



Tasman Resource Management Plan

# Private Plan Change 61 Wainui Bay Spat Catching

## Decision Report

Pursuant to Clause 10 and 29(4) of the  
First Schedule of the Resource Management Act 1991

3 October 2016

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## 1.0 Introduction

This report provides the decision of the Hearings Panel on Plan Change 61 – Wainui Bay Spat Catching, a private plan change request made by Wainui Bay Spat Catching Group. The specific changes to the Tasman Resource Management Plan arising from this plan change are shown in Appendix 1: Schedule of Amendments.

## 2.0 General

- 2.1 The hearings panel visited the site on the 21 August 2016.
- 2.2 The hearings panel consisted of Cr King (chair) Crs Bouillir, Canton, Ensor and Sangster.
- 2.3 The hearing was held at the Takaka Fire station on 22 August 2016, 9:30 am.
- 2.4 Present for the requester: Q Davies, H Roundtree, M Holland, R Sutherland, K Grange, A Strang, J Hudson,
- 2.5 Submitters present: J Foxwell, J Vaughan (Royal Forest and Bird Protection Society (Golden Bay), A Vaughan, Dr C Mead & H Wallace (Friends of Golden Bay), C McLellan (Golden Bay Community Board) and H Campbell (Friends of Nelson Haven & Tasman Bay (Inc.)), Mr Murray (Minister of Conservation) provided written evidence.
- 2.6 Council officers present: S Markham, T Bray, R Squires.
- 2.7 The hearing was adjourned on 22 August at 4.00 pm pending the planner's written response to matters raised in the hearing and the requestor's written right of reply.
- 2.8 The deliberations were held on 7 September 2016.
- 2.9 The decision was finalised on 3 October 2016.

## 3.0 Decision Overview

Having had regard to the issues raised by submitters, the evidence presented at the hearing and statutory requirements, the decision of the hearings panel is to **approve the proposed plan change with modifications**. The Plan Change (with modifications) is shown in Appendix 1: Schedule of Amendments. Modifications were made to the following provisions.

- Hours of Operation
- Notification of consent applications
- Biosecurity; and
- Spat catching as a by-product

After considering a plan change request, Clause 29 of the Schedule 1 allows Council to decline, approve or approve with modifications and give reasons for its decision. For proposed Plan Change 61, this means the hearings panel is required to consider the request in its entirety and is not restricted to considering just those matters raised in submissions. The submissions, evidence presented and decision (including reasons) is provided in Section 5. There is no legal requirement for Council to address each submission individually and to this end the decision and reasons in this report are grouped by issue.

## 3.0 Background

### 3.1 The Plan Change Request

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On the 15 October 2015 the Wainui Bay Spat Catching Group lodged a private plan change (PC 61) with the Tasman District Council (TDC) regarding the mussel spat catching and holding farms located in Wainui Bay.

After considering the material received in the application, TDC made the decision on 19 November 2015 to **accept** the private plan change request (PC61) and to proceed to public notification.

The Plan Change was notified on 12 March 2016, with the submission period closing on 26 April 2016. Within this time, 16 submissions were received. The Summary of Decisions Requested was publicly notified on 14 May 2016, with the further submission period closing on 30 May 2016. Further submissions were received from three organisations.

No late submissions were received for the Plan Change.

The Plan Change proposed the following changes to the TRMP:

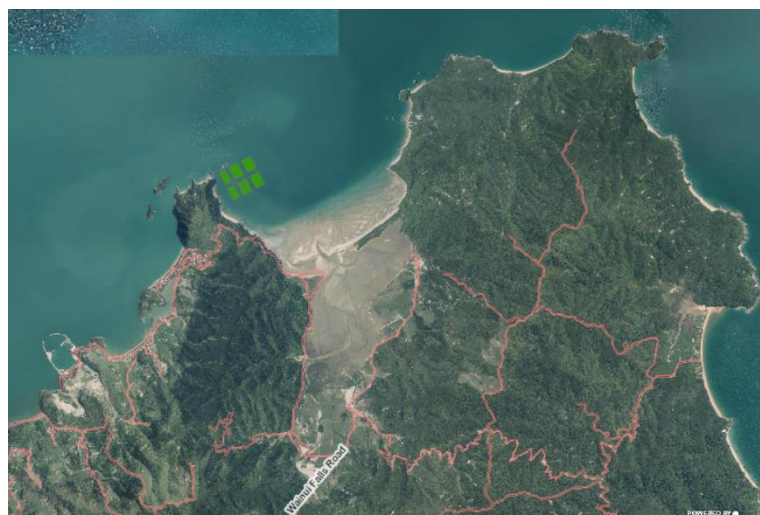
- (i) Amendments to Chapter 22 Aquaculture- Introduction.
- (ii) Minor amendments to 22.1.3.1, 22.1.20 and 22.1.30.
- (iii) New definition for “Mussel Spat Holding”.
- (iv) New Aquaculture Management Area (AMA 4) specifically for Wainui Bay. The boundaries proposed match the currently consented boundaries.
- (v) Provide for mussel spat-catching and mussel spat-holding within the AMA 4 as Controlled and Restricted Discretionary Activities (where controlled conditions are not met).
- (vi) Introduce a number of conditions to address potential amenity effects.
- (vii) Prohibit aquaculture activities other than mussel spat-catching and mussel spat-holding within AMA4.

