



RESOURCE MANAGEMENT ACT 1991

Decision of Marlborough District Council

RESOURCE CONSENT: U170288
APPLICANT: Talley's Group Limited
LOCATION: South of Opihi Bay, Port Underwood

THIS IS THE DECISION ON THE APPLICATION FOR RESOURCE CONSENT:

To establish and operate a 16.87 hectare marine farm (site number 8640) south of Opihi Bay in Port Underwood using conventional longline techniques, comprising the amalgamation, reconfiguration and 6.87 hectare extension of existing marine farm sites 8417 (5.0 hectares) and 8418 (5.0 hectares).

DECISION: **Granted**

RESOURCE CONSENT ISSUED:

Coastal Permit

Pursuant to sections 34A(1) and 104B and after having regard to Part 2 matters and sections 104 and 104D of the Resource Management Act 1991, the Marlborough District Council **grants** resource consent to establish and operate a 16.87 hectare marine farm (site number 8640) south of Opihi Bay in Port Underwood using conventional longline techniques, comprising the amalgamation, reconfiguration and 6.87 hectare extension of existing marine farm sites 8417 (5 hectares) and 8418 (5 hectares), subject to conditions imposed under section 108 of the Resource Management Act 1991 shown on the attached Certificate of Resource Consent.

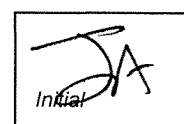
Reasons

Proposal

1. Talley's Group Limited (applicant) seeks resource consent to establish a 16.87 hectare marine farm south of Opihi Bay in Port Underwood. The proposed farm would comprise the amalgamation, reconfiguration and 6.87 hectare extension to two existing 5.0 hectare marine farms (numbers 8417 and 8418) at the site.
2. The key elements of the proposal can be summarised follows:
 - a) Thirty-nine conventional longlines arranged in two blocks with backbone lengths varying from 162 metres to 190 metres, with a total backbone length of 6796 metres (this is a 20 percent increase on the 5658 metres of existing consented backbones across sites 8417 and 8418);
 - b) The cultivation and harvest of the following species:
 - i. Green shell mussel (*Perna canaliculus*);
 - ii. Blue shell mussel (*Mytilus edulis*);
 - iii. Dredge Oyster (*Tiostrea chilensis*);
 - iv. Scallop (*Pecten novaezelandiae*);
 - v. Paua (*Haliotis iris*, *Haliotis australis*, *Haliotis virginea*)And the following seaweed and algae:
 - vi. *Macrocystis pyrifera*;
 - vii. *Ecklonia radiata*;
 - viii. *Gracilaria spp*;
 - ix. *Pterocladia lucida*;
 - x. *Undaria pinnatifida*;
 - xi. *Asparagopsis armata*.
 - c) The taking and discharge of coastal water and biodegradable, organic waste matter associated with harvest;
 - d) Disturbance of the seabed by anchoring devices.
3. Inherently the activity of marine farming would require vessels to regularly visit the farm for seeding, maintenance and harvesting activities.
4. The existing consents MFL221, U090784, MFL 233 and U100121 for the two existing 5.0 hectare farms are proposed to be surrendered if this current application is granted.

Background – The Receiving Environment

5. The application site is located near the mouth of Opihi Bay, towards the head of Port Underwood. Resource uses in the locality primarily comprise plantation forestry, marine farming, scattered residential/holiday development and water-based recreation.



6. There are neighbouring marine farms located about 50 metres to the north (site 8416) and south (site 8419) of the boundaries of the proposed farm. The nearest dwelling is located about 900 metres away to the north, backing the head of Opihi Bay.
7. Excluding the proposed extension, the west arm of Port Underwood contains about 54 hectares of marine farming space. At 6.87 hectares, the proposed extension represents a 12.7 percent increase to the existing marine farming space in the west arm of the Port. At 16.87 hectares, the overall proposed farm if approved would comprise about 28 percent of the 61 hectares of marine farming space in the west arm of the Port.

Background – Consent History

8. Marine farm site 8417 was originally established as a 3.0 hectare farm sometime following the grant of marine farm licence MFL221 on 19 April 1982. The farm was subsequently extended by 2.0 hectares seaward under consents U951217 issued 22 October 1997 and MPE370 issued 6 November 1998. These latter two consents were replaced by U090784 granted on 6 January 2010. The existing consents for site 8417 are due to expire on 31 December 2024. Those existing consents allow for up to 21 longlines with a combined backbone length of 3450 metres across a 5.0 hectare area.
9. Marine farm site 8418 was originally established as a 3.0 hectare farm sometime following the grant of marine farm licence MFL233 on 1 October 1982. The farm was subsequently extended by 2.0 hectares seaward under consents U000106 issued 23 October 2002 and MPE867 issued 11 December 2006. These latter two consents were replaced by U100121 granted on 12 April 2010. The existing consents for site 8418 are due to expire on 31 December 2024. Those existing consents allow for up to 18 longlines with a combined backbone length of 2208 metres across a 5.0 hectare area.

The Hearing and Appearances

10. Councillors Mr J Arbuckle (Chairperson), Mr D Oddie and Mrs C Brooks heard the application at a hearing on Thursday 28 September 2017. The following appearances were recorded:

Applicant

- Mr K Solly, Applicant
- Mr Q Davies, Legal Counsel
- Mr R Davidson, Marine Biologist
- Mr R Sutherland, Resource Management Planner
- Dr N Hartstein, Oceanographer
- Mr J Hunt, Landscape Architect

Submitter

- Mr K Roush, Port Underwood Association

Council

- Mr P Johnson, Resource Management Officer
- Dr S Ulrich, Senior Environment Scientist - Coastal
- Ms A McMillan, Resource Management Hearings Facilitator

Procedural Matters

Site Visit

11. A site visit by boat was undertaken by the Committee on Tuesday 12 September 2017. Photographs were taken to assist the Committee in their decision-making.

Submissions

12. A late submission was received from Te Rūnanga a Rangitāne o Wairau (22 June 2017, two days following the close of the submission period) neither opposing nor supporting the application (neutral) and wishing to be heard at a hearing. Te Rūnanga a Rangitāne o Wairau subsequently withdrew their right to be heard.
13. The Committee raised the matter at the hearing and the applicant acknowledged the late submission and accepted that it be included in the process.

