones. The habitats, species and communities found under and near the proposed consent are suitable for consideration for this marine farm activity. The exception is a localised area immediately inshore of the northern inshore end of the proposed area. A small backbone exclusion zone around this feature is suggested.

5.7.2 Productivity

Mussel farms can influence adjacent farms by slowing water flow to farms located in downstream positions (Ogilvie, 2000). This is particularly pronounced in quiescent areas of the Sounds. However, published work by Zeldis *et al*. (2008, 2013) suggests that the major factors influencing productivity in the Marlborough Sounds relate to cyclical weather patterns in the summer (El Nino and La Nina) and river-derived nutrient inputs in winter. Slow crop cycles in some years are therefore a reflection of a weather cycle and much less about the number of farms.

No data has been presented to show the ecological carrying capacity of the Sounds has been reached, however, this topic is not well researched. There is considerable evidence showing the major drivers of the Pelorus system, for example, naturally leads to large within and between year variability. Relative to this, the impact of mussel farms appears to be material but relatively small compared to major environmental drivers (Broekhuizen *et al*., 2015).

Rams Head proposed farm

Tidal flows through this area average <0.09 m/sec (Broekhuizen *et al*., 2015). No tidal flows were observed during the present study. Winds are likely to be a driver of water movement in this area during north-west and northerly weather events. The location of the farm is close to the main Reach of Pelorus Sound, indicating water turnover times are likely to be short compared to farms further west.

Based on these considerations and the existing literature, it is probable the site will likely cause phytoplankton depletion inside its boundaries; however, these are expected to return to background levels as water leaves the farm backbones.

5.8 Proposed Marlborough Environment Plan (pMEP Var 1/1A)

Following two years of work between MARWG (including members of the marine farming industry, Marlborough Sounds' community organisations, and central government agencies) and MDC, the proposed plan variations for managing marine and finfish farming in the Marlborough Sounds was released for public submission in December 2020. In the variation, the MARWG and the Council have produced a spatial allocation for most existing marine farms. It is proposed that existing marine farms can be located within the AMA when they re-consent. The MDC website states: "it may involve moving lines or, in some cases, farms to relocate into a relevant AMA". On May 19th 2023, the Variation 1/1A decision was publicly notified and provided improved definition of the locations of AMA's. The decision also provided the opportunity for appeals made before July 3rd 2023.

Rams Head proposed farm

The original location for farm 8645 is in Croisilles Harbour. The owners of the consent propose to relocate that consent to the present study area at Rams Head.

Based on the present survey, the proposed area at Rams Head is suitable for consideration for marine farming.

5.9 National Environmental Standards – Marine aquaculture (NES-MA)

The Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 (NES) came into force on 1 December 2020 (NZ Government, 2020). Regulation 18(g) includes the following matter over which discretion is restricted for replacement coastal permits under Part 3 of the NES: "the effects of the activity on reefs, biogenic habitat, and regionally significant benthic species within the area of interest."

The "area of interest" for a subtidal marine farm is defined as meaning the footprint of the surface structures of a marine farm and 20 metres from the boundary of the consented area (See Reg. 3 of NES-MA; Fisheries NZ, 2021). An assessment of these matters is provided below.

5.9.1 NES-MA assessment of effects for the proposed marine farm at Rams Head

"Reef", "biogenic habitat" and "regionally significant benthic species" are defined in NES-MA regulations 7 – 9, and criteria for applying the "biogenic habitat" and "'reef" definitions are contained in NES-MA Schedule 4.

NES-MA criteria was triggered by natural shell cover at or above 40% cover at a localised area immediately inshore of the north-eastern corner of the proposed site. No other thresholds were reached (Table 4).

5.10 Boundary adjustments, line adjustments and monitoring

All of the proposed marine farm area was dominated by a flat seafloor of silt and clay with very little natural shell. No NES-MA features were detected in the proposed marine farm site.

Natural shell cover at 40% cover was recorded immediately inshore of the north-eastern corner of the proposed area. A small backbone exclusion area is suggested in this area (Figure 7). This will not alter the proposed farm layout as this area would be populated by an anchor and a warp. Davidson *et al.* (2024) has shown that these structures do not lead to shell deposition that would impact epibenthic communities.

Based on present data, no monitoring of the study area is suggested should the consent be approved.

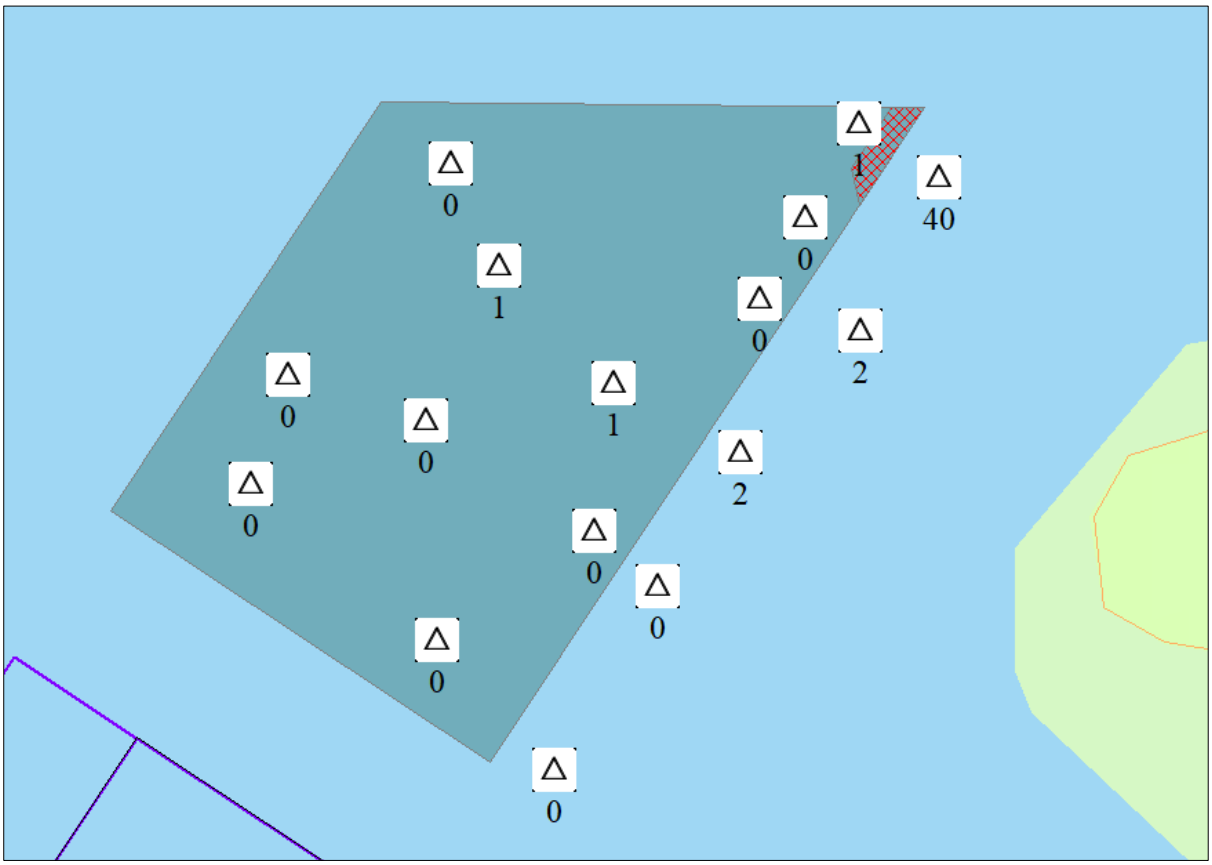

Figure 7. Suggested backbone exclusion areas (red hatched) relative to the proposed consent (teal) and drop camera stations showing the % cover of natural shell.

Table 4. Reef, biogenic habitats and regionally significant species summary for Rams Head study area.

NES	NES biotic and abiotic features	NES criteria or definition	Marine farm	Comments
7	Biogenic habitat	Section7	Not seen or known	
8	Reef	Section 8	None seen or known	
9 (a, b, c)	Status or significant species	Section 9	None seen or known	
9 (d)	Council significant site	Section 9	None seen or known	
S4 1	Rhodolith	1 seen	None seen or known	
S4 2	Council-recognised important dead shell	Present	None seen or known	
S4 3 (a, b)	Biogenic prominent or raised (0.5m)	Present	None seen or known	
S4 4 (a) (i)	Biogenic (colony forming)	≥ 10%	Not seen or known	
S4 4 (a) (ii)	Biogenic macroalgae or seagrass	≥ 10%	Not seen or known	
S4 4 (a) (iii)	Biogenic tubeworms, brachiopods, natural shellfish	≥ 10%	Not seen or known	
S4 4 (b)	Natural shell	>40% cover	**40% cover inshore of the proposed consent**	**Up to 40% natural shell rubble located at one station inshore of the proposed consent.**
S4 4 (c)	Biogenic large habitat-forming species (e.g. horse mussel, hydroid tree)	Mean = ≥1 per m^2.	Not seen or known	

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Appendix 1. Drop camera photographs

Photo 1 silt & clay, natural shell rubble

Photo 2 silt & clay, natural shell

Photo 3 silt & clay, natural shell

Photo 4 silt & clay

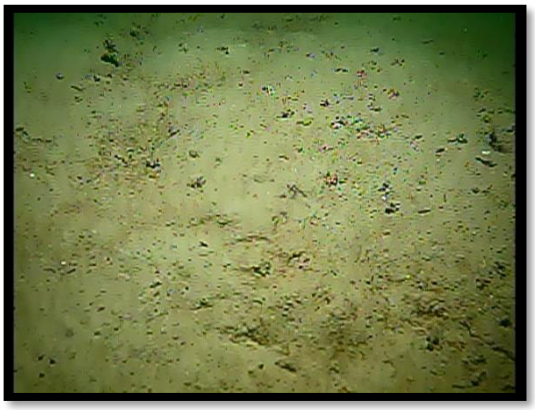


Photo 5 silt & clay

Photo 6 silt & clay

Photo 7 silt & clay

Photo 8 silt & clay

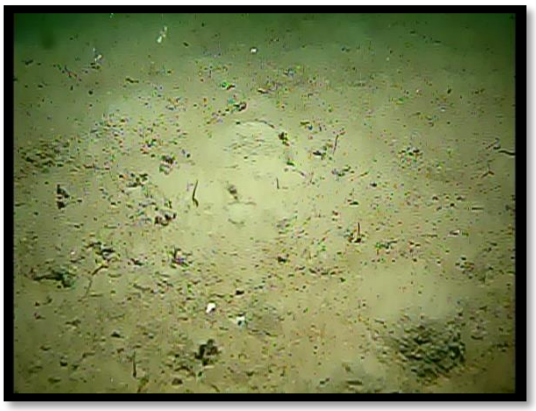


Photo 9 silt & clay

Photo 10 silt & clay, natural shell

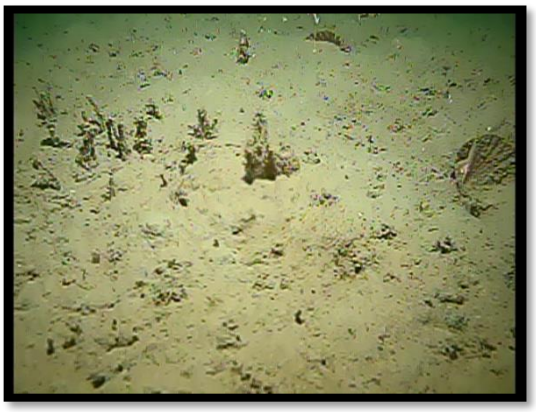


Photo 11 silt & clay

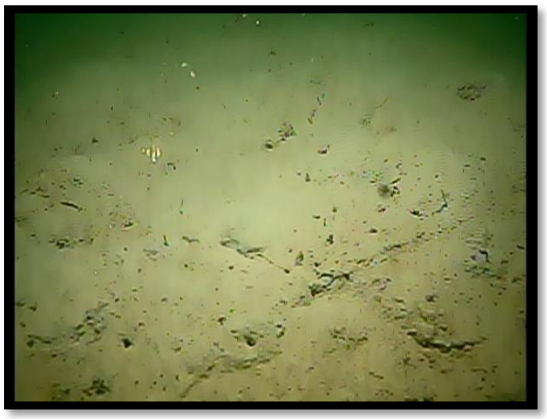


Photo 12 silt & clay, natural shell

Photo 13 silt & clay

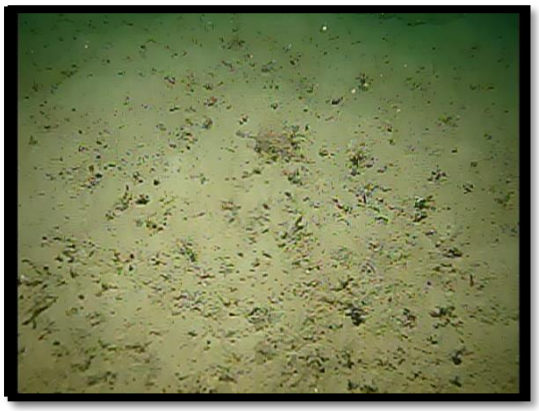
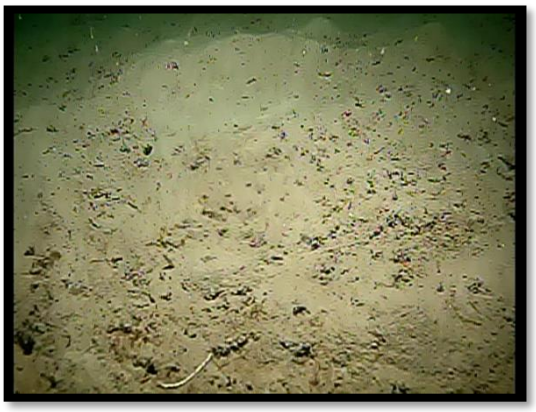


Photo 14 silt & clay, natural shell

Photo 15 silt & clay

Photo 16 silt & clay



Appendix 2. Background information

Tawhitinui Reach

Tawhitinui Reach aligns approximately east to west, from Tennyson Inlet and Fitzroy Bay in the west, Waitata Reach in the north, and the Beatrix Complex in the east (Figure 1). The main Pelorus Reach also enters from the south at Tawero Point. Tawhitinui Reach is roughly 11.5 km long and up to 4 km wide. Tawero Point, at the eastern end of the Reach, is approximately 34 km by sea from Havelock. The Reach is subjected to moderate-strong tidal currents in the east on both incoming and outgoing tides, with milder currents in the west. Offshore areas are relatively flat and dominated by mud and a small component of shell substratum. The Reach edges are composed of mostly cobble and boulder shores with intermittent bedrock substrata located near or at promontories.