### 3.2 Site and Locality

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Wainui Bay is located in south eastern Golden Bay. Within Wainui Bay the farms are located east of Able Tasman Point, adjacent to, but separate from the rock and reef structure that extends out from the Point. See Figure One below for the location.

*Figure 1: Wainui Bay and the mussel spat catching and holding sites.*



## 4.0 Statutory Context

### 4.1 Introduction

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The RMA provides the statutory framework for decision-making on private plan change requests. Once a request for a private plan change has been accepted by Council under clause 25(2)(b), Part 1 of the Schedule 1 applies. After considering a plan change, Clause 29 of the Schedule 1 allows Council to decline, approve or approve with modifications the change and give reasons for its decision. The hearings panel has been delegated the authority to make the decision on behalf of the Council with regard to this plan change.

The following documents have been considered in reaching a decision and due consideration and weight has been given to the various provisions. The key provisions are detailed below.

#### 4.1.1 Resource Management Act 1991

In particular:

##### **Section 8 - Treaty of Waitangi and Section 66(2A)**

There are no iwi management documents considered relevant in making a decision on this Plan Change. All eight iwi (including the Maori reserve landowners in Wainui Bay) were notified of the plan change request. No specific submissions or further submissions were received from iwi.

##### **Section 32 and Section 32AA**

A detailed Section 32 report was provided with the plan change request and in the officers Section 42A report. The assessments were considered in the deliberations, but are not repeated in this document.

In considering the level of detail that was required for the Section 32 assessment the following was considered important:

- The Plan Change seeks to change the provisions for an existing activity in an existing location; it does not introduce a new activity or location.
- The spat catching farms existed when policy was being formulated for the Tasman Resource Management Plan (TRMP) and the social-economic benefits and adverse visual effects of the farms were identified and considered at time of policy formulation. Following submissions and a hearing, Council made the decision to provide for spat farming sites in Wainui Bay, those provisions in the TRMP were not appealed.
- The proposed rule framework for the activity is consistent with the framework used in the TRMP for aquaculture generally. The aquaculture framework arose from a decision by the Environment Court.
- All eight farms currently hold consents issued under the TRMP.

For the reasons stated above we consider the changes proposed to the framework that apply to the spat catching farms are appropriate, consistent, and necessary to achieve the purpose of the Act.

Where modifications are sought for the Plan Change, the hearings panel is required to undertake further evaluation (under section 32AA of the Act) of the proposed modifications. There were a number of modifications proposed through the submissions, Section 42A report and evidence presented at the hearing. The modifications sought generally concerned:

- Activity Status of Spat Catching
- Outstanding Natural Landscapes and Features
- Heritage
- Climate Change
- Conditions on the Activity; and
- Biosecurity

These matters are evaluated in Section 5 of this Report.

Following the Section 32 and 32 AA evaluations a number of modifications have been made to Plan Change 61 and the reasons for those modifications are provided in Section 5.

It is considered that the provisions in Plan Change 61, with the modifications detailed in Appendix 1: Schedule of Amendments, are the most efficient and effective and therefore the most appropriate means to achieve the purpose of the Plan Change and so the purpose of the Act.

#### **4.1.3 New Zealand Coastal Policy Statement**

The most relevant provisions of the NZCPS were considered to be Policy 6: Activities in the Coastal Environment, Policy 8: Aquaculture, Policy 13: Preservation of Natural Character, Policy 15: Natural Features and Natural Landscape. These policies are discussed in detail in Section 5.

It is considered that the Plan Change is not inconsistent with the policies of the NZCPS.

#### **4.3.2 Tasman Regional Policy Statement**

The current provisions in the TRMP providing for the farms in Wainui Bay were prepared in accordance with the TRPS. It is considered that the Plan Change is consistent with the TRPS.

#### **4.3.3 Tasman Resource Management Plan**

The current provisions in the TRMP provide for the farms in Wainui Bay. It is considered that the Plan Change is consistent with the provisions in the TRMP.

## 5. Significant Issues Raised

### 5.1 General - Plan Change 61

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#### 5.1.1 Introduction

The Wainui Spat Catching Group requested the plan change to enable the continuation of existing mussel spat-catching and -holding activities in Wainui Bay. The proposed plan change, includes a change in status for the activity, inclusion of a new AMA and text changes regarding the farms.

#### Summary of Submissions

Sixteen submissions and three further submissions were received. Two submissions were in support of the Plan Change. Two submissions were neutral. The majority of the submissions opposed the proposed changes and most considered that the current Plan provisions better provided for the activity. One submission sought that the farms be relocated elsewhere.

#### Summary of Section 42A Report

There is little guidance in the plan as to how the provisions should be applied. The current provisions are inconsistent with the other provisions in the TRMP and provide little certainty to the industry or the community. It is difficult to recommend the retention of the existing provision. The provisions are outdated and ambiguous. The report recommended that the proposed plan change be approved with modifications.

#### Summary of Evidence Presented at the Hearing

**Mr Davies** (for the requester) believed no decision is required regarding whether or not the farms should be removed. The decision required is whether the Plan Change is appropriate in a planning sense. Planning is only for the life of the plan (10 years) and when the plan next comes up for renewal the Wainui Bay provisions also comes up. At any stage a private plan change request can be made. The resource consents will only be renewed once (before 2024) in the lifetime of the plan.