Proposed Marlborough Environment Plan

14. The weighting to be given to the Proposed Marlborough Environment Plan (PMEP) and the operative Marlborough Sounds Resource Management Plan (MSRMP) is not specified by the Resource Management Act 1991 (RMA) and the weighting applied by decision makers is an exercise of discretion.
15. The Committee noted the PMEPEP was notified on 9 June 2016 and received approximately 1270 submissions. The further submission period closed in June 2017. Hearings for all submissions to the PMEPEP are due to commence at the end of November 2017.
16. Relevant matters the Committee has taken into consideration:
 - a) The extent to which the proposed measure has been exposed to independent decision making;
 - b) Possible injustice; and
 - c) The extent to which a new measure may implement a coherent pattern of objectives and policies in a plan.
17. In recent cases, the Environment Court has indicated that there are situations where it would be more appropriate to give more weight to the proposed plan, such as if the proposed plan is considered to be more in accordance with Part 2 of the RMA. Examples of this occurred in *Mapara Valley Preservation Society Inc v Taupo District Council EnvC (A083/07)* and *Auckland Regional Council v Waitakere Council (A065/08)*.
18. The Committee is satisfied that the operative MSRMP is in accordance with Part 2 of the RMA for the purposes of this application.
19. Significantly, the marine farming provisions of the operative plan (MSRMP) are still under review and, as such, the PMEPEP contains no provisions which manage marine farming directly (Chapter 16 of PMEPEP). Given these factors the Committee determined to give little weight to the PMEPEP in reaching its decision on U170288.
20. In conclusion, the Committee has considered the operative MSRMP for the relevant regional rules, all policies and objectives; and the PMEPEP for the regional rules with little weight overall given to the policies and objectives relevant for marine farming.

Principal Issues

21. Section 104(1)(a) of the RMA states that when considering an application for resource consent and the submissions received, the consent authority must, subject to Part 2 of the RMA, have regard to any actual and potential effects on the environment of allowing the activity. The submitted application provides a reasonably thorough assessment of most of the effects likely to arise from the proposed marine farm. These effects can be grouped under the following key headings:
- Ecological Values
 - Amenity Values
 - Natural Character, Landscape Values, and Cumulative Effects
 - Navigational Safety, Public Access and Recreation Values
 - Positive Effects

Planning Provisions

22. In considering this application, the Committee has had regard to the matters outlined in sections 104, 104B and 104D of the RMA. In particular, the Committee has had regard to the relevant provisions of the MSRMP.

Marlborough Sounds Resource Management Plan Zoning

23. The application site (marine farm) falls entirely within the Coastal Marine Zone 2 (CMZ2) as defined by Map 64 of Volume 3.

Relevant Overlays

24. The land backing the bay is split into Rural 1 and Conservation zones. There are no identified ecologically significant marine sites in the immediate area
25. The application site is not characterised by any outstanding natural feature and landscape, or outstanding coastal natural character PNEP or MSRMP overlays.

Activity Status

26. The proposed farm extends beyond 200 metres (385 metres) from the mean low water mark in its outer boundaries, and parts are located closer than 50 metres from mean low water mark on the inshore boundaries. It is therefore a Non-Complying Activity under Rule 35.5 of the MSRMP.
27. Overall, the application has been assessed by the Committee as a **Non-Complying Activity**.

Notification and Affected Parties – Sections 95 and 95B of the Resource Management Act 1991

Affected Parties

28. No affected party approvals were provided with the application or gained through the process.

Notification

29. The application was publicly notified on 22 May 2017, with a period for submissions (20 working days) closing at 5:00 pm on 20 June 2017. At the close of the public notification period the following submissions were received from the following persons:
- a) Timothy Johnston - Oppose, does not wish to be heard
 - b) Sarah Johnston - Oppose, does not wish to be heard
 - c) Benjamin Johnston – Oppose, does not wish to be heard
 - d) Clive Barker – Neutral, does not wish to be heard
 - e) Underwood Farm Limited – Oppose, does not wish to be heard
 - f) Port Underwood Association Incorporated – Oppose, wishes to be heard
 - g) Keith Black – Oppose, wishes to be heard
 - h) Maureen and Ray Joyce – Oppose, does not wish to be heard
 - i) Te Rūnanga a Rangitāne O Wairau – Neutral, does not wish to be heard
30. Keith Black formally withdrew his submission on 14 August 2017.
31. The following key points/issues of relevance were raised in the submissions:
- a) The proposal would restrict even further the public recreational opportunities such as fishing, water-skiing and general boating/sightseeing in Port Underwood.
 - b) The further encroachment of the farms out into Port Underwood will exacerbate the damage already done to the aesthetic values of the Port.
 - c) The presence of mussel farms has led to a dangerous amount of loose ropes and floats in the Port.
 - d) The area is already congested with marine farms; the proposal will increase that congestion.
 - e) The proposal will detract from the scenic values of the Port and will mean that the farms are increasingly visible from the northern and western shores where a number of families have baches.
 - f) A carrying capacity study is required of the ecosystem of the area.
 - g) Over exploitation of the microalgae will negatively impact the food web.
 - h) The farm boundaries should be redrawn so that the farm does not extend more than 200 metres from the mean low water mark.
 - i) The impact of the proposed farm will be more than inconsequential.
 - j) The amenity values of the area will be diminished.
 - k) The proposal would have an effect on the infrastructure and roading safety in the Port Underwood area, by increasing the volume of product transported by heavy vehicles over the Port Underwood Hill Road.
 - l) The proposal would result in a thick band of high density mussels filtering out nutrients before they can reach the inshore areas of cobble habitat.
 - m) The proposal would set an undesirable precedent for incremental creep of farms further from shore.
 - n) The proposal would effectively take all the available water space within the bay.
 - o) The proposed farm would continue to adversely modify ecological systems of the site and adjoining coastline, with a consequent reduction in mahinga kai.

- p) There is insufficient information on the methodology, risk or impact of farming scallop or algae at the site.
- q) The industry should work with the iwi of the area on a restoration project to reintroduce taonga species to the area.
- r) A remediation plan for the benthic environment should be developed based on independent monitoring.

Obligation to Hold a Hearing

- 32. One submitter wished to be heard and therefore a hearing of the application was required pursuant to section 100(b) of the RMA.

Environmental Effects - Discussion

Resource Management Act 1991

- 33. Section 104(1)(a) of the RMA states that when considering an application for resource consent and the submissions received, the consent authority must, subject to Part 2 of the RMA, have regard to any actual and potential effects on the environment of allowing the activity.
- 34. Sections 2 and 3 of the RMA set out the definitions of certain terms, including 'environment' and 'effect', both of which are widely defined. The term 'effect' includes a future effect and a potential effect of high probability. The term 'environment' includes people and communities and all natural and physical resources.