Figure 1. Location of Tawhitinui Reach, central Pelorus Sound.

Marine farming

There are 29 marine farms in Tawhitinui Reach, with some split into different consents (Figure 2). Marine farm consents are mostly used for farming green-lipped mussels.

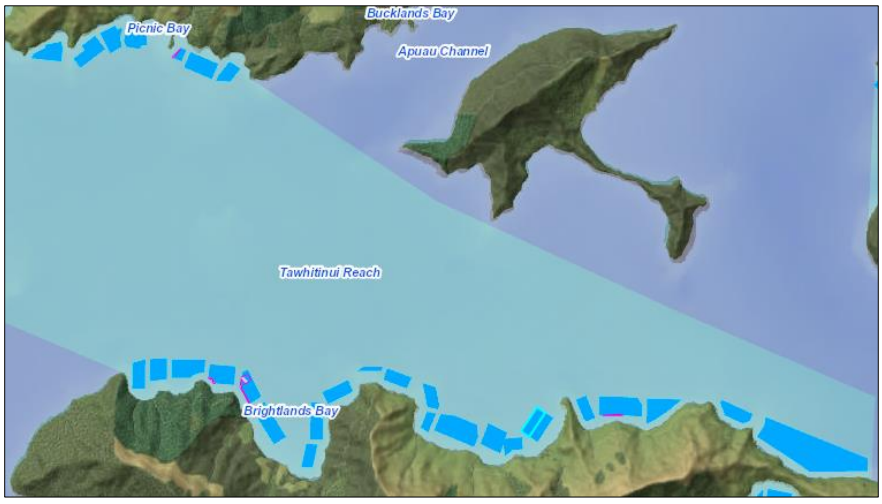


Figure 2. Marine farms located in Tawhitinui Reach.

Catchments

The land adjacent to Tawhitinui Reach is a combination of pasture and regenerating native vegetation. Areas of mature native vegetation are usually located on higher hillsides. Reserves are located at Kenny Isle, Mt Shewell, Maud Island and Tennyson Inlet. The remainder of land is in private ownership. Small forestry blocks are located at several locations along the Reach.

Fishing

Commercial fishing in Tawhitinui Reach has historically been a regular occurrence (Figures 3a, 3b). Previous to recent fishery closures, dredging during the scallop season occurred throughout the Reach (Figure 3b). Recreational fishing occurs near promontories and is less common than inner and outer Pelorus areas (Figure 3c; Authors, pers. obs.).

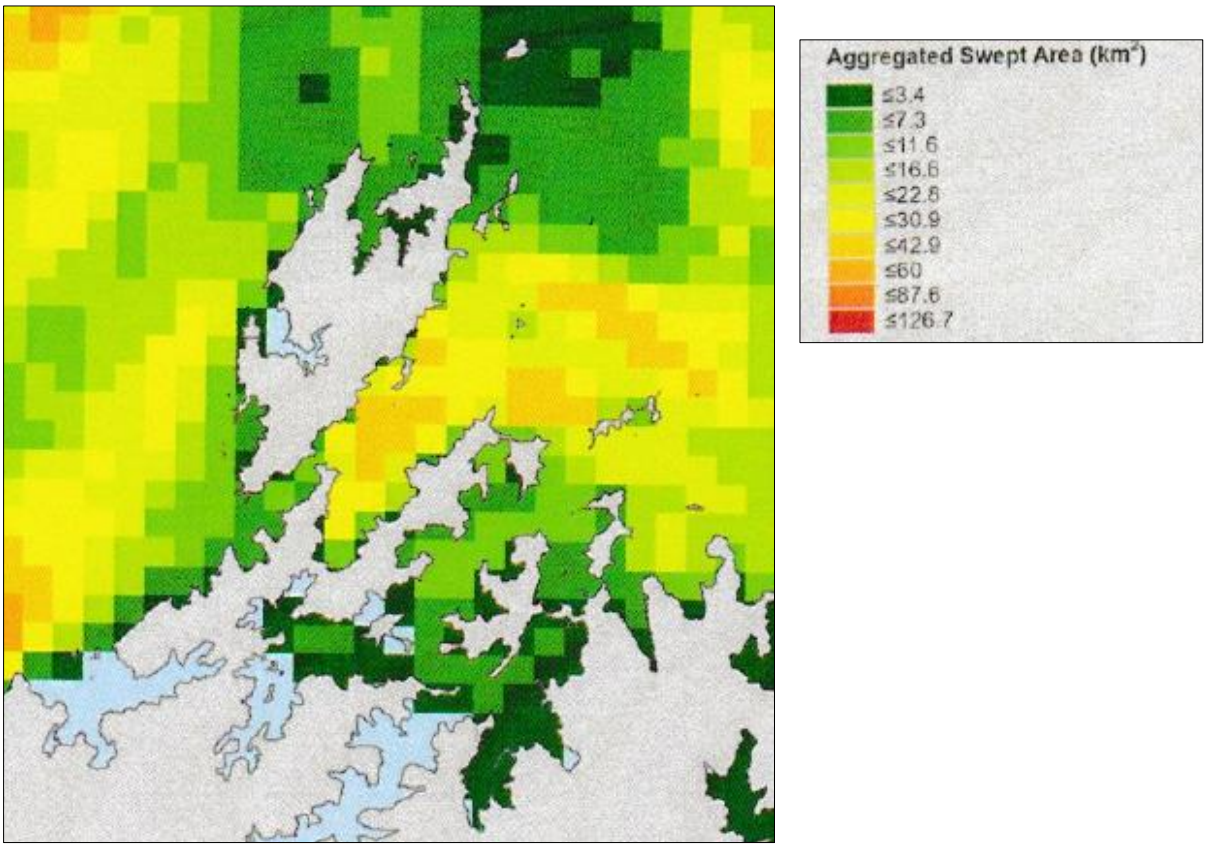


Figure 3a. Bottom contact trawl effort October 2009 to September 2019: data is presented as aggregated swept area from trawl event data (km²).

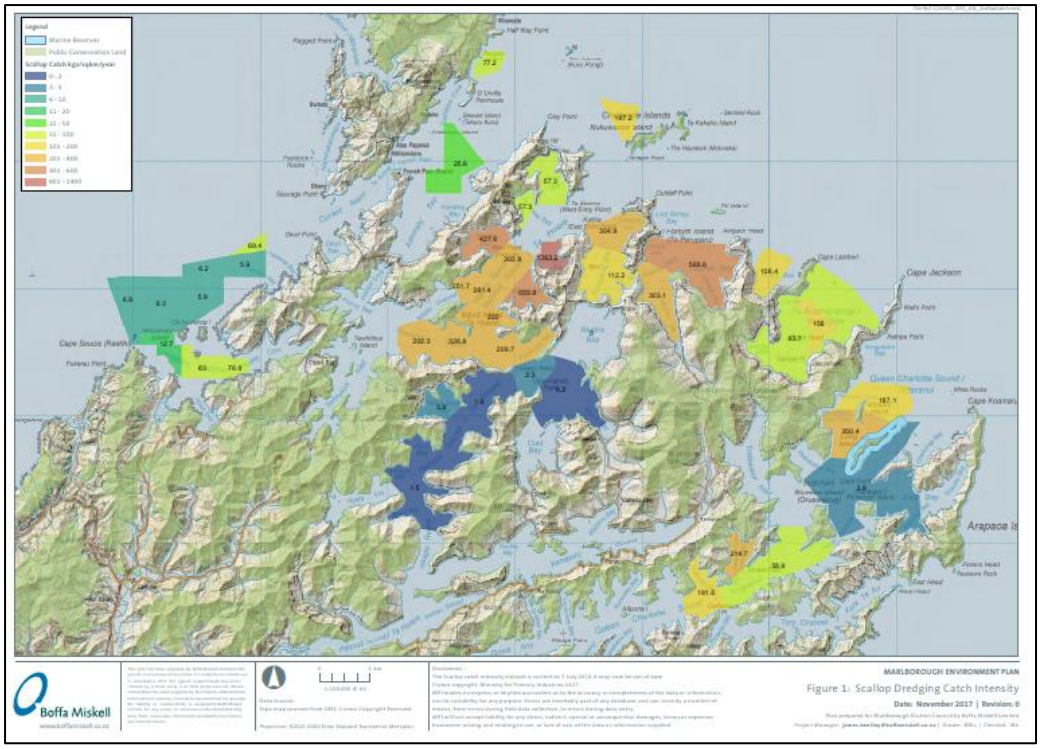


Figure 3b. Scallop catch data to July 2014 (from Boffa Miskell maps produced for MDC Coastal Plan).

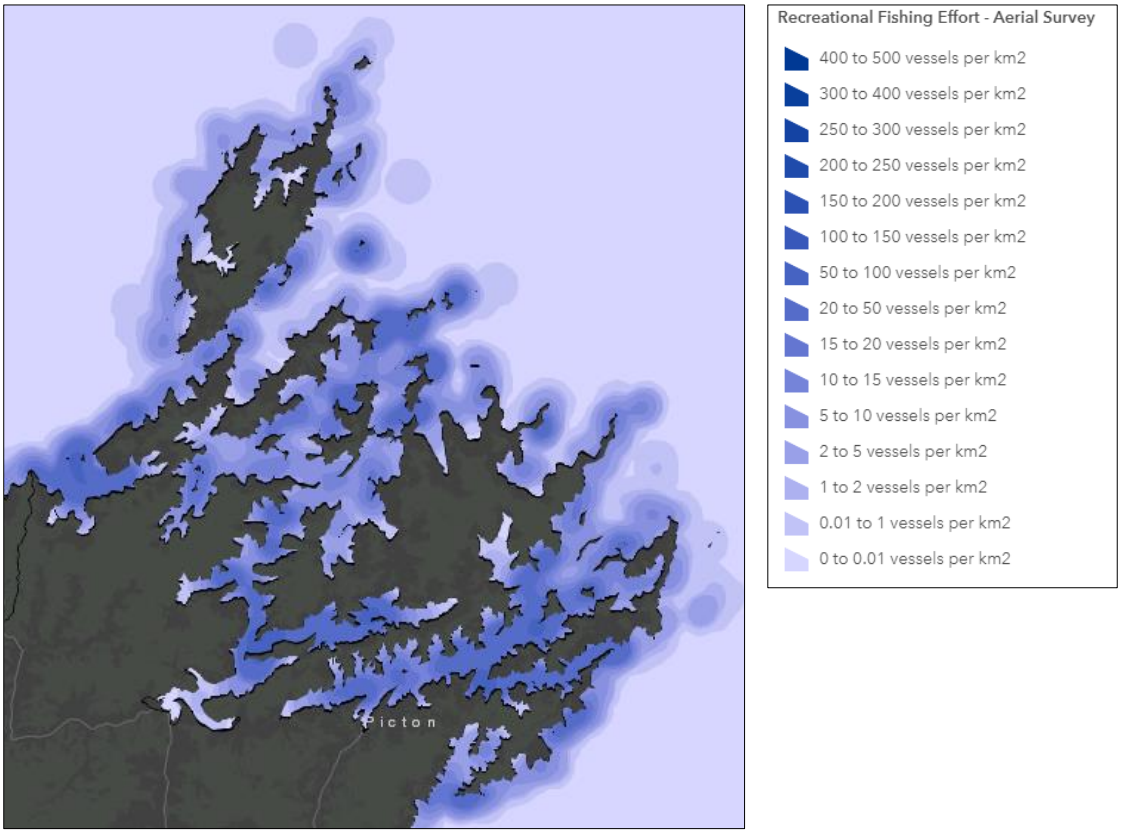


Figure 3c. Aerial survey of recreational fishing effort. Map created by NIWA for MPI, October 2016.

Existing biological data and studies

Many studies and investigations have occurred in Tawhitinui Reach (Figure 4). Most data points have been commissioned by the marine farm industry, particularly concerning new farms and extension applications. There are also a small number of species, habitat or community-based studies.

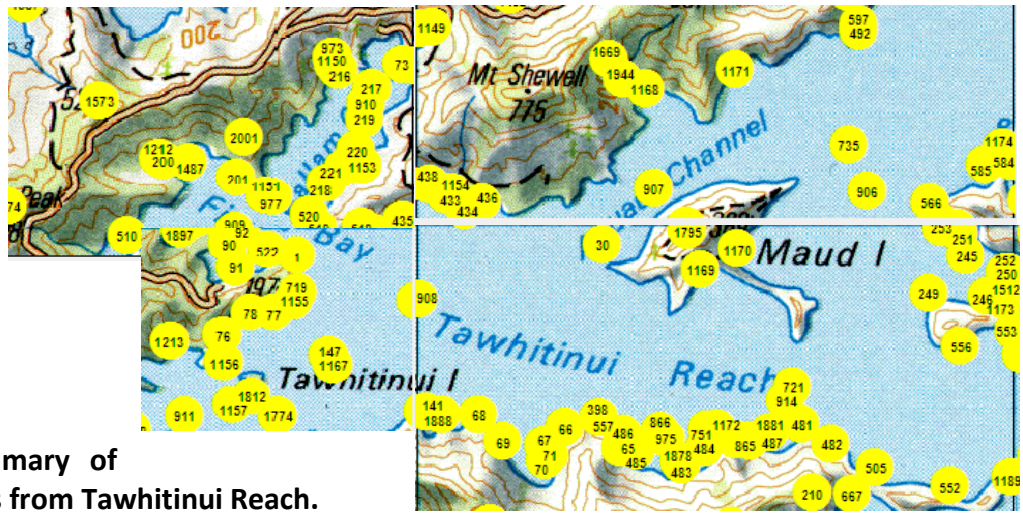


Figure 4. Summary of existing studies from Tawhitinui Reach.