**Friends of Golden Bay** (submitter) believed minor difficulties identified with the current TRMP regarding the farms could easily be overcome with amendments without creating a new AMA. Three sets of recommended changes, including a new definition, rules restricting use, expansion and requiring the removal of structures if abandoned and new policy regarding the location of farms to shore were provided.

#### 5.1.3 Decision

The decision of the hearing panel is that Plan Change 61 be **approved, with the modifications** as set out in this report. The approved Plan Change text and modifications are shown in Appendix 1: Schedule of Amendments.

#### 5.1.4 Reasons

The existing provisions (status quo) are dated and have been affected by a series of amendments to the other aquaculture provisions. The existing provisions provide no guidance or certainty to the requestor or the community regarding use of the coastal marine area at the Wainui Bay location in connection with mussel spat as a nationally important resource. The Plan Change provisions provide a logical and appropriate planning framework,

that is consistent with the other provisions in the TRMP for aquaculture. It is considered that the proposed changes (with modification) when assessed under section 32 is the more efficient and effective way of achieving the purpose of the Act.

## 5.2 Activity Status

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### 5.2.1 Introduction

The plan change proposes to change the activity status of the spat catching farms in Wainui Bay from Discretionary to Controlled/ Restricted Discretionary.

#### Summary of Submissions

Eleven submissions were received which supported or opposed the proposed activity status in the Plan Change. Three further submissions were received which supported the retention of the current activity status. These are as follows:

**Golden Bay Marine Famers Consortium Ltd** (C61.327. 2), **Wallace, William (Bill)** (C61.4131.2) and **Tui Community** (C61.4130.1) supported the proposal to make spat catching at the site a controlled activity.

**Friends of Nelson Haven & Tasman Bay (Inc.)** (C61.1050. 1,2,3), **Forest & Bird (Golden Bay branch)** (C61.1421.2), **Friends of Golden Bay** (C61.1328.1,2), **Anatimo Trust (Anna Wright)** (C61.4125. 1), **Foxwell, Jillian** (C61.4126.1), **Whitehead, Beryl** (C61.4132.1), **Reed, Denis** (C61.4129.1), **Royal Forest & Bird Protection Society (Golden Bay)** (C61.1421.2) all opposed the controlled activity status or requested the activity remain as a discretionary activity/status quo. **James A Beard** (C61.840.5) requested the farms be relocated elsewhere.

**Golden Bay Community Board** (C61.3592.1) unable to agree whether the Wainui Bay spat catching site should be granted as a controlled AMA or whether it should continue as a discretionary activity. The submitters sought that the activity continue to be consented.

#### Summary of Section 42a Report

It was considered appropriate for mussel spat-catching and -holding within Wainui Bay to be a controlled activity, subject to conditions to avoid, remedy or mitigate particular effects. It was also considered appropriate for activities which do not meet the conditions of the controlled activity rule, to be assessed as a restricted discretionary activity. The recommendation was that no changes be made to the activity status proposed in the Plan Change.

#### Summary of Evidence Presented at the Hearing

**Mr Sutherland** (for the requester) believed it is difficult to conceive that decision makers would decline consent for these farms in the lifetime of the Plan and controlled activity status was justified in the circumstances.

**Mr Davies** (for the requester) believed the choice [of activity status] hinged on whether the consent might be refused. Consent would not be refused because 1) value of the site for spat catching. 2) impact on the industry/ community 3) lack of other options e.g. hatchery spat, need for different sources, and preference for wild spat. 4) need for certainty by the industry.



**Mr Vaughan** (submitter) contended that it was not about certainty, but control. Control of the spat catching sites, control of the industry in the top of the south. Council currently has control over the farms, and if they become an AMA/ controlled activity then Council loses control and cannot refuse consent.

**Forest and Bird Protection Society (Golden Bay)** (submitter) believed residents would not be protected from unanticipated effects under a controlled activity, such as new technology. By leaving the permit as discretionary, unanticipated problems could be addressed. In addition, if spat of the same quality and quantity is found to exist elsewhere or if Cawthron is successful, the situation would change. The farms must always be considered as temporarily located.

**Friends of Golden Bay** (submitter) believed it is important that the consents can be declined as the industry is in flux. Want to be able to monitor the development of aquaculture to ensure it is ecologically and socially sustainable. Wary of restricting the options of future generations by designating an AMA in the close coastal environment. Considered that the current provisions may need tweaking to cover the matters not covered in the current permits e.g. lighting.

**Friends of Nelson Haven and Tasman Bay** (submitter) believed there is very limited scope for challenge with a controlled status. Conditions can only be challenged under certain circumstances, no public notification or advice to other interested/affected parties. A controlled activity status cannot in itself manage an operation if there is not the will of the consent holders to do so.

## **Summary of the Supplementary Staff Evaluation Report**

The requirement to notify is independent of the activity status. Unless there is a rule in the plan requiring a particular activity be notified then until there is an application no presumption can be made regarding notification. Including a rule in the Plan regarding notification could relieve some of the concerns of the submitters. It was recommended that Council consider the benefits of including such a rule.