Ecological Values

- 35. The section 42A reporting officer described "in broad terms, marine farms occupy the water column with growing and support structures; alter the natural movement of seawater; consume phytoplankton and zooplankton; increase sedimentation rates on the seabed; and modify the biological processes and species composition beneath and adjacent to farms. The significance of such changes largely depends on the various properties of the particular receiving environment.
- 36. In response to submitter concerns requiring a carrying capacity study to determine if the impacts of the farm extensions will 'over exploit the micro algae', Dr Hartstein replied that "I would point out that a number of carrying capacity studies of the nearby Pelorus and Queen Charlotte Sounds have been undertaken, including at least three different numerical modelling studies [see paragraph 18]. None of these to my knowledge have indicated that there is a significant long term nutrient/phytoplankton loss due to mussel farming on the wider ecosystem or as one submitter calls it the 'wider environment'. Mussel farming in these Sounds appears to be in places as least as dense as that that has existed in Port Underwood for a number of years. Given the large number of existing farms and the length of time these farms have been in production I do not see how a relatively small extension (compared to the total farmed area) will cause a sudden crash in the phytoplankton levels across Port Underwood. Based on a number of previous studies I expect that phytoplankton depletion will be localised to the farm and close to the farm lease."
- 37. The Port Underwood Association submitted that the farm will "filter nutrients out of the water column before it can reach the inshore areas of cobble, areas that are considered important in the overall ecology of the marine environment". Dr Hartstein said "in my opinion, as explained elsewhere in my evidence, any loss of phytoplankton due to consumption will be localised around the farm, and levels will recover quickly away from the farm".

38. Dr Hartstein concluded “given the farm location, size of farm and spacing between long lines, I am expecting the farm to have little impact on current flow within Port Underwood as a whole. It will have a local impact both in terms of current flow and phytoplankton density (and subsequently local farm production), which will need to be managed carefully by the farm in terms of stocking/harvesting”.
39. Mr Davidson highlighted that “for parchment worms to be considered a “tubeworm bed” or biogenic habitat, there is little guidance in the literature. In the DOC (1995) guideline for biological surveys for marine farms it suggests that an increased level of survey would be required if ‘other tubeworms’ were recorded ‘>10 percent cover in a distinct zone’.” In evidence Mr Davidson provided an assessment of estimated percentage covers for parchment worms. “Percentage cover ranges from 0 to 30 percent, however, most photos = zero. A total of five photos are 10 percent or greater. The mean cover for parchment worms in this area is 5.5 percent cover. Based on these data, I consider it unlikely that the area would be regarded as a tubeworm bed”.
40. “Based on my experience investigating many areas in Port Underwood and the wider Sounds, I do not consider the abundance of parchment worms at this site to be sufficiently high to warrant further survey or future monitoring. Further, the apparent increase in their abundance over the period when farms were installed suggests the extension may facilitate their establishment around any newly farmed areas.”
41. In its evidence circulated and discussed at the hearing the Port Underwood Association stated “the community has had concerns for the diminishing marine productivity of Port Underwood for a number of years. One aspect of this diminishment is in the number and variety of fish and other species present in the Port. For those who are familiar with the Port area this decrease in quantity and species has corresponded to the rise in the amount of space being used for marine farming.” To further its case the Association quoted excerpts from the MPI publication, *Literature Review of Ecological Effects of Aquaculture – Cumulative Effects*. In particular sections 12.1; 12.2.1 and 12.2.4.
42. The Committee noted this observation but through the hearing did not acquire evidence which attributed the granting of the proposed farm to having a direct cause and effect to the diminishment of the number and variety of fish species in Port Underwood.
43. In response Mr Davidson referred to the contents of the 2016 Ministry for the Environment (MfE) report outlining the state of New Zealand’s marine environment which identified a number of issues of concern, the key threat being global greenhouse gas emissions resulting in ocean acidification and warming.
44. Regarding any effect on larger marine mammals, Mr Davidson commented “Hector’s dolphins are occasionally seen in the Port, but most sightings have been recorded between the Wairau and Awatere River Mouths (DuFresene and Matlin, 2009). Other marine mammals may visit the area but their use is likely temporary and uncommon. Large whales occasionally enter the Port.
45. Mr Davidson acknowledged “there are two issues in relation to this overlap with marine mammal areas; a) dolphin entanglement, and b) dolphin exclusion”. “It is unknown if this species feeds within or under mussel structures.” “If feeding is hindered the important consideration is the scale of the loss. The area of the proposed extension represents a very small part of the feeding area for this species in Cloudy and Clifford Bays. No entanglements between Hector’s dolphins and mussel farms have been documented.”

46. There was some concern from Dr S Ulrich on the survey methods, assessments and therefore conclusions that Mr R Davidson made in presenting evidence. The Committee was satisfied in this instance with the evidence put forward by Mr R Davidson (survey methods, assessments and experience) that there would not be a negative impact on or existence of parchment worms to constitute a valuable biogenic habitat in the proposed farm area.

Pacific Oysters

47. Mr Sutherland addressed the Te Rūnanga a Rangitāne o Wairau submission:
48. “The Te Rūnanga a Rangitāne o Wairau submission provides perceptions Rangitāne iwi have of the environment of Port Underwood over time and raises concerns over variety of species potentially to be farmed. All of the species listed are similar to other consents in the Port and indeed oysters, paua, and blue mussels are on the existing consents.
49. Although Rangitāne were not present at the hearing to present their submission, it was taken as read and discussed. As a result of discussion the applicant volunteered to remove the cultivation and harvest of Pacific Oysters (*Crassostrea gigas*) due to perceived biosecurity concerns from Rangitāne.
50. The Committee concluded that the subject site is suitable for mussel farming and is unlikely to affect ecologically significant sites, if granted, and overall the adverse effects on the benthic environment would be minor.