Significant sites

There are seven known significant sites located within and adjacent to Tawhitinui Reach (Figure 5).

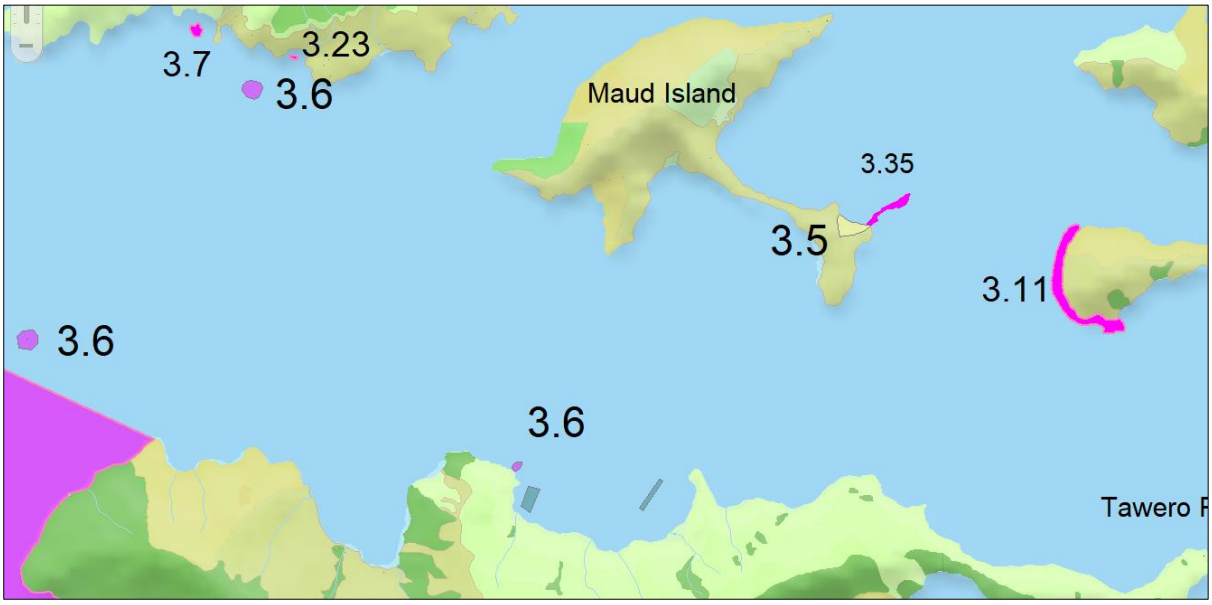


Figure 5. Known significant sites in Tawhitinui Reach (pink polygons).

Marine mammals

The Marlborough Sounds and wider Cook Strait region is an area of high diversity for marine mammals. Recent reviews (e.g. Douglas *et al*., 2018, Clement & Elvines, 2019) of marine mammals have confirmed that at least 22 species of marine mammals have been reported (e.g. sightings, strandings, bycatch, etc) from the region. For the 22 species reported in the wider region, their presence varies from the resident (e.g. Hector's and bottlenose dolphins), semi-resident (e.g. dusky and common dolphins), regular visitor (e.g. orca), migratory (e.g. humpback whales) to vagrant (e.g. leopard seals), depending on their exact relationship with the region (see Slooten *et al*., 2002; Markowitz *et al.,* 2004; Merriman *et al*., 2009; Clement and Halliday, 2014; Cross, 2019). Low numbers of New Zealand fur seals (status = not threatened) can be observed year-round within Pelorus Sound, Queen Charlotte and Tory Channel.

Bottlenose dolphins (status = Nationally endangered: Baker *et al*., 2019) is the species most consistently observed within the Marlborough Sounds (Authors, pers. obs.). An open, yet semi-residential population of approximately 385 bottlenose dolphins ranges throughout the Marlborough Sounds (Merriman *et al.*, 2009), generally in groups of 30–40 animals (Cross, 2019). These animals use the entire Sounds region year-round, regularly and systematically moving from one end of the Sounds to another, while additional animals migrate in and out of the region at the same time (Merriman *et al.,* 2009). A long-term sighting database from Dolphin Watch Marlborough (now known as E-Ko Tours) starting in 1995 suggests that bottlenose dolphins have been frequently found within inner and mid-QCS and are commonly seen around the wider Picton Bays region (Slooten *et al*., 2002; Cross, 2019). Recent research surveys found while sighting rates are fairly consistent across seasons, group sizes are slightly larger in autumn accounting for greater densities of bottlenose reported within QCS during these months (Cross, 2019).

Bottlenose dolphins within the Sounds represent one of three isolated subpopulations around New Zealand's coastline; the others are found along the northeast coast of the North Island and within Fiordland in the south-west of the South Island. This species nationally endangered status is due to their restricted ranges and the fact that the other two sub-populations have reported general population declines over the last decade. Such factors make this species potentially more vulnerable to disturbance or changes within their distribution range (D. Clement, pers. comm.). International studies investigating the interaction between bottlenose and marine farms have shown that this species can target aquaculture facilities where they forage for fish (Lopez, 2012; Diaz Lopez and Methion, 2017; Methion and Lopez, 2019).

Starting in 1998, Markowitz *et al*. (2004) studied dusky dolphin (status – not threatened) presence within the Marlborough Sounds, and in particular Admiralty Bay. The authors found

that the number of dusky dolphins increased significantly over the winter months and are periodically throughout the outer Sounds east of D'Urville to Rarangi. While no studies have focused specifically on the presence of common dolphins (status = not threatened) in Pelorus Sound.

Clement and Halliday (2014) suggest that outer Sounds bays, such as Admiralty, may serve as important habitat for at least a proportion of the common dolphin population found around New Zealand. Common dolphins appear most abundant in the outer Sounds bays during mid- to late winter and early spring, often coinciding with dusky dolphins while in the region (Clement and Halliday, 2014). Seasonal trends and the high re-sighting rates of identified individuals within the area over consecutive seasons and years indicates that common dolphins are either seasonally migrating to this region (i.e. like dusky dolphins) or use it as part of a large home range, like bottlenose dolphins (D. Clement, pers. comm.).

Several studies have aimed at investigating marine mammal interactions with aquaculture (Markowitz *et al*., 2004; Vaughn *et al.,* 2007; Pearson *et al.,* 2012; Díaz López, 2012; Diaz Lopez and Methion, 2017; Methion *et al*., 2019), Department of Conservation (e.g. B. Lloyd, unpubl. data; Merriman, 2007) and aquaculture-funded research (Clement and Halliday, 2014).

King shag

King shag (*Leucocarbo carunculatus*) is one of the world's rarest seabird species (Nationally endangered: Robertson *et al*., 2021; IUCN, vulnerable status). Although once widespread in New Zealand, the species is now endemic to the Marlborough Sounds and is seldom observed outside of this region. The species nests at a small number of colonies, usually on rock stacks that are separate from the mainland, however, there are two mainland colonies presently used by birds (Hunia and Tawhitinui Bay).

Bell (2022) reported the total number of nesting pairs have ranged from 326 (2019), 295 (2020) and 287 (2021). Aerial surveys of King Shag roost sites conducted during the non-breeding season have been carried out since 2015. Bell (2022) reported an average of 763 king shags were counted at 10-13 sites each non-breeding season 2018-2022, however, the authors noted that movement of colonies in some years resulted in some birds being missed. When taken into account, the authors estimated the average non-breeding numbers to be 792 birds. The largest colonies were Duffers Reef, White Rocks, Trio Islands and Rahanui.

Diet studies have shown king shags feed on a variety of fish at a wide variety of locations in the Marlborough Sounds (Figure 6). Lalas and Brown (1998) recorded 683 prey items, of which flatfish accounted for 90% of items. Van der Reis and Jeffs (2020), found that the king shag diet was dominated by flatfish, such as left eyed flounder (Bothidae), witch (*Arnoglossus scapha)* and crested flounders (*Lophonectes gallus)* among other benthic dwelling fish, indicating that King Shag are predominantly foraging along the seafloor.

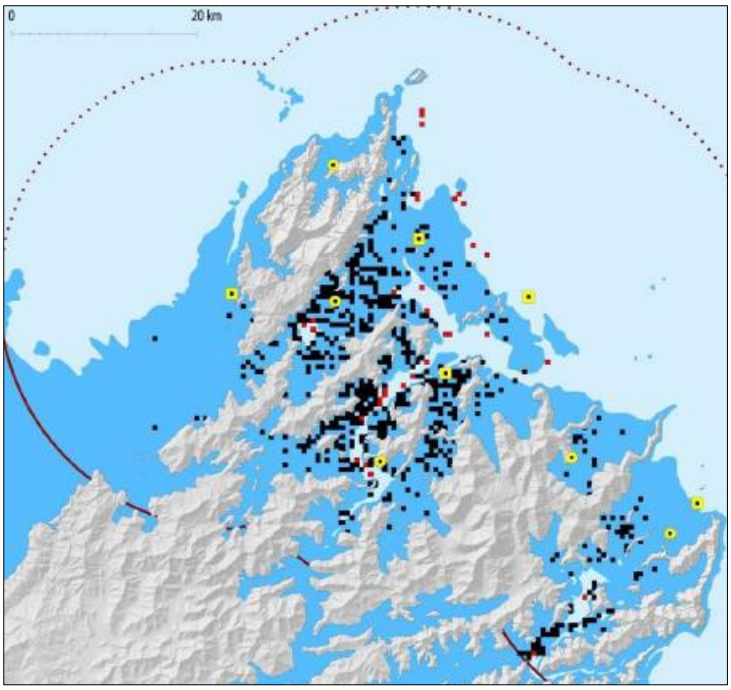


Figure 6. Distribution of foraging by king shags in Marlborough Sounds. Figure from Schuckard (unpublished evidence, 2017).

Bell (2022) put GPS data loggers on 51 adult king shags between 2018 and 2022 from Tawhitinui, Duffers, The Twins and Trio Islands. Mean foraging area was 509 ha for males and females with individual birds often returning to the same foraging sites. The author also reported birds exhibited individualised foraging preferences over-riding sex-stereotyped behaviour.

Benthic

Tawhitinui Reach can become very choppy, especially during westerly and northwesterly weather events. The Reach is dominated by soft substrata over most of its relatively flat offshore area. Around the edges, cobble and bedrock substrate occupy a relatively narrow strip. Between the deep flat mud bottoms and the fringing rocky shores exists a zone comprising natural whole and broken dead shell as well as combinations of fine sand particles. These coarser soft sediments are usually found on the sloping shore immediately below the rocky substrate.

Sediment plumes during large flood events from the Pelorus River seldom reach this area. For most periods of the year, the Reach has relatively low turbidity. In summer, water clarity can fall; often due to algal blooms rather than sedimentation.

Duffy *et al.* (in prep) qualitatively described the biota from 360 sites around the Marlborough Sounds including Tawhitinui Reach. The author stated the edges of the Reach are swept by

moderate to strong currents in the east and often support filter feeding species such as hydroids, sponges, ascidians and, in places, bryozoans. In the west, currents are light and the biota more typical of sheltered areas of central Pelorus Sound. Where currents are present, offshore soft bottom areas are often coarse. Mud and natural shell are widespread in current swept areas. Macroalgae is restricted to a narrow band around low tide or can be absent. Duffy *et al.* (in prep) found rocky reef sample sites were grouped with their Site Group 1, while soft sites were grouped with Site Group 7.

Rocky Site Group 1

This was the largest group with 11 sub-groups including Queen Charlotte Sound (34 sites) Pelorus (31 sites), Port Hardy (2), Admiralty Bay (8), Cherry Bay at D'Urville Island (1), Squally Cove in Croisilles (1), Catherine Cove (2), Guards Bay (2), Anakoha Bay (2) and Forsyth Island (5). The most common rocky habitat type was cobble banks. Although the group had few indicator species, it was the most species-rich of the Inner Sounds site groups (average 31 species per site). Duffy *et al*. (in prep) stated the best indicator species were *Maoricolpus roseus*, *Galeolaria hystrix* and *Forsterygion lapillum*.

Soft Site Group 7

Sites in this group were located in Kenepuru Sound (4 sites), inner Greville Harbour (2), Tawhitinui Reach (2), Port Gore (1) and Spenser Bay in Queen Charlotte Sound (1). All had low fetch and/or high distance to open water, and significant freshwater input. Depths were the shallowest of all of the site groups. Nine of the sites were cobble and one was large boulders. This was the second most species-poor site group after the outliers in Site Group 3 (average about 14 species per site). Indicator species were the brown alga *Cystophora retroflexa,* the estuarine triplefin (*Grahamina nigripenne*) and the whelk *Cominella adspersa*.

Appendix B: Existing Resource Consent/License

THE RESOURCE MANAGEMENT ACT 1991

APPLICANTS:	**JONATHAN TESTER and CIARAN HUGHES**
LOCAL AUTHORITY:	**MARLBOROUGH DISTRICT COUNCIL**
SUBJECT MATTER:	**Proposed marine farm, Croisilles Harbour, Marlborough Sounds**
SITE DESCRIPTION:	Part of the Coastal Marine Area lying to the north of Symonds Hill and to the east of Lone Rock Squally Cove
REFERENCE:	**U170080**
HEARING DATE:	**18 May, 2018 – Site inspection 17 May.**

Appearances:

- Nigel McFadden for the applicants **Jonathan Tester and Ciaran Hughes**
- Ted Culley for **Sanford Ltd.**
- **Margaret Hippolite** for herself and for **Robert Hippolite**

Peter Johnson to present s42A reports

Summary of decision: **Consent is granted, subject to conditions.**

DECISION OF THE COMMISSIONERS

PRELIMINARY[1]

[1] On 9 February 2017 the present applicants sought a coastal permit enabling the establishment and operation of a marine farm and for discharge permits relating to that activity. Although it is convenient to describe what is proposed as a 'mussel farm' it must be noted that the consents sought are capable of accommodating the propagation and harvesting of a number of shellfish species and marine algae. Thus, and although a 'description of the activity' in documents accompanying the application shows an intended layout of backbones and longlines of a kind typical of mussel farms in the Marlborough Sounds, it is intended that there should be some flexibility as to the precise manner in which the consents sought might be exploited. This is a common situation throughout the Sounds.