## **Summary of Requesters Right of Reply**

Discretionary activity was a poor compliance tool because the resource consent is only renewed every 20 years or so; peer pressure had been proven to be an effective tool in reducing the number of complaints; there are compliance measures under the Resource Management Act 1991 which provide a more effective range of remedies; it is generally unlawful to use the refusal of a resource consent as a compliance tool, with the exception of s165ZJ which was considered likely to be used only in extreme cases. Alteration of conditions can be achieved through an enforcement order, review of conditions or through a subsequent plan change. It was submitted that no weight be given to this factor.

The best approach is to leave notification up to the discretion of the Consents Officer, however it was within Council's power to require public notification.

There was no credible evidence that consent would be refused in 2024. Hatchery spat was not favoured or able to replace wild spat in the next few decades. With evidence of the acceptability from a landscape perspective and benign from an ecological perspective, it is difficult to see why it is efficient to maintain the discretionary activity status. Discretionary activity will curtail investment in the industry as a whole and particularly in Wainui Bay.

## 5.2.2 Decision

That Proposed Plan Change 61 be approved and provisions regarding activity status remain unchanged with the exception of new rules requiring notification of resource consent applications. The text for the new rules can be found in Appendix 1: Schedule of Amendments.

## 5.2.3 Reasons

There was a central theme in the opposing submissions with submitters wishing things to remain as they were and evidence was presented which suggested that controls on the activity would be lesser if the activity was made a controlled activity. A comparison was made between the existing provisions, current conditions and the proposed provisions (see Table 1, from the Section 42a report, below). When compared there is little difference between what is currently controlled through consent conditions and what is proposed to be controlled through the Plan Change. Both the existing conditions and the proposed conditions enable a review of conditions if needed. We are confident that the adverse effects identified can be appropriately address under a controlled activity status.

Mussel spat catching and holding has been undertaken at the site since the late 1980s. There is a detailed assessment of environmental effects (AEE) submitted with the request and further evidence was presented at the hearing. The proposed provisions restrict the activity to that which is currently undertaken. There is a high level of certainty regarding the effects of the activity. Given the high level of certainty around the effects of the activity, the proposed activity status framework (Controlled/ Restricted Discretionary) is considered appropriate.

A number of submitters also opposed the change in status with the belief that the community would have no further input should the environmental effects or technology change. Whether or not an application is notified is not affected by the status of the activity and is required to be assessed at the time of the application, unless there is a rule in the plan requiring notification. Council officers are very capable in assessing the need to notify a consent application; however, given the close proximity of the activity to residential dwellings, the nature of the activity and the value attributed to close dialogue between the residents and the industry, it is considered that the inclusion of a rule requiring notification would provide greater certainty to the community and industry.

**Table 1**

	<b>PC61 (Controlled)</b>	<b>PC61 (Restricted Discretionary)</b>	<b>Current TRMP Provisions (Discretionary)</b>	<b>Current Coastal Permit Conditions (RM071049 &amp; RM060292)</b>
Can be declined	No, subject to meeting conditions	Yes (limited grounds)	Yes	Accepted with conditions
Notification	May or may not be notified	May or may not be notified	May or may not be notified	The 2 outer consents were notified, the inner 4 were not
Area and Location	Fixed to existing area and location	Fixed to existing area and location	Fixed to existing area and location	Fixed to existing area and location
Species	Mussel Spat (0-60mm)	Mussel Spat (0-60mm)	Mussels (0 to harvest)	Mussel Spat to 40 or 60mm
Structure	Limited to surface or subsurface longlines or structures, incorporating surface buoys	Limited to surface or subsurface longlines or structures, incorporating surface buoys	Limited to longline structures, incorporating surface buoys	Restricted to approved structure plan, structure changes require approval
Lines	A condition can be imposed for type, scale, location, density of structures, including number of lines	A condition can be imposed for type, scale, location, density of structures, including number of lines	A condition can be imposed for type, scale, location, density of structures, including number of lines	Conditions imposed
Navigation Lighting	A condition can be imposed	A condition can be imposed	A condition can be imposed	Conditions imposed
Term/Duration	A condition can be imposed	A condition can be imposed	A condition can be imposed	Condition imposed
Monitoring	A condition can be imposed	A condition can be imposed	A condition can be imposed	Required.
Biosecurity	A condition can be imposed	A condition can be imposed	A condition can be imposed	Required.
Rubbish	All refuse from the spat-catching activity is collected and either	A condition can be imposed	Standard conditions regarding loose and	Works and Maintenance program.

	<b>PC61 (Controlled)</b>	<b>PC61 (Restricted Discretionary)</b>	<b>Current TRMP Provisions (Discretionary)</b>	<b>Current Coastal Permit Conditions (RM071049 &amp; RM060292)</b>
	<p>reused or disposed of on land at a facility that is authorised to accept such material; (PC61 25.1.3.1A(i))</p> <p>Standard conditions regarding loose and obsolete structures etc.</p>	<p>Standard conditions regarding loose and obsolete structures etc.</p>	<p>obsolete structures etc.</p>	<p>Conditions regarding loose and obsolete structures.</p> <p>No specific condition regarding rubbish.</p>
Hours of operation	<p>All operational activities on site occur between the hours of 6:00am to 8:00pm each day (the “operating hours”). Work is only to occur outside the operating hours in exceptional circumstances. In any year, there are to be no more than five occasions when work occurs outside of these operating hours. Each instance when the operating hours need to be exceeded, together with the exceptional reasons for exceeding the limits, is to be reported in advance to the Council’s Co-ordinator Compliance Monitoring. (PC61 25.1.3.1A(ii))</p>	<p>A condition can be imposed</p>	<p>Not specifically listed</p>	<p>All operational activities on the farm sites are restricted to occurring between the hours of 6.00am to 8.00pm each day (the “operating hours”). Work is only to occur outside the operating hours in exceptional circumstances. During any one year from the granting of consent, there are to be no more than five (5) occasions when work occurs outside these operating hours. Each instance when the operating hours have been exceeded, together with the exceptional reasons for exceeding the limits, is to be reported to the Council’s Co-ordinator Compliance Monitoring within 24 hours of the event occurring.</p>
Noise	<p>All activities related to the site meet the following noise standards as measured and assessed in accordance with the</p>	<p>A condition can be imposed</p>	<p>Not specifically listed</p>	<p>All activities to this site shall meet the following noise standards as measured in accordance with</p>