Amenity Values

51. The RMA defines amenity values as being *“those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”*.
52. The section 42A reporting officer assessed “the amenity values of the application site to include its boat-access only location; the moderately steep pine-clad hillsides backing the site; the absence of residential development; the fishing and boating opportunities; and the public open water space and associated freedom of movement through the area. While the existing ribbon of farms along the coastline, including existing sites 8417 and 8418 until 2024, have a significant bearing on the overall amenity values of the immediate area, the proposal constitutes a 20 percent increase in surface structures and as such seems likely to further erode some of the qualities and characteristics of the area that contribute to people’s appreciation of the embayment’s pleasantness, aesthetic coherence, and cultural and recreational attributes”.
53. Mr Roush for the Port Underwood Association submits that “amenity values in this area will be neither maintained nor enhanced”.
54. “We see this application as an extension added on top of previous extensions at the site which just goes too far and will only promote the desire for more applications for additional extensions on the surrounding farms. This promotes a never ending cycle of expansion which is detrimental to the amenity values of this part of Port Underwood”.
55. Cumulative effects are addressed further below.

56. Mr Hunt assessed “the visual amenity effects that are likely to result from this proposal have a limited audience, and these will primarily be from residential/holiday homes located across the bay from the application site, along with recreational vessels which visit the head of Opihi Bay. While the elevated view from dwellings and Tumbledown Bay Road are at a distance of over 1.0 kilometre to the application site, the proposal will be seen in conjunction with the string of adjacent marine farming activities. Although the application has a larger footprint than the previously consented sites 8417 and 8418, there will still be a 50 metre gap between the two proposed blocks, and the overall width of the amalgamated sites will not increase”.
57. Mr Hunt pointed out that “the ability to see the application site is not in question, rather, it is the magnitude of the proposed marine farm and resulting effect on the character of the receiving environment that needs consideration. Due to the low lying nature of the longline structures, and presence of surrounding aquaculture activities, the visual amenity of the Opihi Bay area is considered to have been maintained. While a site visit has not been undertaken to the private land of residential/holiday home owners, it is acknowledged that individuals can have vastly different opinions on the potential visual impact of marine farming activities. However, it is considered that the resulting adverse effect on the visual amenity of this modified environment will be low”.

Landscape and Natural Character Values

58. The MSRMP does not identify the subject site or locality as being an Area of Outstanding Landscape Value.
59. The nearest such area is the land backing Opihi Bay, over 500 metres to the north of the site. Similarly, the PMEP does not identify the application site as part of an Outstanding Natural Feature or Landscape, the nearest such landscape starting over 3.0 kilometres away to the west, facing into Cook Strait.
60. The section 42A reporting officer suggests that nonetheless, the land/seascape of the immediate area retains some biophysical values (indented, rocky coastline), perceptual values (open water space and unbuilt shoreline) and associative values (archaeological sites). The proposed marine farm would occupy the open water space with buoyed backbones and thereby have some individual adverse effect and, in conjunction with the existing ribbon of marine farms, also have some cumulative adverse effect on the perceptual values of the land/seascape of the west arm of Port Underwood.
61. In the opinion of Mr Hunt “in relation to the natural surrounds of Port Underwood it is considered that the underlying topography, which exhibits the unique Marlborough character, is actually what is valued. The landscape has historically (and presently) been significantly modified by productive activities, yet the land form does retain a scenic quality. Mr Hunt further concludes that “it is my opinion that this proposal will not diminish the existing amenity values (including scenic/aesthetic) of the area in any perceptible way, due to the existing level of modification and the somewhat celebrated heritage as a working landscape. This area has a rich history as a working Port, as it is the first sheltered Port that a vessel would have come to after leaving Lyttleton Harbour, some 300km further south.”
62. Mr Hunt observed that “lastly, the impression gained from reading the submissions is that the common theme of opposition is more to do with the principle of ‘expansion’ rather than this specific application.

Cumulative Effects

63. The Committee understands cumulative effects and consideration has been given to the notion of this application being 'just another extension', and 'where does it stop?', also known as 'incremental planning creep'.
64. Mr Roush stated "we submit that the size and location of the proposed extension will have a negative effect on the amenity value of this area of Port Underwood as perceived by many people. This application is not an insignificant addition to the amount of marine farms in this area".
65. "The additional lines, especially when lined up with farms on either side, creates the impression of one large massive farm where the multiple farms to the north and south are merged into one large unnatural, commercial intrusion".
66. "This application aligns with the adjacent farms and creates a straight edged barrier which is totally at odds to the character of the Port. There comes a point when the size and range of commercialisation over-dominates the naturalness of sea and coast."
67. "We do not agree with Mr Hunt's evaluation in paragraph 35 that states it is difficult to discern the overall area of the farm and its distance from shore. When on the water, the steeply rising coastline gives a very good indication of how far away the outer edge of the farm is from it and, as previously mentioned, aligning the seaward edge of multiple farms increases the sense of largeness of the combined mass."
68. Mr Hunt addressed cumulative effects on landscape and natural character to be Very Low and the effects on cumulative visual amenity to be Low. "This is because the greatest visual impact is likely to occur in close proximity to the application site, where the scale of the activity is most apparent. However, in order to get this close, vessels will have passed by the adjacent marine farms at a similar distance. The alignment of the seaward longline complements the existing extent of the other marine farms, so that vessels will not have to adjust their course to the new alignment."
69. Mr Roush "as mentioned, Sounds communities have for years brought up the detrimental aspect of sedimentation which is a cumulative effect. It has finally been acknowledged after scientific study that it is a problem. We wonder how long it will be before adequate study is made to clarify all of the cumulative mussel farm impacts. A precautionary approach demands that it is time to stop allowing large increases in mussel farming space when we know that our knowledge is insufficient to accurately assess the effects of more and more mussel farming".
70. The Committee noted the wider Port Underwood as having an established presence of marine farming and considered that the proposed farm (16.87 hectares total; 6.87 extension from existing farms) would not overall degrade the natural character, landscape and amenity values.
71. In light of a thorough assessment of the environment effects, consideration to all relevant planning documents and technical reports the Committee was satisfied that the granting of the farm would be consistent with and not contrary to evidence presented or the planning framework.
72. Overall, the Committee understands that it is a highly modified environment, land and sea. In considering all the evidence provided from expert witnesses the Committee is of the opinion that due to the relatively small and infilling nature of the proposed marine farm in the localised area and Port Underwood context, the effects of the proposal on amenity values, landscape and natural character values will be maintained.