[2] The application was publicly notified on 7 March 2017. Five submissions were received (two in support) with two of the submitters indicating a wish to be heard. Broadly speaking, submissions in support drew attention to the contribution which mussel farming makes to the local economy while those in opposition raised issues relating to (i) the traditional significance (to Māori) of the southern coastline of Croisilles Harbour, (ii) recreational values of the area, (iii) the desirability of keeping marine farming in Croisilles Harbour at current levels, (iv) the unconventional (and, it was said, undesirable) consequences of 'double parking' and (v) the impact of the present proposal on an adjacent farm.

[3] While a hearing was initially proposed for November 2017 that did not proceed, seemingly at the election of the applicants. On 23 February 2018 a revised set of plans was filed, essentially reducing the area of the proposed farm from 2.97 to 1.59 hectares – seemingly to ensure that the proposed farm would not impinge upon an "Area of Outstanding Landscape Value" identified in the Marlborough Sounds Resource Management Plan (the 'MSRMP' or 'Sounds Plan). Additionally, the applicants clarified their proposed consent term – 20 years. The application proceeded on this basis.

[4] We, Councillor C J Brooks, Councillor N P Taylor and J R Milligan (Chair) were appointed as commissioners to "hear and determine" the amended application, with the hearing set down to commence on 18 May 2018. The day before the hearing, we visited the site (in the absence of the parties and accompanied only by employees of the Harbourmaster's office responsible for managing the vessel used).

[1] In this section and in those to follow, quoted passages are either shown within quotation marks or shown in-set and in a font smaller than the rest of the text

[5] Section 113(1) of the Act identifies matters that must be set out in a decision, amongst them being:

> (ac) the principal issues that were in contention; and
> (ad) a summary of the evidence heard; and
> (ae) the main findings on the principal issues that were in contention;

A summary of evidence will be found attached to this decision as Appendix C. Where greater detail is required it will be found within the body of this decision, as will the other matters required by s113.

. BACKGROUND

[6] The waters of Squally Cove are within the Coastal Marine Zone 2 of the Sounds Plan. That zone can be said to have two 'sub-zones': the major part in which marine farming is a non-complying activity and a 'ribbon' between 50 and 200 metres of mean low water in which marine farming is a discretionary activity.[2] The site applied for is one of the few in Squally Cove within this ribbon which remains vacant. That was not always so: pursuant to a 1996 consent order of the (then) Planning Tribunal Aqua King Limited, Robert Hippolite and Margaret Hippolite obtained resource consent for the establishment and operation of a 9 hectare mussel farm within the ribbon positioned so as to include the site with which we are now concerned.

[7] It seems that the farm as established did not conform to the spatial requirements of the consent. Accordingly, in 2011 – by which time the farm had come in to the hands of Sanford Ltd – the "authorised space" of this farm was amended at Sanford's request "to reflect the actual space defined by co-ordinates specified" in a plan put forward by Sanford. Effectively, the farm then became legitimised on a site on which, for the major part, aquaculture was a non-complying activity. That site is now known as 8300; the current consent for it – U100797 – expires on 7 April 2031. The site of the present application is now 'vacant', both in a legal and in a practical sense.

NATURE AND STATUS OF THE PRESENT PROPOSAL

[8] As amended, the present proposal seeks

(a) Coastal Permits for the establishment, use and maintenance, within a defined area of 1.587 hectares, of a marine farm:

- comprising 4 backbones as shown in an amended plan prepared by Draughting Plus Limited and dated 22 Feb 2018;

- involving a disturbance of the bed of the coastal marine area by reason of the positioning of mooring blocks or other anchoring devices;

[redacted]

[2] Rule 35.4.
[3] Pursuant to s53 of the Aquaculture Law Reform (Repeals and Traditional Provisions) Act 2004

– for the propagation of specified[4] species of shellfish and algae; and

– for the harvesting of those marine species;

(b) A **discharge permit** enabling the discharge to the coastal marine area of

– Faeces and pseudofaeces from marine farm organisms; and of organic and bio-degradable wastes during harvest.

[9] As described earlier, Rule 35.4 of the Sounds Plan defines a 'ribbon' or 'sub-zone' within the Plan's coastal Marine 2 Zone in which all of the activities described above are discretionary. It was accepted on all hands that the site of the present application is wholly within that area and that the proposal should be considered as for a conditional activity.

OUR APPROACH

[10] In his opening Mr McFadden drew our attention to several decisions dealing with the proper interpretation of the words "subject to part 2" as they appear in s104(1), RMA'91.[5] As we see it, the decision of the Supreme Court in *King Salmon*[6] has put previous approaches to decision-making (in cases such as the present) into doubt. In particular, the 'overall broad judgment' approach – at least as the Supreme Court saw it as having been applied in the first-instance decision appealed against – has been held to be inappropriate. What is to replace it remains unclear. There is some inconsistency to be found among recent High Court and Environment Court decisions. It is hoped that an Appeal Court decision in an appeal now before it[7] will provide some clarification, but that is not expected for some time. It thus appears highly likely that whatever approach we take in the present case may well be vulnerable to criticism.

[11] At the moment all we can do is the best that we can. Accordingly, we set out our intended approach – one which reflects what we see as a plausible end state. If, in the event, this turns out to be wrong then *where* we are wrong will be easily identified. In what follows we:

- Accept that section 104 (coupled with those that follow) governs the decision-making function. It directs us to "have regard" to the matters there specified but contains no directions as to the significance of any. We do not read that section as requiring us to proceed in any particular order or sequence;

[4] Green Shell Mussels (*Perna canaliculus*), Scallops (*Pecten novaezelandiae*), Blue shell Mussels (*Mytilus edulis*), Flat Oysters (*Tiostrea lutaria*), and Pacific Oysters (*Crassostrea gigas*) and the following algae:*Macrocystis pyrifera, Eclonia radiata, Gracilaria spp.* and *Pterocladia lucida.*

[5] In particular, *EDS v NZ King Salmon*[3014] 1 NZLR 593, *Thumb Point Station v Auckland City*, citation not given; *R J Davidson Family Trust v Marlborough District Council* EC (2016}.

[6] Above

[7] *Davidson* above – the appeal is from adecision of the High Court.

- Will internalise Part 2 matters at every stage of our deliberations. It is from Part 2 that mandatory directions as to purpose, significance and weight are ultimately derived;

- Presume that relevant statutory planning documents fully particularise the directions of Part 2 with which they deal (and those of 'superior' planning instruments) as they were at the time that they became operative. We regard this presumption is rebuttable; absent a convincing argument for that, however, we will not seek to go behind the provisions of an operative plan or other statutory instrument in an endeavour to decide whether their provisions are in accordance with the Act or superior planning documents;

- Assume that the expression "invalidity, incomplete coverage or uncertainty of meaning" as used in *King Salmon* should either be construed broadly or as indicating members of an open class. As an example, we think that placing legislative changes within the chronology of plan preparation processes (and vice versa) may justify reconsideration of some outcomes of the latter;

- Regard the ultimate decision as an 'integrated' one – this in the sense that section 5 does not appear to permit a 'trade-off' between the matters set out in the first part of ss(1) and those referred to in the lettered sub-clauses that follow. These, we think, are all objectives that we must attempt to achieve at the same time, recognising that none are expressed in absolute terms and that the Act is not a 'nil-effects' regime.

SECTION 104(1)

[12] The section reads:

> (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to–
>
> (a) any actual and potential effects on the environment of allowing the activity; and
>
> (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and
>
> (b) any relevant provisions of—
>
> (i) a national environmental standard:
>
> (ii) other regulations:
>
> (iii) a national policy statement:
>
> (iv) a New Zealand coastal policy statement:
>
> (v) a regional policy statement or proposed regional policy statement:
>
> (vi) a plan or proposed plan; and
>
> (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

Clauses (ab), (b)(i) and (b)(ii) do not appear to have present relevance.

Relevant 'policy' documents

[13] Mr Johnson's s42A report contains an analysis of the New Zealand Coastal Policy Statement 2010, the Operative Marlborough Regional Policy Statement, the Operative Marlborough Sounds Management Plan and the Proposed Marlborough Environment Plan, identifying and assessing the effect of objectives and policies in those documents which he considers to be of relevance. He thus addresses matters relevant in terms of clauses (b) (iii), (iv), (v) and part of (vi) above. He concludes:

> 39. The proposed marine farm is consistent with some and inconsistent with others of the above provisions. In particular, the proposed marine farm would:
>
> - Contribute to the economic wellbeing of people and communities (NZCPS Policy 6(2)(a));
> - Contribute in a cumulative way to the significant economic benefits of aquaculture in the region (NZCPS Policy 8);
> - Avoid significant adverse effects on the moderate-high natural character of the immediate area (NZCPS Policy 13(b));
> - Avoid adverse effects on the existing outstanding land/seascape of the immediate area (NZCPS Policy 15(b));
> - Not result in a significant increase in sedimentation (NZCPS Policy 22(2));
> - Avoid adverse effects on the main public access routes through Croisilles Harbour (MSRMP Policy 8.3.1.2);
> - Preserve the existing moderate-high natural character rating of the immediate area (RPS Policy 8.1.6, MSRMP Policy 2.2.1.2 and MEP Policy 6.2.7); and
> - Avoid, remedy or mitigate adverse effects on navigation and safety (MSRMP Policy 19.3.1.1);
>
> 40. However, the proposed marine farm:
>
> - Would not maintain or enhance the public open space and recreation qualities and values of the coastal marine area (NZCPS Policy 6(2)(b));
> - Would not promote the enhancement of amenity values of the area (MRPS Policy 7.1.7 and MEP Objective 7.2); and
> - Would not entirely avoid, remedy or mitigate adverse effects on amenity values and recreation values (MSRMP Policies 9.2.1.1.1 and 9.4.1.1.1).

[14] Neither Mr Johnson's analysis nor his conclusions were in dispute – Mr Butler, a resource management planning consultant called by the applicant, came to similar conclusions by a somewhat different route. Pursuant to s113(b) we cross-refer to Mr Johnson's analysis and adopt the conclusions set out above.

"a plan or proposed plan"

[15] The requirement that, "subject to part 2" we are to have regard to "a plan or proposed plan" goes wider than the objectives and policies contained within documents of that kind. Section 104(1) (vi) includes within its ambit *all* of the relevant elements of those documents, including zoning provisions, applicable rules, identified issues and explanatory material. Before going further we note that a Proposed Marlborough Environment Plan was notified in June 2016, attracted over 1200 submissions (decisions expected in early 2019) and, in its present form, does not include 'substitute' rules governing marine farming. We have already accepted Mr Johnson's views with regard to the objective and policy provisions of this document (agreed to by Mr Butler – his para. 10.6) and will not consider it further under this head.

[16] Some measure of encouragement, so far as marine farming is concerned, is to be found in the objectives and policies of the Sounds Plan. These, however, do not directly address that activity. Instead they place what are called "appropriate activities" in tension with other objectives and policies of an environmentally protective nature. That tension is to some extent resolved by Rule 35.4, which provides for marine farming by constituting it a discretionary activity within the 'ribbon' or 'sub-zone' earlier discussed. Generally speaking it can be said that Rule 35.4 has been *interpreted* in a way that recognises both that marine farming enables relevant people and communities to provide for their own wellbeing (s5(2)) and that marine farms may be appropriately accommodated in a large number of places within the 'ribbon'. This approach finds some support in both the Marlborough Regional Policy Statement and the New Zealand Coastal Policy Statement 2010.

[17] As far as we are aware there has been very little discussion – post 1 October 1991 – as to whether (and if so what) inferences may properly be drawn from activity status. In our view that question remains open. We note, however, that under the Planning Acts "conditional uses' – the predecessor of what are now 'discretionary activities' – were understood to be generally appropriate within zone, but not necessarily appropriate to every site and/or likely to be in need of special conditions. Without wishing to elevate this approach to the status of a general maxim we think it appropriate here.

Actual and potential effects on the environment – Amenity and Landscape

[18] Ms Gavin, a landscape architect called by the applicants, acknowledged that the entire landscape of the Marlborough Sounds is recognised in the Sounds Plan as possessing outstanding visual values and that Symonds Hill, together with parts of its fringing waters, is within an 'Area of Outstanding Landscape Value' identified in that plan. Although her paragraph 60 appeared in the context of a discussion of the magnitude of change to natural character values, we think it summarises both her approach and her overall conclusions:

> Without the screening effect of mussel farm #8300 in the foreground (viewed from the sea) the proposed mussel farm would be seen as an introduced modification that appears unnatural due to the materials used, the geometric shape of the farm which introduces a regular pattern in the waters in the foreground of Symonds Hill. However, with #8300 in place, this character is already part of the receiving environment, and forms a dominant part of the view …, the proposed farm will only introduce a small change to an already modified landscape.

No countervailing opinion was expressed. Having viewed the site we accept this assessment.