	PC61 (Controlled)	PC61 (Restricted Discretionary)	Current TRMP Provisions (Discretionary)	Current Coastal Permit Conditions (RM071049 & RM060292)
	<p>provisions of NZS 6801:2008, Acoustics - Measurement of Environmental Sound and NZS 6802:2008 Acoustics – Environmental Noise at any point on land above MHWS.</p> <p style="text-align: center;"><b>Day      Night</b></p> <p>L<sub>Aeq</sub> (15 mins) 50 dBA    40 dBA L<sub>max</sub>                      70dBA</p>			<p>NZS6801:1999 and NZS6802:1999, at any point on land above MHWS.</p> <p style="text-align: center;"><b>Day      Night</b></p> <p>L<sub>10</sub>      50 dBA    40 dBA L<sub>max</sub>    70dBA</p>
Noise	No broadcast radio station or digital or analogue recorded noise (including CDs, cassette tapes, MP3s or other digital formats) from activities on the vessels occurs while working on site;	A condition can be imposed	Not specifically listed	No broadcast radio station or digital or analogue recorded noise (including CDs, cassette tapes, MP3 or other digital formats) is to occur at ...
Lights	Lights from vessels working at the site do not shine onto land where those lights may cause a nuisance.	A condition can be imposed	Not specifically listed	No
Community Liaison	A condition could be imposed	A condition can be imposed.	Not specifically listed	Condition imposed
Bond	A condition could be imposed	A condition can be imposed	Condition could be imposed	Condition imposed
Review of Conditions	A condition could be imposed	A condition can be imposed	Condition could be imposed	Condition imposed

## 5.3 Outstanding Natural Landscape/Features and Natural Character

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### 5.3.1 Introduction

The proposed plan change is located close to a national park and in an area with significant landscape and natural character values. The NZCPS provides strong guidance on where activities in the CMA can be provided for and the hearings panel is required to give effect to the policies of the NZCPS.

#### Summary of Submissions

**James A Beard** (C61.840.4) and **De Lambert Family Trust** (C61.1531.2) believe that the artificial/ industrial nature of the farms is inconsistent or incompatible with the special character of the area and that the proposed Plan Change should be declined (or tightly controlled) or the farms located elsewhere. **Foxwell, Jillian** (C61.4126.3) similarly identified the activity as an unwelcome industrial activity, an eyesore and opposes the proposed Plan Change.

**Friends of Nelson Haven and Tasman Bay** (C61.1050.1) raised the importance (under the RMA and NZCPS) placed on the preservation or protection of natural character and outstanding natural landscapes and features. Several submitters raise the findings of previous landscape studies and an Environment Court case which variously found that Wainui Bay has special values.

**Golden Bay Community Board** (C61.3592.3), **Friends of Nelson Haven and Tasman Bay** (C61.1050.1) and **Friends of Golden Bay** (C61.1328.2) discussed the current landscape project underway by Council to identify Outstanding Natural Landscapes and the current and future provisions in the TRMP which may affect the activity. **Friends of Nelson Haven** were concerned that Council has not assessed areas of natural character nor identified areas of ONL/ONF and does not have appropriate rules controlling activities in the TRMP. The proposed Plan Change is pre-empting the Council process. **Friends of Golden Bay** also believed it is inappropriate to be altering the designation while the process is underway. Conversely, **Golden Bay Community Board** identified there is fear in the community that the consequences of policies and rules associated with ONLs and ONFs now or in the future may interfere with the management and ongoing ability of land and marine-based farming activities. For this reason, they see that some security is being sought with the proposed Plan Change.

**Friends of Nelson Haven and Tasman Bay** (C61.1050.1), **Friends of Golden Bay** (C61.1328.2), **Vaughan, Alan** (C61.1377.2), **Forest & Bird (Golden Bay branch)** (C61.1421.5), **De Lambert Family Trust** (C61.1531.2), **Foxwell, Jillian** (C61.4126.3), **Reed, Denis** (C61.4129.2), **Whitehead, Beryl** (C61.4132.2) generally sought to retain the activity as a discretionary activity/status quo so that matters, such as the effect on landscape, can be considered at the time of the resource consent application.

#### Summary of the Section 42A Report

The NZCPS contains a number of objectives and policies regarding activities within the CMA. The most relevant policies with regard to landscape and natural character are found in policies 13 and 15. These two policies require Council to protect the environment from inappropriate uses; avoid adverse effects in areas of outstanding landscape/features/natural character; avoid significant adverse effects and avoid, remedy or mitigate other adverse effects. In assessing these policies three matters were determined.