Navigational Safety, Public Access and Recreation Values

Navigational Safety

73. The section 42A reporting officer noted the Council Harbourmaster has reviewed the application and advised that he has no comments to make. In the event that consent is granted, the Harbourmaster will need to determine the appropriate lighting and marking required pursuant to the Maritime Transport Act 1994.
74. It was highlighted by the section 42A reporting officer that due to the distance from Cook Strait, the application site is unlikely to be subject to strong tidal flows or large waves. Even so, in the interests of the safety of users of Port Underwood the farm needs to be appropriately designed, constructed and maintained. It was suggested that consent conditions should be imposed accordingly.
75. Mr Roush is concerned with "the increase size is a deterrent to boaties to enter such a large structure because it is not a pleasant, enjoyable surrounding as one would be seeking on a boating trip and it gives a sense of commercial privatisation to a large portion of the water space and coastline."
76. No other direct comments were made during the hearing from the submitter regarding navigational safety.
77. In light of the evidence presented at the hearing the Committee is not concerned that the effects of the application will create a navigational safety issue, but has imposed a standard suite of conditions to maintain navigational safety.

Public Access and Recreation Values

78. An assessment of public access and recreation values was described by the section 42A reporting officer as "the location and physical properties of the application site make it likely to be used for recreational boating, fishing and associated casual anchoring. Several of the opposing submitters are landowners in the Port Underwood area and have indicated that the proposed extension would further encroach on water space which they value for access and recreation. The proposed farm structures would constrain the open water space available for boating in the area and would push the 5-knot speed-limited area further from shore. However, vessels would still be able to pass through the farm site between the longlines".
79. Mr Sutherland in response to the section 42A reporting officer assessing the application as being contrary to New Zealand Coastal Policy Statement (NZCP) policy 6(2)(b), wrote "the proposed farm is between other established marine farms. While public access will be restricted to travel lay parallel with the proposed lines, the presence or absence of the farms will have little impact on the type of recreation that can be undertaken in the Bay. Furthermore, while some forms of recreation might be hindered at the particular location where the farms are situated, fishing which targets marine farms would be enhanced at that location."
80. Mr Solly stated "I have observed water skiing in the head of Opihi Bay and know that people set nets and also inside of farms where cobble or reef habitat is present. Port Underwood is not known for cod to the same extent as Pelorus Sound. However, people do tie up to farms to fish. From my experience, most of the recreational boating activity takes place in the outer reaches of the Port or along Cook Strait shore. The western side of The Tongue can be windy as it gets northwest downdraft coming over the top of the ridge between Queen Charlotte Sound and the Port. This area can be choppy and unpleasant as compared to the protection offered by the eastern side of The Tongue".

81. Mr Roush stated that the “impacts on the land transport network often focus on land use activities and subdivision. However, in the Marlborough Sounds there are well-established marine farming and forestry industries that have flow-on effects for the Sounds road network, especially when harvested produce is transported to processing facilities on narrow and windy roads, for example from Port Underwood to Picton”.
82. Mr Sutherland outlined the farm “harvest of 3500 tonne equates to 145 truckloads per year, or say three loads a week. At 5000 tonnes that equals to 210 truckloads or 4.2 truckloads per week. This application would be responsible for less than 10 percent of those truck movements. Marlborough Roads and the Council have a policy in place to limit tonnage over the Port Underwood Road to 50,000 tonnes per year. The forestry industry has in the past been a major user of the Port Underwood Road”.
83. There was general concern expressed from submitters of debris from mussel farming. Ms Johnston wrote: “The Port is used for recreational purposes by many people – residents and holiday makers alike. Over time it has become apparent that the presence of mussel farms are actually becoming dangerous as when boating it is notice that often there are loose ropes and floats around the Port”...”I feel that with more and more mussel farms the situation is only going to get worse.”
84. Mr Solly commented that “the MFA [Marine Farming Association] Environmental and Compliance Committee are responsible for setting, implementing and monitoring environment and compliance standards in the marine farming industry. This includes running a comprehensive beach debris programme, staff training and marine farm compliance, i.e. lights, orange floats and noise”.
85. The Committee is of the opinion that public access and recreation values will be maintained inshore and around the proposed farm, in granting the proposal.

Positive Effects

86. Part 17 of the submitted application indicates an average return to the grower of \$550 per tonne of mussels and an annualised production of about 17 tonnes per line. Based on such figures the potential return to the grower from the proposed 39 longlines may be around \$360,000 per annum.
87. The section 42A reporting officer explained the “positive economic effects would also result to those who are employed to service and supply the farm and to harvest, process and export the products therefrom”.
88. The Port Underwood Association commented “the applicants have listed the benefits of this application which are mainly financial returns to the owners and some industry workers. Much of the information is based on the cumulative wider marine farming system, and is based on the benefit of the whole country, not Port Underwood or even just Marlborough”... “We believe that is because the direct benefit to Port Underwood is negligible”.
89. The Committee agreed that the granting of the application would provide financial benefits and positive effects by way of employment and investment. The Committee noted that the positive effects would primarily be for the marine farm owners(s), and businesses associated with marine farming.

Environmental Effects Discussion – Conclusion

90. The Committee concludes that the effects of the application would not create a more than minor adverse effect on the environment; and has imposed a suite of standard conditions to ensure effects will not be more than minor.

Relevant Statutory and Plan Provisions

Resource Management Act 1991

91. Section 12 of the RMA outlines the restrictions on the use of the coastal marine area by listing activities that no person may undertake in the coastal marine area; unless expressly allowed by a national environmental standard, a rule in a regional coastal plan as well as a rule in a proposed regional coastal plan for the same region, or a resource consent.
92. Section 104(1)(b) of the RMA states that when considering the application and the submissions received, the consent authority must have regard to any relevant provisions of the NZCPS, the Marlborough Regional Policy Statement (RPS), the MSRMP and the PMP.
93. Section 104B of the RMA states that a consent authority may grant consent for a Discretionary or Non-complying Activity and may, if granted, impose conditions pursuant to section 108.
94. Section 104D of the RMA states that a consent authority may grant a resource consent for Non-Complying Activity only if it is satisfied that either; the adverse effects of the activity on the environment will be minor or the application is for an activity that will not be contrary to objectives and policies of the relevant plan (paraphrased).

New Zealand Coastal Policy Statement 2010

95. The Committee considered the purpose of the NZCPS to promote the sustainable management of the coastal environment. The policies of most relevance to the current application are outlined below:
- Policies: 6(2)(a)-(c), 6(2)(e)(i), 8, 11, 13(1), 15 (b) and 22(2).

Marlborough Regional Policy Statement

96. The MSRMP was prepared in conjunction with the RPS and, as a principal of law, has to be consistent with the provisions contained in the RPS. As the MSRMP and RPS seek similar environmental outcomes the Committee agreed that an assessment of the proposal against the MSRMP should determine whether the application is consistent with the RPS. It is therefore not necessary to repeat that assessment here.