[19] In his discussion of both 'natural character' and 'landscape values' Mr Butler (properly, we think) started from the position that we ought not to look behind the NZCPS 2010 in deciding how we should approach "the natural character of the coastal environment … and the preservation of [it] from inappropriate … development" (s6(a)) and the "protection of outstanding natural features and landscapes". We agree with him as to the first. However

(a) At least arguably, we cannot assume (without further analysis) that the expression 'area of outstanding landscape value', included in a plan promulgated *after* the NCPS 1994 came in to effect, maps with sufficient neatness on to the relevant matter of national importance as to make the provisions of the present NZCPS directly applicable (we think that Mr Butler was drawing our attention to this point in a somewhat different way); but

(b) Even if the landscape values recognised by the Sounds Plan do *not* reach 'national importance' level – and we are not in a position to decide whether this is so – the intent of the Plan is that those values should be accorded a high degree of protection.

[20] Both Ms Gavin and Mr Butler regard the existing farm (8300) as indicative of an area "where the natural character of the coastal environment has already been compromised" and accordingly one in which 'appropriate development' might be encouraged.[8] After noting Ms Gavin's view that, given the presence of 8300, the additional adverse effect of the proposed farm will be "no more than minor", Mr Butler says, at 7.40:

> Ms Gavin also concludes that the effect would become greater if the existing mussel farm #8300 were removed. However this is very unlikely to occur as the MSRMP allows for the re-consenting of the existing farms as controlled activities (which must be granted)

We think that there is something deeply troubling about this argument, a matter to which we will later return.

[8] NZCPS 2010, Policy 1.2

Actual and potential effects on the environment – Marine ecosystems

[21] Dr Grange, a marine ecologist of over 40 years' experience – much of which has involved marine ecological assessments of marine farming – described the marine ecological features of the site as "reasonably well known". In particular, he drew our attention to reports produced by NIWA (of which he was either the author or one of the authors) founded on investigations in which he was involved. Of the site, which he described as subject to relatively high levels of water movement, he said:

> The benthic species that have been recorded are common and typical of the area of Croisilles Harbour and the wider Marlborough Sounds, apart from a population of lancelets in the eastern portion of the site.

These he described as "naturally rare and locally abundant, but may be at the limit of their natural range." This last, in his view, brings Policy 11(a) of the NZ Coastal Policy Statement in to play.

[22] In his view, however, the population of lancelets at this site has proved sufficiently robust to survive the historical use of it as a mussel farm (with its attendant deposition of shell, faeces and pseudofaeces). His conclusion (at 5.3) is that:

> … the proposal … will not impact on sensitive species or habitats, is potentially already affected by the crop lines of 8300, which *lie* within the boundaries, and ecologically is a suitable site for the establishment of a small mussel farm. (our emphasis)

We think that the word italicised above may have been intended as 'once lay'.

[23] With one exception there was no countervailing view. Dr Grange noted that the Hippolite submission (later reiterated in the evidence of Mrs Hippolite) had included

> … concerns over another mussel farm potentially adding to the increased risk of the oyster herpes virus [presently to be found] in Croisilles Harbour. It is my understanding that the oyster herpes virus is not present or spread by mussels. I cannot see how the addition of this small farm could add any significant risk to those present in the area.

Actual and potential effects on the environment – Public access, navigation and the use of Public Space

[24] According to Mrs Hippolite, that part of the CMA subject to the present proposal, while exposed to north-westerly winds, nevertheless provides shelter for "smaller recreational boats" – presumably in southerly conditions or because the existing farm creates a 'lee'. Additionally, she says that the area is "a very popular spot for locals and seasonal holiday-makers for fishing and that, given the existence of the proposed farm, there would not be "sufficient room … left open for people and boats to move round." We were left in some doubt as to the magnitude of this as an issue.

[25] In assessment attached to the s42A report as Appendix 10 the Regional Harbourmaster concludes that although "the proposed farm will complicate navigational access to this inshore area … the resulting navigational risk is not sufficient [to warrant a refusal of consent]". The reasons that he gives for this conclusion do not seem fully to deal with the matters raised by Mrs Hippolite, who was more particularly concerned with "[t]he maintenance and enhancement of public access *to and along* the coastal marine area …" (s6(d), our emphasis) and the tension that exists between public and private uses of the maritime side of that fringing space.

[26] The Sounds Plan provides some resolution here, limiting (as it attempts to do) the establishment of marine farms to a 'ribbon' 150 metres in width the inner edge of which is 50 metres from low water. We think that the 50 metre inner strip is part of the way in which the Sounds Plan "recognises and provides for" the matter of national importance referred to above. The proposed farm, particularly in its modified form, will not impinge on that, and there is nothing in the superior planning documents to indicate that, since the date upon which the Sounds Plan became operative, such a provision should be seen as generally inappropriate. Nor can we say, on the information available to us, that there are factors particular to this site – again, given the presence of 8300 – that would justify a refusal of consent on public access, navigational safety and 'private use' grounds.

Actual and potential effects on the environment – our conclusions

[27] We conclude that, so far as the *present* environment is concerned, the actual and potential adverse effects are likely to be minimal. In coming to this conclusion we accept Ms Gavin's view that the values protected by the AOLV overlay in the Sounds Plan are already compromised by the existence of 8300, and that the addition of the proposed small marine farm inshore of it will make no significant difference. That *additional* adverse effect is not, we think, sufficient in itself to justify refusal of consent – in the event that a grant is justified on other grounds.

[28] There are now a number of court decisions supporting the view that statutory resource management is, in part, a forward-looking exercise. Because of this we cannot accept Mr Butler's view that 8300 is necessarily here to stay (see [20] above). While the *present* Plan regime effectively ensures that applications for the renewal of marine farm consents cannot be declined, we cannot assume that this will be carried forward into a replacement regime that may shortly be promulgated through the Marlborough Environment Plan. Conversely, we cannot assert that, in that part of the (presently proposed) MEP now of relevance, the present ALOV status of Symonds Hill will not alter so as to more clearly align the values there recognised with those to which s6(b) applies.

Other relevant matters

[29] Both Mr Butler and Mr Johnson considered 'economic benefit' under the head of 'environmental effects' noting (in Mr Johnson's case) "unquantified positive economic effects for primarily the farm owner, but also to those who are employed to service and supply the farm and to harvest, process and export the products therefrom." This proposition finds some support in the evidence of the applicant, submissions in support and in the wording of Issue 9.2 of the MSRMP, not previously referred to. We think it more appropriate to consider this matter here, as going to what counts as enabling relevant people and communities to provide for their own wellbeing. We accept Mr Johnson's assessment.

[30] In its submission Te Wahi Whakatupuranga Trust says that:

> The southern coast of Croisilles Harbour is of traditional significance, being used as a highway linking the communities of the Pelorus Sound, Whangarae, Matapihi and those communities leading to Whakatu. We believe that marine farming should, despite Croisilles Harbours present industrial status, be capped at present levels.

While this suggests a matter of national importance (s6(e)) it was not elaborated on at the hearing and we are thus not able to assess the significance of it.

[31] While Sanford Ltd acknowledged that it was a 'trade competitor' of the applicant – claiming that its business was likely to be adversely affected by the proposal – it said that its concerns were "of a planning and environmental question not one of trade competition." For Mr Culley these 'planning and environmental' matters came down to concerns that 'double parking' might (i) adversely affect the Sanford farm (8300) by interfering with the flow of nutrients and making access and harvesting more difficult, and (ii) imperil the results of negotiations which, he said, were ongoing and which (he confidently maintained) would lead to the promulgation of a somewhat different regime in the yet-to-be announced replacement for the Sounds Plan. We do not see how this last point could be relevant here.

[32] We think Dr Grange was right when he said that, if there was to be an interference with the supply of nutrients (which he doubts), any *adverse* effect would be felt by the farm the subject of this application. So far as 'double parking' is concerned:

(a) We do not understand the relevance of this – as advanced it seemed to us to come down to a question of 'who owns' rather than 'what is'; and

(b) As Mr McFadden pointed out, congestion issues could well be dealt with by way of condition.

[33] Seen in the light of the s42A report and the applicant's evidence, however, there may be a point in the 'double parking' concern. Mr Johnson, Ms Gavin and Mr Butler all place some emphasis on the present and continuing existence of 8300. We would characterise the argument of the applicant's witnesses in the following way: in the absence of 8300 there may be something to be said (in 'amenity' or 'adverse landscape effects' terms) against grant of consent; the continuing existence of that farm, however, makes any *additional* adverse effect somewhat insignificant.

[34] We have already accepted that this is so, at least for the time being. The argument went on, however, to assert that because the *renewal* of marine farm consents is a controlled activity *in terms of the current Sounds Plan*, we can have confidence that 8300 will continue to exist, on its present site, well beyond 7 April 2031, the date of expiry of its present consent,

[35] We cannot accept this argument. No-one can predict what the RMA regime for marine farming will be then. What is obvious (at least to us) is that the line of argument described above is potentially capable of being used in the other direction. Given various possible future scenarios it could be argued that the continuing existence of a farm of the kind presently proposed would so modify the then existing environment as to make renewal of 8300 tolerable. Assuming however that by then 'renewal' was a discretionary activity and Symonds Hill had become unambiguously identified as an outstanding natural feature or landscape to which s6(b) applies, it would arguably be wrong to enable such an argument – one in which the time-limited presence of each could be used to justify a renewal of consent for the other. This is, we think, consistent with the 'forward looking' aspect of statutory resource management.

[36] Accordingly we construe Policy 7.2.8 of the Marlborough Regional Policy Statement and Policies 1.1 and 1.2 of Section 2.2 of the Sounds Plan (which reflect the provisions of the NZCPS 1994) as indicating that (i) some 'appropriate uses' may *better* be located in 'compromised' areas, and (ii) such encouragement (in this sense) as the policies give is to be regarded as less available if the 'compromises' relied upon are or might be time-limited. We think that this approach better accords with the thrust of the NZCPS 2010.

OUR CONCLUSION

[37] For the foregoing reasons we have concluded that, given appropriate conditions, consent may properly be given to the present application.

CONDITIONS

[38] Mr Johnson's s42A report contained, as Appendix 15, a set of 'Typical Consent Conditions for a New Marine Farm'. These were not in dispute and we accept them as a place to start.

[39] In his reply Mr McFadden submitted that Mr Culley's concerns relating to access and harvesting went no further than to say that at times there might be conflicts between vessel manoeuvring around the two farms. That could be met, he suggested, by a condition preventing harvesting activities from occurring on the site of the new farm at the same time as harvesting activities were occurring on 8300. We accept this submission and will impose such a condition.

[40] The matters discussed in paragraphs [20], [27] and [33] – [36] above provide, we think, a strong reason for ensuring that future applications for the 'renewal' of the consents for both the farm the subject of this application and 8300 should be addressed under the same statutory resource management regime and at times sufficiently close to each other that the argument addressed at [35] above can only be, at best, of marginal significance. We cannot alter the terms of the consent under which 8300 now operates. Thus, and if this result is to be achieved, that can only be by way of a condition in this consent. We have two concerns here.

[41] Firstly, the Sounds Plan presently contains a provision making 'renewal' a controlled activity. Thus (it might be argued) there is nothing to prevent the consent holder for 8300 applying for renewal of its consent well in advance of its expiry date.[9] The fundamental question then would be that of whether the application was truly for 'renewal' *as that concept is employed in the Sounds Plan* or whether it is a means to the achievement of some other end. There are several decisions which suggest that what an application is truly *for* – and thus what provisions of the Act apply to it – is a matter of substance rather than form. It thus seems to us to be at least arguable that a supposed 'renewal' application egregiously in advance of the expiry date might well be characterised as an illegitimate attempt to extend the expiry date.[10]

[42] A more difficult question arises from the wording of s123A. Relevantly that reads:

> (1) A coastal permit authorising aquaculture activities to be undertaken in the coastal marine area must specify the period for which it is granted.
> (2) The period specified under subsection (1) must be not less than 20 years from the date of commencement of the consent under section 116A unless—
> (a) the applicant has requested a shorter period; or
> (b) a shorter period is required to ensure that adverse effects on the environment are adequately managed ; or
> (c) …
> (3)The period specified under subsection (1) must be not more than 35 years from the date of commencement of the consent under section 116A.
> (4)This section applies subject to section 125.

[43] So far as subsection (2) is concerned (i) the applicant has explicitly sought a term of 20 years but (ii) for reasons already given we think that the limitation of clause (b) is met. A more difficult problem arises from a consideration of the section as a whole. Firstly, it prevents us from specifying an *expiry date*; all we can do is to prescribe a *term*. Secondly, we cannot control when that term commences; that is affected both by the date upon which any appeal is determined (s116) and when the chief executive of the Ministry of Fisheries exercises his functions under s116A. We thus cannot ensure that both the consent that we intend to give and that under which 8300 now functions will expire at the same time.

[9] Although Mr Culley said that Sandford does not intend such a step, that disclaimer cannot bind those into whose hands 8300 may come.
[10] Contrary to s127(1)(b)

[44] We do not think that matters. The point – as we see it – is not that of ensuring that renewal applications for the two farms are considered at the same time (and perhaps by the same hearings panel) to stand and fall together. Rather, it is to diminish the force of an 'already compromised area' argument if put forward in relation to one or other of these sites in the future. Such an argument is, we think, one that might well run contrary to the adequate management of adverse effects on the environment, given a different plan regime. Of course, if renewal *is then* a controlled activity the condition that we intend will have little or no practical effect.

FORMAL DECISION

For the foregoing reasons consent is granted to

The establishment of a marine farm in Squally Cove, Croisilles Harbour, immediately to the north of Symonds Hill generally in accordance with, and on a site having the coordinates identified in, two plans prepared by Draughting Plus Limited dated 22 February 2018 annexed to this consent as Appendices A and B. More specifically, the activities consented to are:

- ***The construction and maintenance of marine farming structures;***
- ***Disturbance of the bed of the Coastal Marine Area to the extent necessitated by those activities;***
- ***The undertaking of marine farming activity;***
- ***The harvesting of authorised species;***
- ***The discharge of contaminants to the marine environment, including***

– ***Faeces and pseudofaeces from marine farm organisms, and***

– ***Organic and biodegradable waste, particularly during harvest;***

Upon the following conditions

1. The term of this consent is 13 years from the date of its commencement in accordance with section 116A of the Resource Management Act 1991.