### **1) Was the area outstanding?**

Both Froude and landscape expert panel found that the site of the plan change was not an area of outstanding natural character. The two landscape studies found the Bay to be a landscape feature. The Small Group found the site was in an outstanding landscape feature. The expert panel could not decide due to a lack of knowledge of the wider context. Both studies acknowledged the broader Golden Bay marine landscape as an outstanding natural landscape.

### **2) What are the effects on landscape and natural character and have they been addressed?**

The effects of the spat catching farms were considered to be largely aesthetic and perceptual. The spat catching farms affected the natural character/landscape/feature, but other human development within the Bay had greater effect. The plan change contained a number of conditions to control the perceptual effects identified by the expert panel e.g. control on structures, activity, lighting and hours of operation.

### **3) Is the use “appropriate”**

Policy 6 provided guidance regarding activities in the CMA. Priority was given to activities that needed to locate and operate within the CMA and providing for them in appropriate places. The policy encouraged consideration of certain values, including natural character, headlands, and contributions to the social, economic and cultural wellbeing. Policy 8 also required the recognition of existing and potential contribution of aquaculture to social, economic and cultural wellbeing. It was found that there was a functional need for the activity to continue at that location. The Small Group and expert panel found the activity to be appropriate. Through the submissions there was a level of community acceptance of the farms. The TRMP also provided for the farms.

Given the national importance of the farms to the economic and social wellbeing of communities and the functional need for the activity to occur in the CMA it was concluded that under polices 6,8,13 and 15 of NZCPS that spat catching and holding in Wainui Bay was appropriate.

Environment Court – the findings of a 2001 Environment Court decision regarding aquaculture in Tasman were raised. The findings were not disregarded, however, the findings arose from evidence that was presented at an earlier time and in a different context than the Plan Change. A new NZCPS had since commenced, key court cases and changes to landscape assessment had also occurred. Greater weight was placed on the contemporary assessments which were specific to the Plan Change.

## **Summary of Evidence Presented at the Hearing**

**Mr Hudson** (for the requestor) despite reports and assessments by various parties, there was no statutory plan maps identifying Outstanding Natural landscapes or features within Golden Bay. Nor were there any comprehensive studies, statutory, proposed or draft maps for natural character.

Supported the findings of the Small Group regarding the landscape in Golden Bay, including the finding that the entire marine area of Golden Bay was an Outstanding Natural Landscape and other areas around the site also had outstanding values.

The reason the expert panel was not able to reach a conclusion was “due to the lack of contextual information on landscape values within the Golden Bay”. Mr Hudson believed

that a key means of gathering this contextual information is through community input and he believed that the Small Group findings provided a vital contribution to filling the information gap.

The Small Group found that Port Tarakohe was an acceptable activity within the CMA, which also required a coastal permit, was within an ONL and was adjacent to two ONF's like the spat catching proposal.

There have been a number of assessments covering Golden and Wainui Bay and all accepted that Wainui Bay as a potentially ONF despite the presence of the spat catching site, including the Small Group which found that the existing farms is of sufficiently small scale not to prevent the Wainui Bay Inlet from remaining outstanding.

In some locations the views may be adversely affected by the farms, but being able to see the site from one location does not necessarily mean that the farms are inappropriate. This was but one view, within a wide bay and in which the defining values of the bay remained intact. The values of transience were little effected by the farms, with this value primarily relating to the inner inlet and intertidal zone. The value of legibility remained intact, with the defining hills on the aster side of the bay and cliffs on the western side being the dominant features that contain the bay.

A number of modifying elements within the Bay e.g. houses, roading but the area was still considered to be outstanding despite these due to the dominance of the values that caused the outstanding classification. The farms had a limited effect on the values of the ONL when seen from a distance.

Despite the presence of the farms the values would not be affected due to the scale of the bay and the strength of the values. The Small Group also found that the Wainui Bay Inlet is an outstanding natural feature and the presence of the farms did not prevent them reaching this conclusion. The expert panel was unable to reach a consensus but the presence of the farms did not prevent them from reaching the same conclusion. Considered the output of the Small Group provided the necessary contextual information and in his opinion this information confirmed the relative status of Wainui Bay and aligns with that of the Small Group.

**Mr Roundtree** (for the requestor) Clearwater employs seven fulltime staff, with six-eight staff members servicing the Wainui Bay Farm. Hire casual staff when spat catching is busy. In excess of 30 people work at Wainui Bay, including staff from other companies. The aquaculture industry has benefits compared with other major sources of employment in the wages, including decent wages and long hours to boost income, year round employment and casual work and training opportunities.

Clearwater, marine farmers and the Wainui site contributed to the local community in various ways. Clearwater made small financial contributions to local schools and sports teams. Product was often donated for community and social occasions. Educational visits were made to the farms and some recreational fishermen targeted the farms for fishing opportunities. Marine farmers in Golden Bay are involved in many varied community groups, including sports clubs, and with environmental work. The Wainui Bay farmers and marine farmers in general, help out the community whenever they get the opportunity, including search and rescue. A number of supporting industries benefited.

**Mr Holland** (for the requestor) Clearwater employs 26 people in fulltime positions, eight to nine at the Wainui Bay farm. The majority of their product is supplied to Talley's processing factory which employs approximately 200 people. They also supply product to PHR



Processing, which employs 29 staff and to MacLab which employs 42 people. 80-90% of their product is exported and part of their crop is used for high value nutraceutical products.