Marlborough Sounds Resource Management Plan

97. The MSRMP (Volume One) sets out objectives and policies to promote the sustainable management of the natural and physical resources of the Marlborough Sounds area. The Committee agreed that the following objectives and policies were relevant to its consideration of the proposal:
- Chapter 2 - Natural Character: Section 2.2; Objective 1 and Policy 1.2
 - Chapter 4 - Indigenous Vegetation and Habitats of Indigenous Fauna: Section 4.3; Objective 1, Policy 1.2
 - Chapter 5 - Landscape: Section 5.3; Objective 1
 - Chapter 8 - Public Access: Section 8.3; Objective 1 and Policy 1.2

- Chapter 9 - Coastal Marine: Section 9.2.1; Objective 1 and Policies 1.1, 1.2 and 1.7, Section 9.4.1; Objective 1 Policy 1.1 and 1.9
- Chapter 19 - Water Transportation: Section 19.3; Objective 1 and Policy 1.1

Proposed Marlborough Environment Plan

98. The PME (Volume One) sets out objectives and policies to promote the sustainable management of the natural and physical resources of the Marlborough Region. The Committee considered that the following objectives and policies were relevant to its consideration of the proposal, but overall gave little weight to its decision:
- Chapter 5 - Allocation of Public Resources: Objective 5.10 and Policy 5.10.3
 - Chapter 6 - Natural Character: Objective 6.2 and Policy 6.2.7
 - Chapter 7 - Landscape: Objective 7.2 and Policy 7.2.4
 - Chapter 8 - Indigenous Biodiversity: Objective 8.1 and Policy 8.3.1 and 8.3.2
 - Chapter 13 - Use of the Coastal Environment: Objective 13.2; Policy 13.2.6
99. The Committee assessed that the proposal would:
- Contribute to the economic wellbeing of people and communities (NZCPS Policy 6(2)(a));
 - Contribute in a relatively small way to the significant economic benefits of aquaculture in the region (NZCPS Policy 8);
 - Avoid significant adverse effects on the moderate to low natural character of the immediate area (NZCPS Policy 13(b));
 - Avoid significant adverse effects on the existing seascape of the immediate area (NZCPS Policy 15(b));
 - Be unlikely to result in a significant increase in sedimentation (NZCPS Policy 22(2));
 - Preserve the existing moderate to low 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).
100. Overall, the Committee considered if the proposal was granted it would not have significant adverse effects on the surrounding environment.

Section 104D - Particular Restrictions for Non-complying Activities

101. Section 104D of the RMA states that a consent authority may grant a resource consent for a Non-Complying Activity only if it is satisfied that either; the adverse effects of the activity on the environment will be minor or the application is for an activity that will not be contrary to objectives and policies of the relevant plan (paraphrased).
102. In order for consent to be granted under section 104D of the RMA the “threshold test” must be passed by at least one limb of the test. The Committee considered that the effects of the activity on the surrounding environment will be no more than minor subject to conditions of consent; therefore, the first limb of the gateway test has been passed.
103. Out of an abundance of caution, the Committee also considered that the proposal will not be contrary to the objectives and policies of the MSRMP and therefore the second limb of the test can also be passed.

Part 2 Resource Management Act 1991

104. The Committee noted that Part 2 of the RMA sets out the purpose and principles of the RMA, being to promote the sustainable management of natural and physical resources.

105. The Committee has taken into account the relevant principles outlined in the following sections of the RMA:

- a) Section 6 - sets out matters of national importance which are required to be recognised and provided for.

Based on a full assessment and consideration of the proposal, the Committee believes that the proposed marine farm will maintain the natural character and landscape values of the locality and surrounding environment.

- b) Section 7 - sets out other matters to have particular regard to. Of relevance to this application are:

a) Section 7(b): The efficient use and development of natural and physical resources.

b) Section 7(c): The maintenance and enhancement of amenity values.

c) Section 7(f): The maintenance and enhancement of the environment.

Based on a full assessment and consideration of the proposal, the Committee believes that the proposed marine farm will be an efficient use of the CMZ2, and it will maintain the amenity values of the locality and surrounding environment.

- c) Section 8 - requires the consent authority to take into account the principles of the Treaty of Waitangi in determining the subject application.

The principles include consultation, active protection of Maori interests, partnership, reasonableness and co-operation. Notice of the application was sent to the relevant iwi as part of an agreed process; however, no concerns were directly received through this process. Later, Te Rūnanga a Rangitāne o Wairau made a submission to the notification of the application and the Committee, along with the applicant, has considered their submission accordingly.

106. The Committee considered that granting resource consent would best achieve the purpose of the RMA as presented in section 5 as it would be promoting sustainable management of the natural and physical resources of Port Underwood, and surrounding area, evident from adverse environmental effects being appropriate, and consistent with the relevant statutory and plan provisions.

107. In conclusion, the Committee grants resource consent.

Consent Duration and Lapse Date

- 108. This consent shall lapse on the date specified in the Certificate of Resource Consent in accordance with section 125 of the RMA.
- 109. This consent shall expire on the date specified in the Certificate of Resource Consent in accordance with section 123A of the RMA.

JA Arbuckle

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Chair, Hearings Committee, Marlborough District Council

19/10/2017

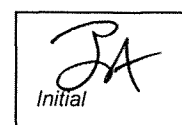
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Date

Certificate of Resource Consent

Consent Holder:	Talley's Group Limited
Consent Type:	Coastal Permit
Marine Farm No:	8640
Consent Number:	U170288
Lapse Date:	This coastal permit shall lapse three years after the date of its commencement in accordance with section 116A of the Resource Management Act 1991.
Expiry Date:	This coastal permit shall expire 20 years from the date of its commencement in accordance with section 116A of the Resource Management Act 1991.

Pursuant to sections 34A(1) and 104B and after having regard to Part 2 matters and sections 104 and 104D of the Resource Management Act 1991, the Marlborough District Council **grants** resource consent to establish and operate a 16.87 hectare marine farm (site number 8640) south of Opihi Bay in Port Underwood using conventional longline techniques, comprising the amalgamation, reconfiguration and 6.87 hectare extension of existing marine farm sites 8417 (5.0 hectares) and 8418 (5.0 hectares), subject to the following conditions imposed under section 108 of the Resource Management Act 1991.