2. This consent will lapse 3 years after the date of its commencement in accordance with section 116A of the Resource Management Act 1991.

3. Within two weeks following the installation of any structures pursuant to this coastal permit, the consent holder must inform the Compliance Manager, Marlborough District Council, by written or electronic notice of the installation date and the type and number of structures installed.

4. Only any one or more of the following species may be farmed:

   a) Green shell mussel (*Perna canaliculus*)

   b) Scallop (*Pecten novaezelandiae*)

   c) Blue mussel (*Mytilus edulis*)

   d) Flat Oyster (*Tiostrea lutaria*)

   e) Pacific Oyster (*Crassostrea gigas*)

   And/or the following algae species:

   f) *Macrocystis pyrifera*

   g) *Ecklonia radiata*

   h) *Gracilaria spp*

   i) *Pterocladia lucida*

5. Without restricting the consent holder from reasonably undertaking the activities authorised by this resource consent, the consent holder must not undertake the activities in such a way that would effectively exclude the public from the permit area.

6. There shall be no feed artificially introduced into the marine farm unless a specific coastal permit for discharge is firstly obtained.

7. The structures authorised by this consent must be wholly within the 1.59 hectare area identified in **Appendix A** to this consent and must be laid out in a manner that conforms with **Appendix B** to this consent.

8. The structures shall be limited to the anchors, ropes, droppers, cages, racks, floats and lights associated with the farming of the approved species within the boundaries of the consent area. The number of lines shall be at the discretion of the consent holder, but shall not exceed the number and length shown in **Appendix B**, the separation distances between lines must be no less than as shown, other distances must be as shown and lines must be oriented as shown.

9. Within one month of the installation of the structures (or each stage of structures, if the development is to be staged), the consent holder must provide documentary evidence including as-built GPS data to the Compliance Manager, Marlborough District Council, that demonstrates that all farm structures, including anchor blocks and warps, are wholly contained within the authorised farm boundaries and in all respects comply with Conditions 7 and 8 above.

10. The type, design, functionality and placement of marine farm lighting and marking shall be as approved by the Harbour Master under his or her Maritime Delegation from the Director of Maritime New Zealand pursuant to Sections 200, 444(2) and 444(4) of the Maritime Transport Act 1994.

11. Not later than six months from the commencement of this consent, the consent holder must prepare and submit to the Compliance Manager, Marlborough District Council, a safety management plan for marine farm site 8645. At minimum, the safety management plan must include the following information:

    a) A plan drawing of the farm layout and all structures contained therein;

    b) A fit-for-purpose design plan for the farm's anchoring system, to include details of the size, type and installation of the farm anchors, warps and longlines, taking into account the water depths, tides and currents, prevalent sea and swell conditions, seabed composition and predicted crop weight; and

    c) A maintenance schedule and recording system for the anchor blocks and warps, navigational lighting and associated radar reflectors and reflective tape.

12. The consent holder must keep and maintain a written record of all inspections and maintenance undertaken on the anchor blocks and warps, navigational lighting and associated radar reflectors and reflective tape, and must provide such records to the Harbour Master or Compliance Manager, Marlborough District Council, within 10 working days if requested to do so by a Council officer.

13. Each end of the most landward and most seaward longlines must carry the name of the consent holder and the marine farm site number and be displayed in bold, clear letters in such a manner that they can be clearly read from a distance of at least 10 metres.

14. Except as required by the Harbour Master in the lighting and marking plan, all buoys used on the farm must be black in colour.

15. The consent holder must maintain all structures to ensure that they are restrained, secure and in working order at all times so as not to create a navigational hazard, and take whatever steps are reasonably necessary to retrieve any non-biodegradable debris lost in or from the permit area.

16. Each buoy within the approved area shall be permanently branded so as to clearly identify its ownership.

17. Harvesting activities shall not take place at any time at which similar activities are being carried out on the farm immediately to the north of the one to which this consent applies (#8300)

18. Upon the expiration, forfeiture or surrender of the coastal permit the consent holder must remove all structures including buoys, longlines, blocks, and all associated equipment from the site, and restore the area as far as is practicable to its original condition to the reasonable satisfaction of Council. If the consent holder fails to do this Council may arrange compliance on the consent holder's behalf and expense.

19. In accordance with section 128 of the Resource Management Act 1991, the Marlborough District Council may, during the months of January to December (inclusive) in any year for the duration of this consent, serve notice of its intention to review the conditions of this consent for any of the following purposes:

    a) To deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or

    b) To modify the lighting and marking plan; or

    c) To modify the type, number and extent of structures, longlines and backbones; or

    d) To ensure that adverse effects on ecological values, maritime safety, public access and amenity values are adequately avoided, remedied or mitigated; or

    e) To incorporate best management practice guidelines developed to address the cumulative effects of marine farming; or

    f) To protect the extent and/or health of New Zealand lancelet habitat.

Advice Notes

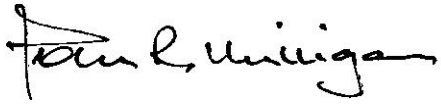
1. Pursuant to section 36 of the Resource Management Act 1991 and the Marlborough District Council's schedule of fees, the consent holder will be responsible for all actual and reasonable costs associated with the administration and monitoring of this resource consent.

2. The consent holder will in the future be required to pay coastal occupation charges if they are imposed through Council's resource management plans.

3. This consent cannot commence other that in accordance with section 116A of the RMA.

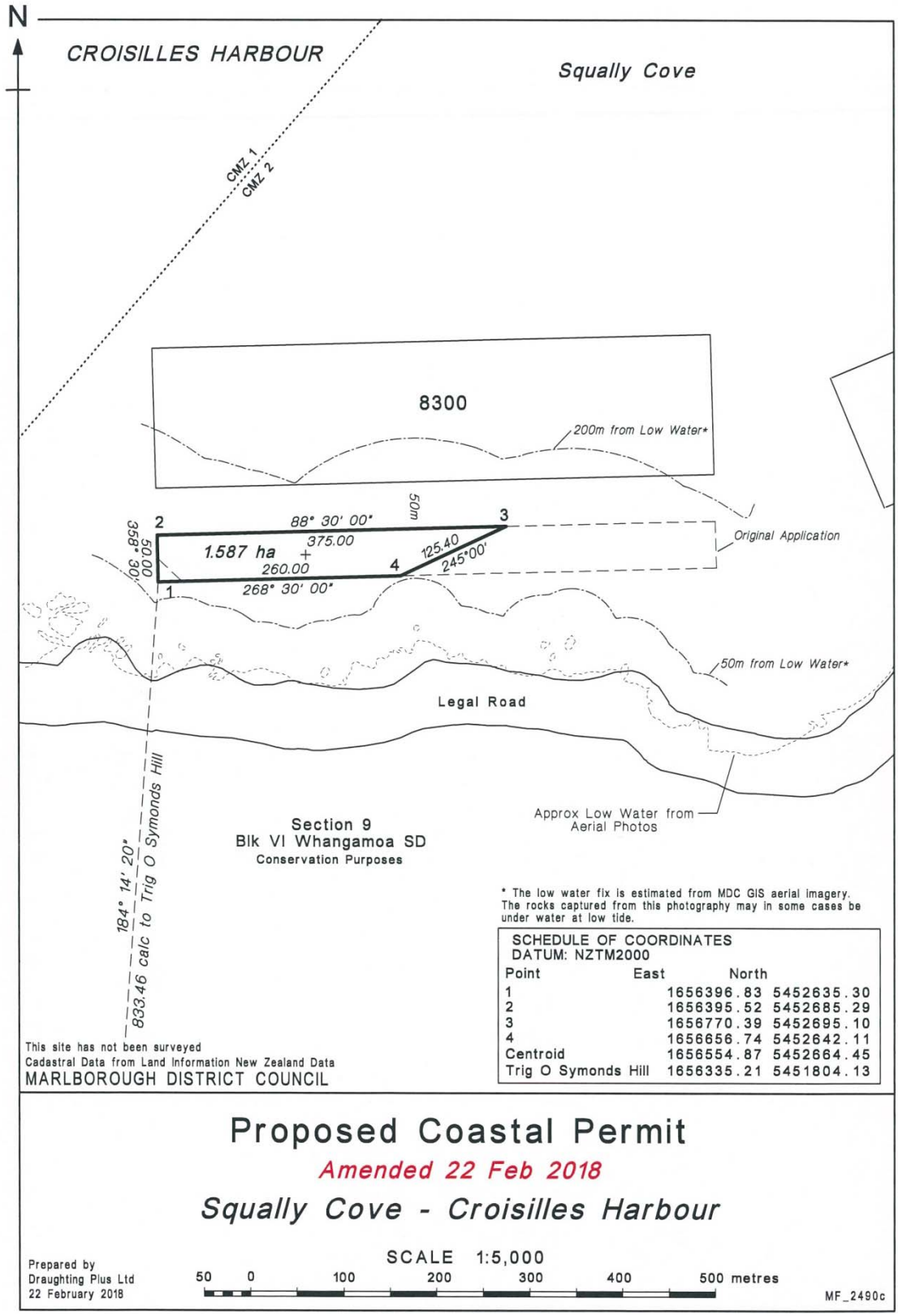
4. Pursuant to section 114(4)(c)(ii) of the RMA, the Marlborough District Council is required to request an aquaculture decision from the Ministry for Primary Industries (MPI) after the appeal period is completed or all appeals are determined for this consent. The MPI will undertake an assessment of the undue adverse effects on customary, recreational and non-quota commercial fisheries resources. Depending on the MPI's decision, the applicant may be able to establish the marine farm as granted, or Council may have to modify or reverse this decision.

For the Hearing Panel

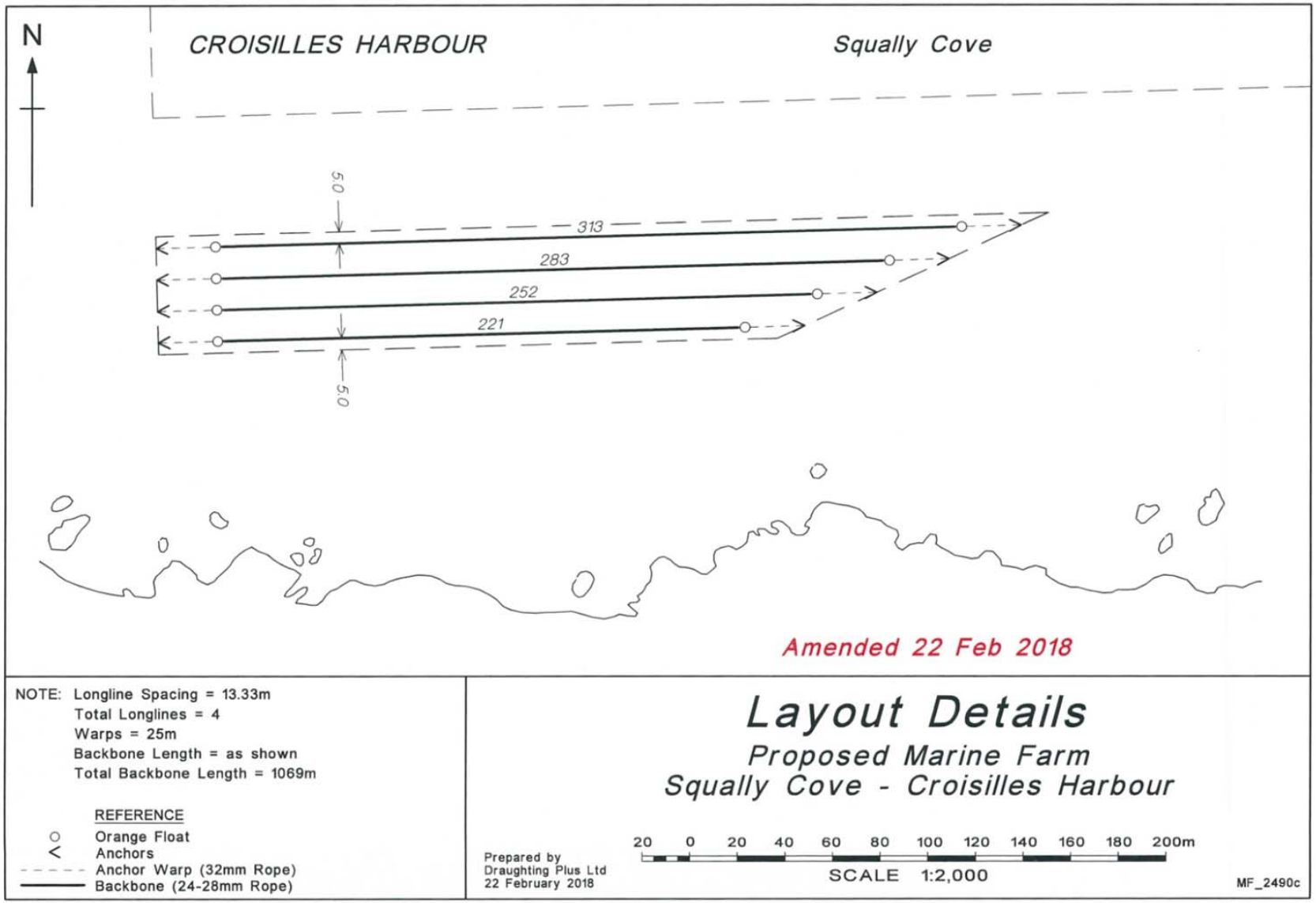


John Milligan
Chair

APPENDIX A


N
CROISILLES HARBOUR
Squally Cove
CMZ 1
CMZ 2
8300
200m from Low Water*
50m
2
88° 30' 00"
3
375.00
1.587 ha
260.00
4
125.40
245°00'
1
268° 30' 00"
358° 30'
60.00
Original Application
50m from Low Water*
Legal Road
Approx Low Water from Aerial Photos
Section 9
Blk VI Whangamoa SD
Conservation Purposes
184° 14' 20"
833.46 calc to Trig O Symonds Hill
* The low water fix is estimated from MDC GIS aerial imagery. The rocks captured from this photography may in some cases be under water at low tide.
SCHEDULE OF COORDINATES
DATUM: NZTM2000
Point East North
1 1656396.83 5452635.30
2 1656395.52 5452685.29
3 1656770.39 5452695.10
4 1656656.74 5452642.11
Centroid 1656554.87 5452664.45
Trig O Symonds Hill 1656335.21 5451804.13
This site has not been surveyed
Cadastral Data from Land Information New Zealand Data
MARLBOROUGH DISTRICT COUNCIL
Proposed Coastal Permit
Amended 22 Feb 2018
Squally Cove - Croisilles Harbour
SCALE 1:5,000
Prepared by
Draughting Plus Ltd
22 February 2018
50 0 100 200 300 400 500 metres
MF_2490c