Clearwater is based out of Havelock, with some employees living in Golden Bay. The marine farming industry playing an important part in enabling small communities to survive.

**Mr Sutherland** (for the requestor) The industry makes a significant contribution to the NZ economy. The combined production of mussel farming in the Top of the South equates to around 65% -70% of New Zealand production. The Wainui Site is essential to the industry with some 50% of production derived from Wainui spat. It is nationally significant as the most reliable source of spat. In growing, harvesting and processing mussels sources from Wainui spat some 510 people are employed full time in the Top of the South. Amounts to approximately 1326 fulltime positions nationwide, taking into account direct and indirect employment. The evidence presented clearly shows that Wainui Bay is of national significance to the industry. Certainty of spat supply is the foundation stone of the industry. The consistency and reliability of spat fall at the site enables the industry to flourish. The Plan Change is consistent with the purpose of the Act.

**Mr Davies** (for the Requestor) Considered that caution needed to be exercised when evaluating the Court's finding. The Court records [707] no party before the Court sought the removal of the farms. Because there was no threat to the farms in those proceedings, nobody championed the farms. Furthermore, Wainui was used by some as a justification for wanting to move the industry offshore. Circumstances have changed, including there was a lookout overlooking the site [and now there is none].

With regard to the farms being provided for in the Decision as a restricted discretionary activity, there were no appeals against the provisions [in the TRMP for the spat catching farms] and, consequently they were made operative. Technically the Court had no power to alter that. This doesn't not affect the request other than to reinforce why the Court decision ought not to have as much influence. The Plan Change is driven by a change in circumstances, with new evidence, and needs to be dealt with on its merits.

**Forest and Bird Protection Society (Golden Bay)** (submitter) accepted that the industry seemed to be dependent upon Wainui Bay's spat as the only reliable source of spat of the quality and quantity that the industry required. Wanted it accepted that there are many downsides to the industries presence in the Bay. Raised the findings of the Environment Court and questioned why the changes were being sought when no-one was restricting supply, and when the TRMP required a re-examination in 2024. The Judge deemed that Wainui Bay was a precious landscape and not the place for marine farming and that the judge made a temporary ruling that the existing farms could continue as a discretionary activity. Challenged the interpretation of the staff member in the Section 42A report, regarding the Environment Court interim findings.

**Friends of Golden Bay** (submitter) The expert panel has not used the NZCPS criteria when assessing natural character and has presumably used landscape assessment criteria. Disputed that the farms are not a visual problem, there used to be a viewing point at the top of the hill prior to road modifications, and could become so again.

**Friends of Nelson Haven** (submitter) queried the findings of the expert panel because it was limited to the visual catchment only and they were divided on the coastal landscape due to a lack of knowledge of the contextual information. Their findings were considered flawed. They believe that natural darkness of the night sky/lighting and noise should have been included in the assessment. Suggested that the classification given by the Small Group for Wainui Bay was based on the current discretionary status and the knowledge that the farms

could be declined. Council should have obtained independent advice. The natural marine elements were not assessed adequately or professionally. The activity does not comply with the NZCPS.

**Mr Vaughan** (Submitter) in his written evidence considered it implicit in the Courts statement was the intention that the farms be moved to an AMA at the end of their consent in 2024.

### **Summary of Requester's Right of Reply**

No party made a coherent case, that as a result of the NZCPS and New Zealand King Salmon decision, the Plan Change request should be refused.

Judge Kenderdine did not have the farms before her, as no party sought to alter the status of Wainui. The Judge's findings are contrary to the Small Group, expert panel and Mr Hudson. Judge Kenderdine considered marine farming generally at Wainui, not spat catching.

### **5.3.2 Decision**

That the Plan Change (with modifications) is consistent with policies 13 and 15 of the NZCPS and the activity is appropriate within the CMA.

### **5.3.3 Reasons**

Policy 13 requires Council to preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use and development. To achieve this, Council is required to:

*13(1)(a) avoid adverse effects activities on the natural character in areas of the coastal environment with outstanding natural character;*

*13(1)(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment.*

The activity enabled by the Plan Change has been undertaken on the same site for over 30 years. The Plan Change restricts the use of the site to the existing use which is currently provided for through resource consents (expiring 2024) and provisions in the TRMP. The Plan Change will not cause any additional effects on the natural character of the Bay. The site of the Plan Change is not of outstanding natural character and no significant adverse effects were identified. The Plan Change contains a number of conditions and matters of assessment to address the adverse effects of the activity that were identified. The activity provided for in the Plan Change is considered appropriate.

Policy 15 requires Council to protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use and development. To achieve this, Council is required to:

*15(a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and*

*15(b) avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment.*

The activity enabled by the Plan Change has been undertaken on the same site for over 30 years. The Plan Change restricts the use of the site to the existing use which is currently

provided for through resource consents (expiring 2024) and provisions in the TRMP. The Plan Change will not cause any additional effect on the landscape of the Bay. The site of the Plan Change is not an outstanding natural feature and no significant adverse effects were identified. The Plan Change contains a number of conditions and matters of assessment to address the adverse effects of the activity that were identified.