1. Notwithstanding its commencement, this permit shall not take effect until MFL221, U090784, MFL233 and U100121 have been surrendered in writing to the Compliance Manager Marlborough District Council.
2. 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.
3. Only any one or more of the following species may be farmed:
 - a) Green shell mussel (*Perna canaliculus*)
 - b) Blue shell mussel (*Mytilus edulis*)
 - c) Dredge Oyster (*Tiostrea chilensis*)
 - d) Scallop (*Pecten novaezelandiae*)
 - e) Paua (*Haliotis iris*, *Haliotis australis*, *Haliotis virginea*)And/or the following algae species:
 - f) *Macrocystis pyrifera*
 - g) *Ecklonia radiata*
 - h) *Gracilaria spp*
 - i) *Pterocladia lucida*
 - j) *Undaria pinnatifida*
 - k) *Asparagopsis armata*



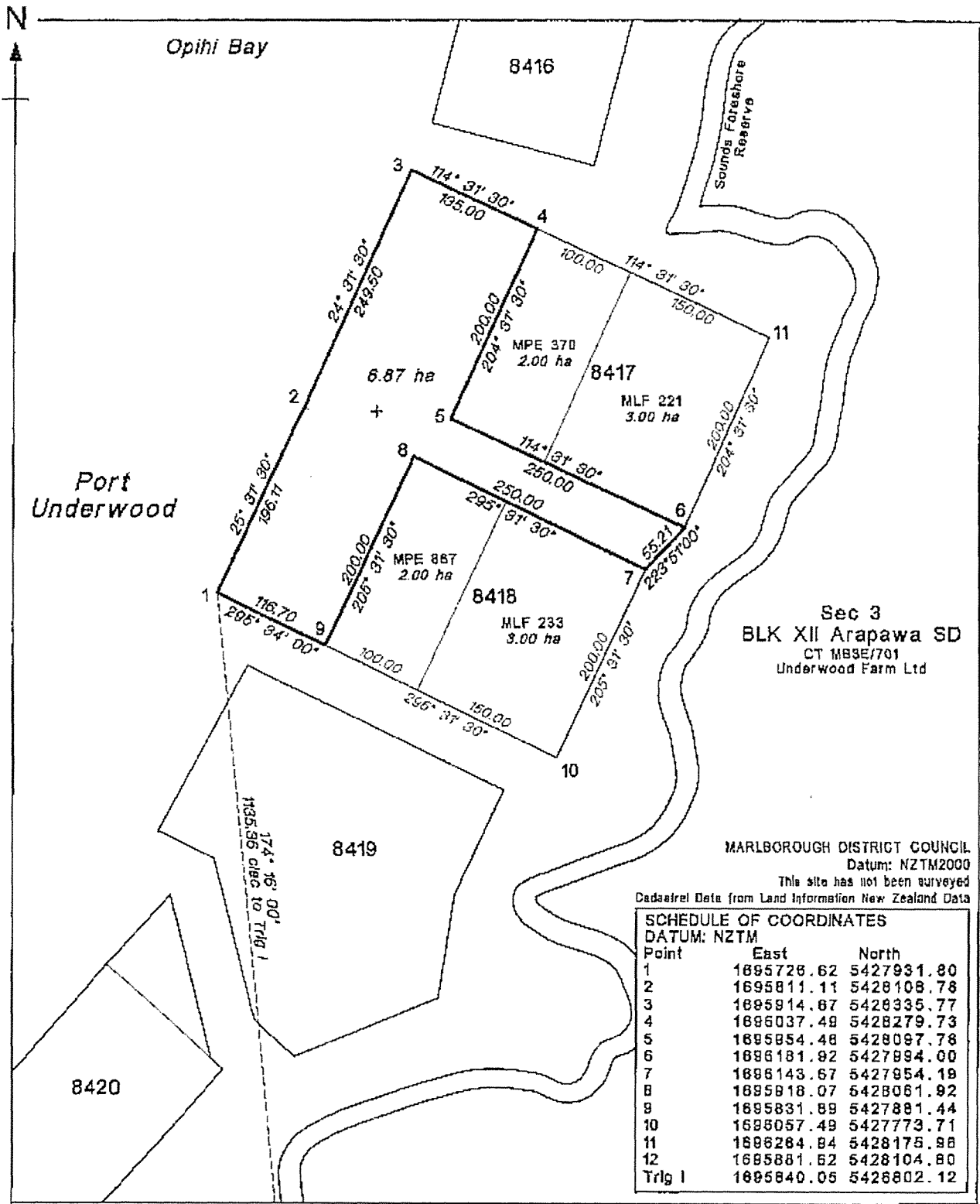
4. Without restricting the consent holder from reasonably undertaking the activities authorised by this resource consent, the consent holder must not undertake the activities in such a way that would effectively exclude the public from the permit area.
5. There shall be no feed artificially introduced into the marine farm unless a specific coastal permit for discharge is firstly obtained.
6. The structures authorised by this consent must be wholly within the 16.87 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.
7. 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.
8. 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 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 6 and 7 above.
9. The type, design, functionality and placement of marine farm lighting and marking shall be as approved by the Harbour Master under his Maritime Delegation from the Director of Maritime New Zealand pursuant to Sections 200, 444(2) and 444(4) of the Maritime Transport Act 1994.
10. 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 8640. 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.
11. 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.
12. 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.
13. Except as required by the Harbour Master in the lighting and marking plan, all buoys used on the farm must be black in colour.

14. 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.
15. Each buoy within the approved area shall be permanently branded so as to clearly identify its ownership.
16. 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.
17. 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 whale and/or dolphin 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 than 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.