APPENDIX B

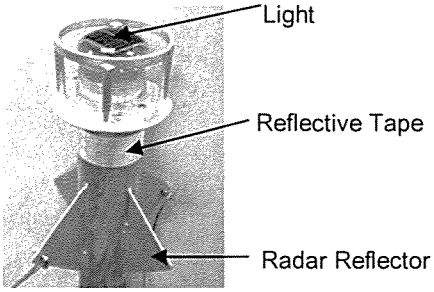

N
CROISILLES HARBOUR
Squally Cove
5.0
313
283
252
221
5.0
Amended 22 Feb 2018
NOTE: Longline Spacing = 13.33m
Total Longlines = 4
Warps = 25m
Backbone Length = as shown
Total Backbone Length = 1069m
REFERENCE
Orange Float
Anchors
Anchor Warp (32mm Rope)
Backbone (24-28mm Rope)
Layout Details
Proposed Marine Farm
Squally Cove - Croisilles Harbour
20 0 20 40 60 80 100 120 140 160 180 200m
SCALE 1:2,000
Prepared by
Draughting Plus Ltd
22 February 2018
MF_2490c

MARLBOROUGH DISTRICT COUNCIL

Marine Farm Lighting and Marking Plan – U170080 (Site no.8645)

I, Luke Grogan, Harbourmaster of Marlborough District Council, hereby approve, under Maritime Delegation from the Director of Maritime New Zealand pursuant to Sections 200, 444(2) and 444(4) of the Maritime Transport Act 1994, the lighting and marking associated with coastal permit U170080, (Site no.8645), located in Symonds Hill, Croisilles, as follows:

1. **That each end of each longline display an orange buoy, as shall the middle of each of the seawardmost and landwardmost longlines.**
2. **That a yellow light, radar reflector and a band of reflective tape 50 millimetres in width be displayed in the positions marked 'A' on the attached structures plan. The lights shall be solar powered and shall have the following characteristics: F1 (5) Y (20 secs) 1m 1M.**



3. **That radar reflectors and a band of reflective tape be displayed in the positions marked 'B' on the attached structures plan.**
4. **That a band of reflective tape 50 millimetres in width be displayed in the positions marked 'C' on the attached structures plan.**

Interpretation:

Light **- a yellow light, group flash 5 every 20 seconds (minimum flash length not less than 0.5 seconds), height of light not less than 1 metre above the water, range at least 1 nautical mile.**

Radar reflector **– to be set at not less than 1 metre above the waterline with a band of reflective tape set above this. The radar reflector should be visible on radar at a range of at least 500 metres.**

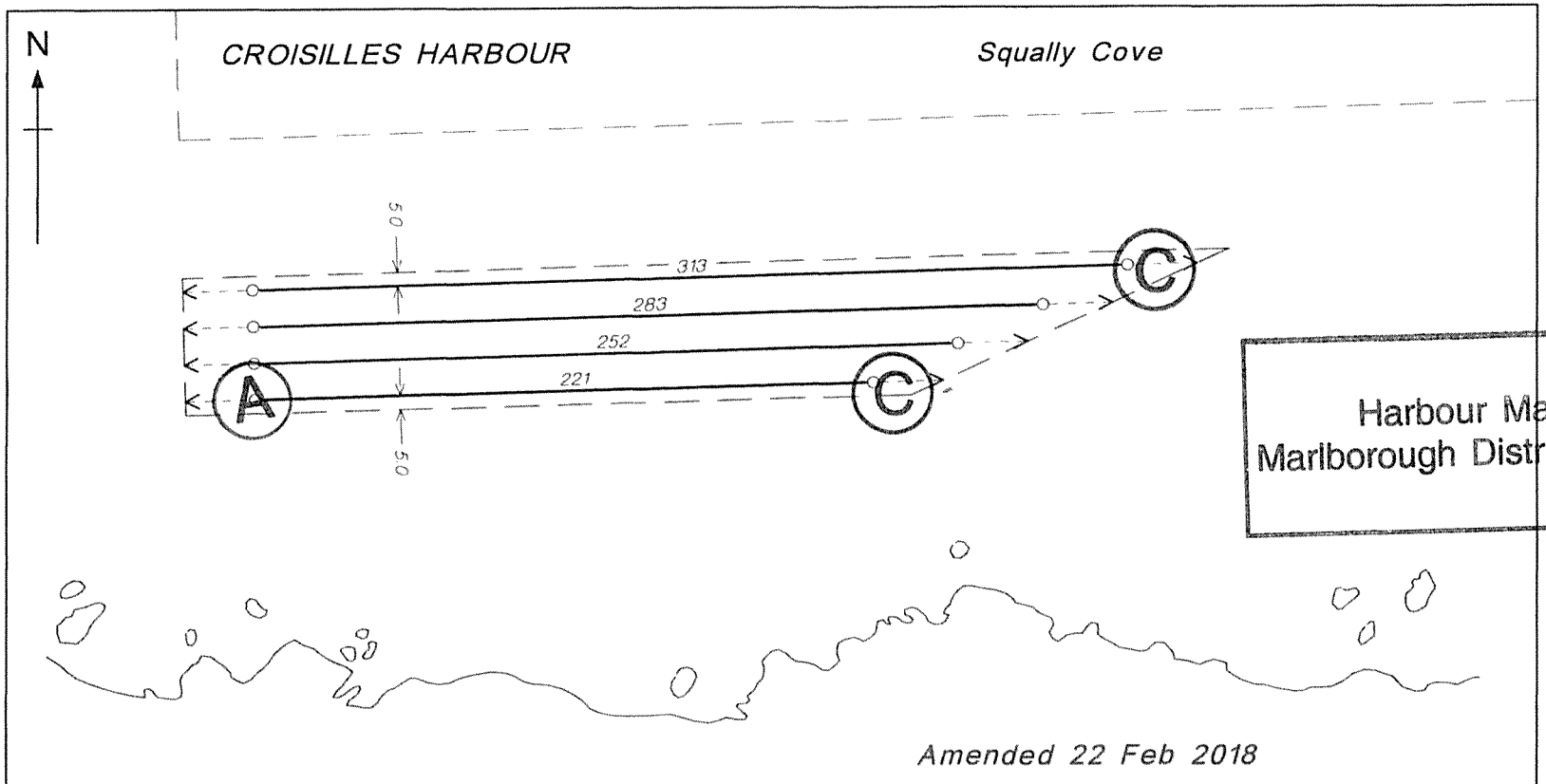
Reflective tape **– should be at least 50 millimetres in width and placed around the circumference of the support tube; the tape should be visible by torchlight at a range of at least 50 metres. Alternative reflectors may be substituted for reflective tape, provided that they are mounted where they are visible by torchlight from at least 50 metres all round.**

5. **Each end of the most landward and most seaward longlines shall carry the name of the consent holder, and the site number issued by Marlborough District Council (e.g. #8405), displayed in bold clear letters in such a manner that they can be clearly read from a distance of 10 metres.**

Given under my hand this 28th day of JUNE 2018

LUKE GROGAN

Harbour Master
Marlborough District Council



NOTE: Longline Spacing = 13.33m
Total Longlines = 4
Warps = 25m
Backbone Length = as shown
Total Backbone Length = 1069m

REFERENCE

- Orange Float
- Anchors
- Anchor Warp (32mm Rope)
- Backbone (24-28mm Rope)

Layout Details

Proposed Marine Farm
Squally Cove - Croisilles Harbour

20 0 20 40 60 80 100 120 140 160 180 200m

SCALE 1:2,000

Prepared by
Draughting Plus Ltd
22 February 2018

MF_2490c

APPENDIX C

SUMMARY OF EVIDENCE HEARD

Jonathan Tester: Environmental compliance and approvals specialist, marine farmer and keen boatie;

- One of the applicants; Long association with marine farming and mussel processing in Marlborough Sounds; involved in the building of a marine farming business; the present site to be farmed in conjunction with other family farms;
- Discusses (and discounts) submissions in opposition; says that there will be no increase in biomass (compared with an earlier situation) and that there is little recreational use of the area;
- Production from the (now) proposed farm will be about 60 tonnes/year, destined largely for export or use as a pharmaceutical supplement;
- On the basis of his experience the farm will create employment opportunities equivalent to 1 person employed 100 days/year, plus that utilised by contractors.

Kenneth Grange: MSc (1st class Hons.), PhD – both in marine ecology. Employed by NIWA and its predecessor since 1974; extensive research and professional experience. An author of a report undertaken by NIWA discussing the benthic environmental features of the site and the author of an amended report following a decision to reduce the size of the proposal;

- From prior work in the area has a reasonable understanding of the ecological processes attending on mussel farming. Describes.
- No live scallops found in the area;
- The presence of lancelets is interesting and of some importance. Describes these as naturally rare, locally abundant and probably near the southern limit of their natural range. Considers Policy 11(a) of the National Coastal Policy Statement applicable;
- There are indications that lancelets have survived the prior presence of a Mussel farm, although none recorded within the boundaries of the (now amended) present site;
- Concludes that the proposal "will not impact on sensitive species or habits … and ecologically is a suitable site for the establishment of a small mussel farm".
- Discusses submitters concerns: does not accept an undesirable (ecological) impact on 8300 – if there are effects of plankton depletion they will be felt by the proposed farm rather than that presently in existence; cannot see how "the addition of this small farm could add any significant risk [of the spread of an oyster herpes virus] to those already present in this area.

Elizabeth Gavin: Landscape architect, qualifications and experience given. Has visited the site on one occasion;

- Speaking generally, the proposal will make little difference – in landscape terms – to the situation presently existing;
- Sets out methodology – a 6 step process designed to reveal (amongst other things) the magnitude and significance of change
- Describes the site and its surroundings in landscape terms and provides details of existing 'local' farms;
- The entire Marlborough Sounds is identified (in the Sounds Plan) as having outstanding visual values;
- Locality is weather exposed. For this reason (and for geological ones) the adjoining land can be described as within a distinct ecosystem;
- A recent study concludes that the waters of Squally Bay should be excluded from a 'very high' rating due to the presence of marine farms. However an area in front of Symonds Hill has been accorded such a rating despite the existence of 8300 and another to the west;
- Describes the proposal in some detail {33}, reviews the statutory context and notes relevant NZCPS provisions – particularly Policies 8, 13 and 15; identifies MSRPS provisions of relevance;
- Deals with Sounds Plan in some detail, identifying various 'value' issues.
- Notes that mussel farms are an inherent element of the existing landscape and have been so for at least the last 20 years;
- No disturbance to land is proposed;
- Disturbance to foreground values already exists and will not be significantly altered by the present proposal – the existing farm (8300) reduces the vulnerability of the water area so that the addition now proposed will produce – at most – only a small adverse cumulative effect – this as far as key landscape and natural values are concerned.
- Applying Plan criteria, says that the present site has moderate to low "visibleness". So far as 'vulnerability to change' is concerned the waters would not be considered important were it not for the presence of Symonds Hill;
- Concludes that the proposal largely accords with the provisions of the NZCPS, the MRPS and the Sounds Plan, *given the presence of 8300.*

Jeremy Butler: Employed as a resource management planning consultant by a Nelson-based firm; qualifications and experience given;

- Describes background and submissions;
- Discussed 'cumulative effects' in the contexts of MRPS and MSRMP. Is of the view that a 'just one more is minimal' approach is incorrect;
- Discusses the "seven key issues' of the s42A report: Maritime safety concerns not credible. Ecological values dealt with by Grange, public access and recreational concerns unfounded or minimal, MSRMP is consistent with the NZCPS so far as natural character is concerned, proposal does not offend against either the NZCPS or the MSRMP, amenity and landscape values dealt with by Gavin;
- Notes the encouragement given in the NZCPS, RPS and MSRMP to aquaculture as an industry of value.

- Discusses conditions, term and lapse provisions. Although he accepts that there is a "theoretical argument" for aligning the expiry date of any consent given here with that of 8300, says neither are necessary or appropriate because "the existing farms (#8300 and #8229) are highly likely to remain extant *due to their status under the MSRMP for re-consenting being a controlled activity and there is no reason to think otherwise"* (our emphasis).

Ted Culley: General Manager, Aquaculture, for Sanford Ltd, based at Havelock – responsible for that company's Greenshell mussel, spat collection and salmon farming operations from Kaitaia to Stewart Island. Has been involved in the industry for more than 20 years. Various industry positions. Sanford owns 8300 and 8299, as well as others.

- Accepts 'trade competitor' limitation;
- 8300 acquired by Sanford in 2010;
- Current consent will expire on April 7, 2031;
- Used as a nursery farm for SpatNZ selective breeding programme;
- Not currently a 'production' farm – takes spat from the factory and grows it to a point at which it can be transplanted to production lines elsewhere;
- Historically, 8300 was established outside its 'consented space' – this remedied by a statutory process which resulted in the boundaries of that space being amended to the position in which the farm had actually become established;
- Sanford plans are eventually to merge 8299 and 8300 as part of a move seaward [assuming the promulgation of a permissive regime]. Argues that this is something of a negotiated position which is as yet to be promulgated (presumably within the framework of the proposed Plan);
- Is concerned about a possible restriction of maneuverability affecting workboats attending farms so closely located, and would "prefer" that this did not become a possibility;
- Essentially a concern about the possibility that what it thinks it has negotiated may not come to pass.