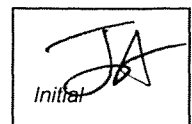
U170288 – APPENDIX A



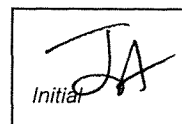
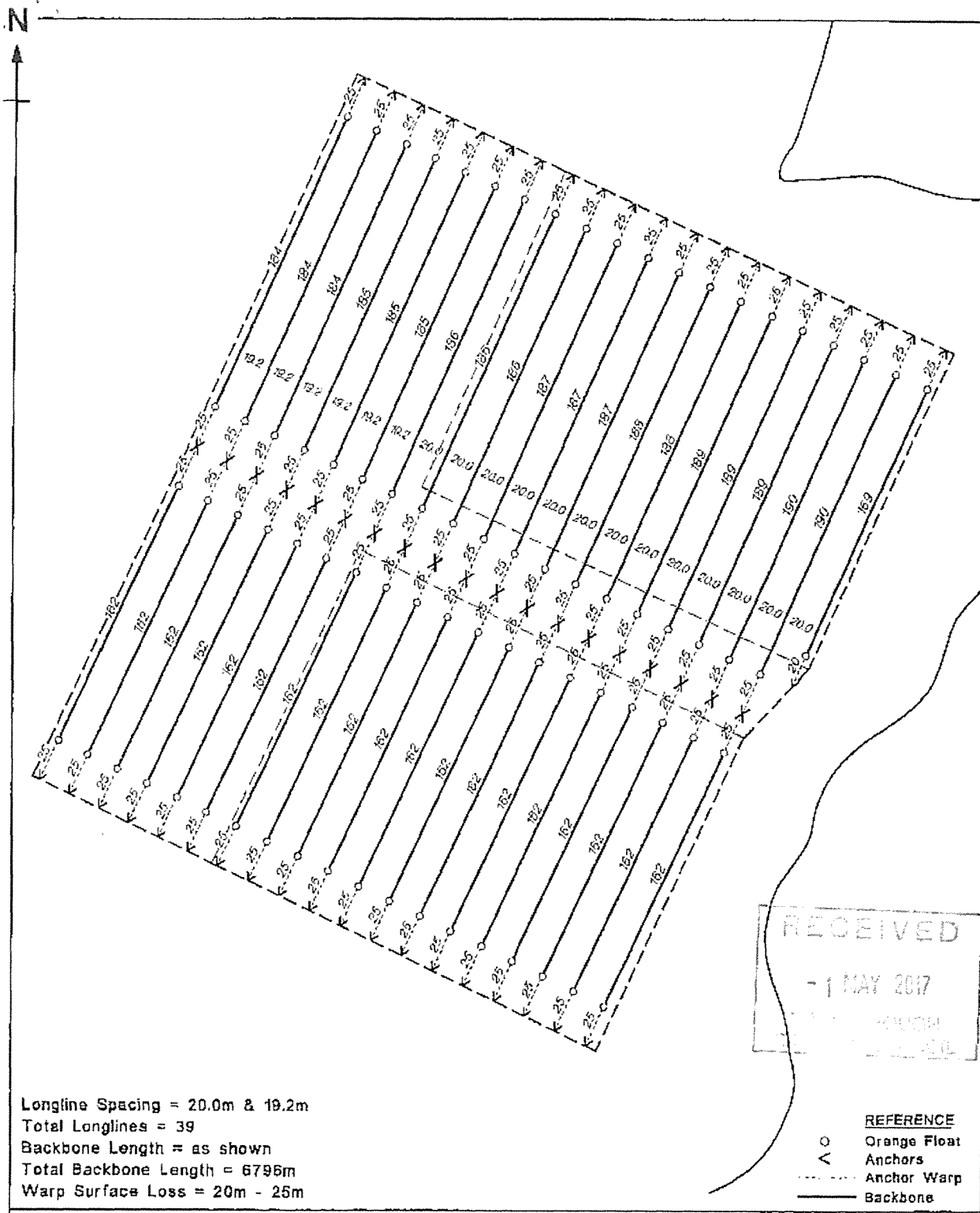
MARLBOROUGH DISTRICT COUNCIL
 Datum: NZTM2000
 This site has not been surveyed

Cadastral Data from Land Information New Zealand Data

SCHEDULE OF COORDINATES		
DATUM: NZTM		
Point	East	North
1	1695726.62	5427931.80
2	1695811.11	5428108.78
3	1695914.67	5428335.77
4	1696037.48	5428279.73
5	1695854.48	5428097.78
6	1696181.92	5427994.00
7	1696143.67	5427954.19
8	1695918.07	5428061.92
9	1695831.89	5427881.44
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U170288 – APPENDIX B



Additional Important Information for Resource Consent Holders

The following information provided in this information sheet is a guide to the legal rights of applicants and submitters.

If you want to discuss matters raised in this information sheet you are welcome to contact Council. However, if you require specific advice you should contact an independent professional and refer to the relevant sections of the Resource Management Act 1991.

Commencement of a Resource Consent

Refer to section 116 of the Resource Management Act 1991

- Where no submissions were lodged or any submissions were withdrawn, a resource consent commences, (and may be actioned) on the date of the receipt of the decision.
- Where submissions were lodged to the application, and not withdrawn, the resource consent commences once the time for lodging an appeal has passed, provided no appeals have been received, or when all appeals have been resolved or withdrawn.
- If the resource consent was for activities controlled by the district plan on reclaimed land or land in the coastal marine area, or a restricted activity; then there are specific provisions regarding the commencement of resource consent. These provisions are outlined in section 116 of the Resource Management Act 1991.

Lapsing

Refer to section 125 of the Resource Management Act 1991

- If no lapse date is specified in the conditions of this consent, the consent will lapse 5 years after the decision date, unless the consent has been actioned (given effect to).

Conditions of Resource Consent

Refer to section 108 of the Resource Management Act 1991

- If conditions are imposed these will be set out in the decision document.
- Please read your consent and ensure that you fully understand any conditions.
- If you have concerns with any condition(s), in the first instance you should discuss your concerns with Council, although an option may be to lodge an appeal or objection.
- It is a legal requirement that there be **compliance with** all conditions.
- If any conditions are contravened it may be that the Council or members of the public will initiate enforcement action (outlined in Part XII of the Resource Management Act 1991).

Change or Cancellation of Conditions of Resource Consent

Refer to section 127 of the Resource Management Act 1991

- The consent holder may apply to the Council to change or cancel conditions of the consent, except a condition specifying duration.

Monitoring Fees

Refer to section 36 of the Resource Management Act 1991 and the Council's Schedule of Fees

- The consent holder will be charged for actual and reasonable costs associated with the monitoring of this consent.

Objections

Refer to section 357 of the Resource Management Act 1991

- In certain circumstances the applicant has the right to object to the Council's decision.
- Any objection shall be made in **writing** and will need to outline the reasons for the objection.
- An objection needs to be lodged with the Council within **15 working days** of the Council's decision being received by you or your agent.

Appeals

Refer to Form 16 and sections 120 and 121 of the Resource Management Act 1991

- The applicant and any submitters have the right to appeal the whole or any part of the Council's decision.
- A notice of appeal must be lodged with the Environment Court and the Council, within **15 working days** of the Council's decision being received (or received by your agent on your behalf). A copy also needs to be served on the applicant and submitters to the application within 5 working days of the notice being lodged with the Environment Court.

Before lodging an objection or an appeal it is recommended that you seek professional advice.