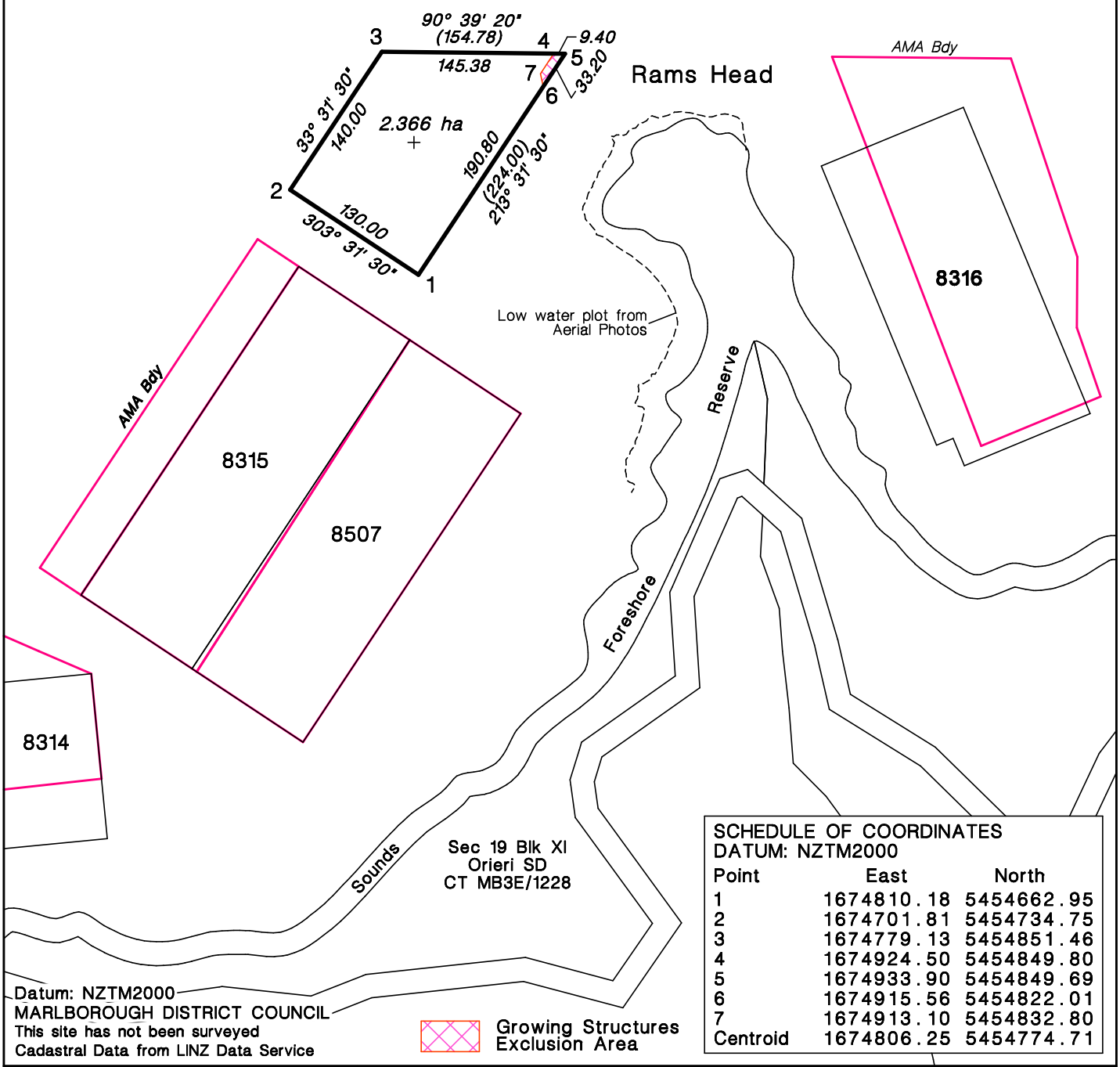
Margaret Hippolite: speaking for herself and her husband Robert Hippolite. A local family of long standing with iwi affiliations. An in-depth of the area and of the aquaculture industry.

- The number and concentration of farms "have reached their tipping point and there is no capacity for new lines";
- Concerned about a lack of consultation;
- In inclement weather smaller boats tend to take shelter inside 8300 [presumably this is in southerly conditions in which Symonds Point would provide a lee];
- The area to the north of Symonds Point is a popular spot for locals and provides an avenue enabling fishing to occur inside the existing marine farms;
- Concerned with a 'doubling up' of marine farms – to allow that here would, she says, establish an undesirable precedent. Doubling up is, she says, inconsistent with current practice;
- Says that their farm has been "affected by the herpes virus" and that the presence of this additional farm would increase the risk.

Appendix C: Proposed Location and Layout

N

Tawhitinui Reach



SCHEDULE OF COORDINATES
DATUM: NZTM2000

Point	East	North
1	1674810.18	5454662.95
2	1674701.81	5454734.75
3	1674779.13	5454851.46
4	1674924.50	5454849.80
5	1674933.90	5454849.69
6	1674915.56	5454822.01
7	1674913.10	5454832.80
Centroid	1674806.25	5454774.71

Proposed Coastal Permit

for Relocation of Marine Farm 8645

Rams Head, Tawhitinui Reach

SCALE 1:5,000

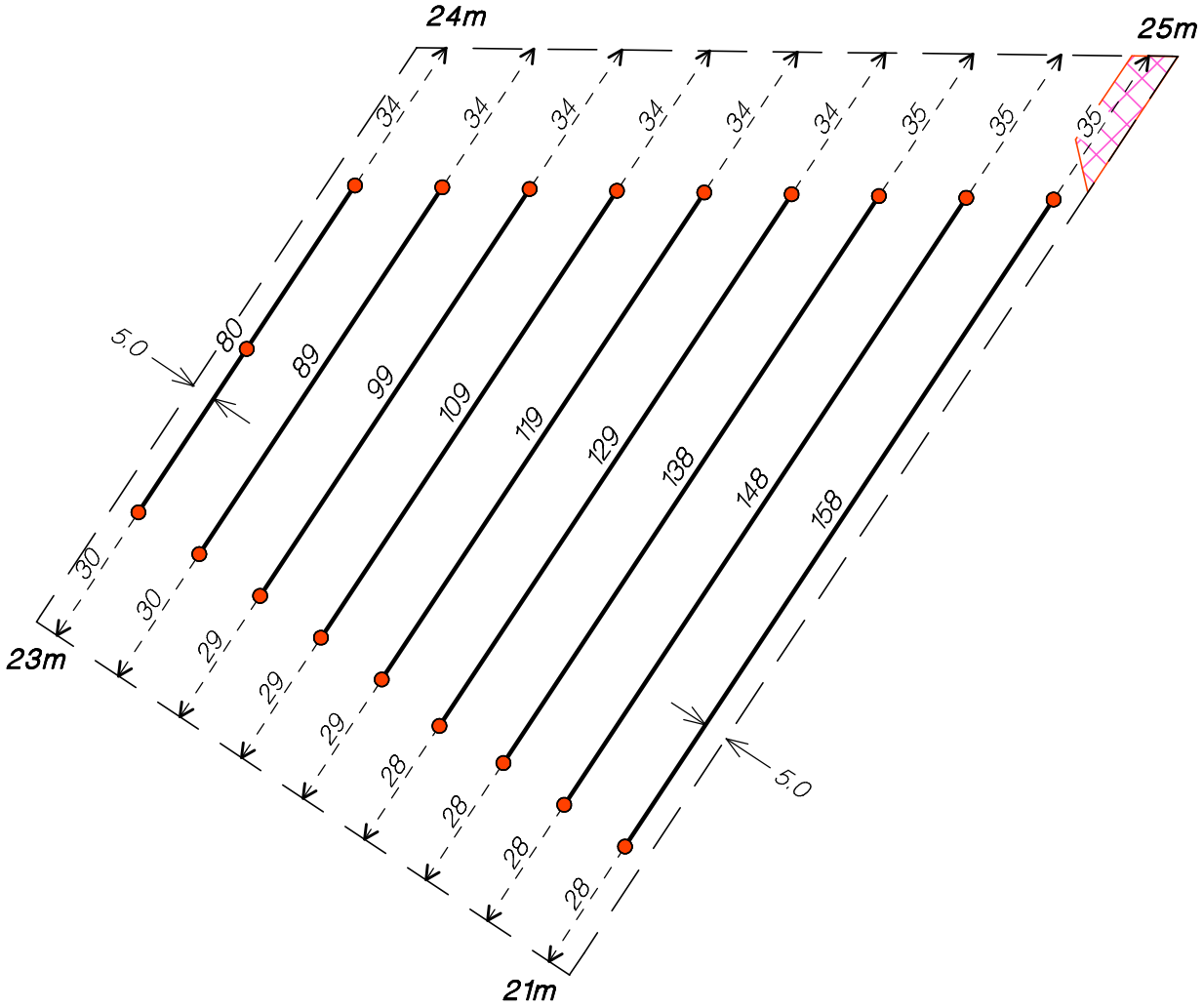
50 0 100 200 300 400 metres

Ref: MF_3102a
Date: 20 May 2024

MF_3102a

N

Tawhitinui Reach



NOTE:
Longline Spacing = 15.0m
Backbone Length = as shown
Total Longlines = 9
Total Backbone Length = 1069m
Warp Surface Loss = 28m - 35m
Warp Ratio = 1.5:1 approx

REFERENCE
- Orange Float
- Anchor
- Anchor Warp
- Backbone
- Growing Structures Exclusion Area

Ref: MF_3102a
Date: 20 May 2024

Structure Layout
Proposed Relocation of 8645
Rams Head, Tawhitinui Reach

SCALE 1:1,500

25 0 25 50 75 100m

Appendix D: Proposed Consent Conditions

PROPOSED CONSENT CONDITIONS

4.

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To: Marlborough District Council
PO Box 443
Blenheim 7240

MARLBOROUGH DISTRICT COUNCIL

ISO 9001:2008
Document Number:
RAF0010-CI1921

SUBMISSION ON APPLICATION FOR A RESOURCE CONSENT

1. Submitter Details

Name of Submitter(s) in full .....

Electronic Address for Service *(email address)* .....

Postal Address for Service *(or alternative method of service under section 352 of the Act)* .....

.....

.....

Primary Address for Service *(must tick one)*

Electronic Address *(email, as above)* ☐ or, Postal Address *(as above)* ☐

Telephone *(day)* ..... Mobile ..... Facsimile .....

Contact Person *(name and designation, if applicable)* .....

.....

2. Application Details

Application Number U.....

Name of Applicant *(state full name)* .....

Application Site Address .....

Description of Proposal .....

.....

.....

3. Submission Details *(please tick one)*

I/we support all or part of the application ☐

I/we oppose all or part of the application ☐

I/we are neutral to all or part of the application ☐

☐ I am a trade competitor for the purposes of section 308B of the Resource Management Act 1991

☐ I am directly affected by an effect of the subject matter of the submission that:

a) adversely affects the environment; and

b) does not to relate to trade competition or the effects of trade competition

☐ I am NOT directly affected by an effect of the subject matter of the submission that:

a) adversely affects the environment; and

b) does not to relate to trade competition or the effects of trade competition

☐ I am NOT a trade competitor for the purposes of section 308B of the Resource Management Act 1991

The specific parts of the application that my/our submission relates to are *(give details, using additional pages if required)*

The reasons for my/our submission are *(use additional pages if required)*

The decision I/we would like the Council to make is *(give details including, if relevant, the parts of the application you wish to have amended and the general nature of any conditions sought. Use additional pages if required)*

4. Heard in Support of Submission at the Hearing

I/we wish to speak in support of my/our submission ☐

I/we do not wish to speak in support of my/our submission ☐

OPTIONAL: Pursuant to section 100A of the Resource Management Act 1991 I/we request that the Council delegate its functions, powers, and duties required to hear and decide the application to one or more hearings commissioners who are not members of the Council. *(Please note that if you make such a request you may be liable to meet or contribute to the costs of commissioner(s). Requests can also be made separately in writing no later than 5 working days after the close of submissions.)* ☐

5. Signature

Signature ..... Date .....

Signature ..... Date .....

6. Important Information

- Council must receive this completed submission before the closing date and time for receiving submissions for this application. The completed submission may be emailed to mdc@marlborough.govt.nz.
- The closing date for serving submissions on the consent authority is the 20th working day after the date on which public or limited notification is given. If the application is subject to limited notification, the consent authority may adopt an earlier closing date for submissions once the consent authority receives responses from all affected persons.
- You must serve a copy of your submission on the applicant as soon as is reasonably practicable after you have served your submission on the consent authority.
- Only those submitters who indicate that they wish to speak at the hearing will be sent a copy of the section 42A hearing report.
- If you are making a submission to the Environmental Protection Authority, you should use form 16B.
- If you are a trade competitor, your right to make a submission may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.
- If you make a request under section 100A of the Resource Management Act 1991, you must do so in writing no later than 5 working days after the close of submissions and you may be liable to meet or contribute to the costs of the hearings commissioner or commissioners. You may not make a request under section 100A of the Resource Management Act 1991 in relation to an application for a coastal permit to carry out on activity that a regional coastal plan describes as a restricted coastal activity.
- Please note that your submission (or part of your submission) may be struck out if the authority is satisfied that at least 1 of the following applies to the submission (or part of the submission):
  - it is frivolous or vexatious;
  - it discloses no reasonable or relevant case;
  - it would be an abuse of the hearing process to allow the submission (or the part) to be taken further;
  - it contains offensive language;
  - it is supported only by material that purports to be independent expert evidence, but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.

7. Privacy Information

The information you have provided on this form is required so that your submission can be processed under the Resource Management Act 1991. The information will be stored on a public file held by Council. The details may also be available to the public on Council's website. If you wish to request access to, or correction of, your details, please contact Council.