The site of the Plan Change is located within the Golden Bay marine landscape which has been identified in the Small Group report as an outstanding natural landscape, despite that the group found that the existing marine farms were not an inappropriate use. The findings of that report have no statutory weight until it is incorporated into the TRMP.

When assessed against the NZCPS, in particular policies 6 and 8, it is considered that the farms, have a functional need to locate at the current site and the farms are nationally important for the economic and social wellbeing of communities. The activity provided for in the Plan Change is appropriate.

## 5.4 Heritage

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### 5.4.1 Introduction

Wainui Bay and the surrounding area has a rich Maori history extending more than 600 years. Golden Bay is also attributed as being the site of the first contact between Maori and Europeans.

#### Summary of Submissions

Three submitters mentioned the historical and cultural importance of the area in their submissions. **James A Beard** (C61.840.6) stated that the area included Abel Tasman's anchorage, Maori habitations, pah, kiangas, middens, tapu land and tracks of significance. **Friends of Nelson Haven and Tasman Bay** (C61.1050.3) and **Forest & Bird (Golden Bay branch)** similarly, state there is a growing awareness of the significance of Wainui Bay for tangata whenua and as a site of the first recorded interaction between Europeans and tangata whenua.

#### Summary of the Section 42A Report

The requestor and Council consulted with iwi, the requestor received one letter of support. No submissions were received from iwi regarding the Plan Change and no matters were specifically raised by iwi regarding heritage. The sites above the ridge are not identified by Mitchell J and Mitchell H (2008) as culturally significant sites. Heritage New Zealand has no listed sites in the area.

The TRMP lists the archaeological sites in the Schedule of Cultural Heritage Sites (16.13.C) and places restrictions on land uses, where the land use occurs on the same part of the land (Ch.16.13.6). The anchorage site is not listed in the TRMP. The activities proposed in the Plan Change are in the CMA and are unlikely to affect the cultural or heritage values in the area. The Plan Change is not considered inconsistent with the heritage objectives and policies in the RMA, NZCPS and TRMP.

### 5.4.2 Decision and Reason

The Plan Change is not inconsistent with the heritage objectives and policies in the RMA, NZCPS and TRMP and no modifications are required.

## 5.5 Climate Change

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### 5.5.1 Introduction

The effects of climate change on the farms was raised and a precautionary approach proposed.

#### Summary of Submissions

**Friends of Nelson Haven and Tasman Bay** (C61.1050.2) requested Council decline the Plan Change and retain the status of spat sites as a discretionary activity. The effects of climate change are raised as one reason for the decision requested.

#### Summary of Section 42A Report

The effects of mussel spat catching and holding at the site are relatively well known and have been monitored for a number of years. The effects identified by NIWA are considered reversible upon the removal of the marine farms. It is not considered that the precautionary approach is required.

Any significant departure from existing practice in response to climate change will either require a change to the conditions of consent or assessment for a new consent. Through this process there should be sufficient opportunity to place responsive conditions on the activity. Should the site prove uneconomical for spat catching then redundant structures are required to be removed and no ongoing environmental effects are anticipated. The TRMP is not a static document and if unanticipated effects do occur then Council is able to undertake a further Plan Change.

#### Evidence Presented at the Hearing

**Mr Grange** (for the requestor) believed climate change would mean more variability and more storms. While this may lead to increased temperatures in some years, it did not mean necessarily more stratification because stronger winds could increase upwelling. Stratification could also mean the spat are retained in the surface layers where there may be more food and transport to the spat lines, so spat fall could be increased. It was considered that climate change may lead to stronger el Nino/la Nina cycles but he could not identify any clear effect of those cycles in the spat monitoring graphs.

**Friends of Nelson Haven** (submitter) believed the impact from climate change will occur as a result of both warming and physical changes as well as from frequency, intensity of extreme events. The combined effects of temperature and salinity changes are expected to reduce the density of the surface ocean and increase vertical stratification and change surface mixing. Acidification will be particularly severe on shelled organisms such as mussels. New Zealand research anticipates effects on larval shellfish growth, problems with rock attachment. The Council's 2012 SOE report also expects by 2090 for sea temperature rises, more rain, increased winds and swells and sea level rises. Also predicted is increased run-off, eutrophication, nuisance conditions, disease risk and sedimentation. There have already been extreme weather events in Wainui Bay, likely to occur more often adversely affecting the spat farming operations. It is considered that the Plan Change is not inconsistent with the RMA and the NZCPS regarding climate change.

## Requester's Right of Reply

The effects of aquaculture are well known, the effects of spat catching are particularly benign. Use of the precautionary principle requires evidence.

### 5.5.2 Decision

No change be made to the Plan Change regarding climate change.

### 5.5.3 Reasons

The activity has been undertaken on that site for over 30 years and the effects of the activity on the environment are well known. The conditions on the controlled activity rule limit the activity and where a significant change to the activity is sought then further assessment is required. The precautionary approach is not necessary in this instance. It is accepted that climate change will change the marine environment in the future and this may impact on the activity as it will on all activities undertaken in the coastal marine area. The provisions in Plan Change are sufficient to provide for this change. Should this not be the case then the Council or the requestor can undertake a further plan change. These provisions are required to be reviewed every 10 years.

## 5.6 Conditions on the Activity

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### 5.6.1 Introduction

A number of effects have been consistently identified with regard to the mussel spat-catching and -holding farms in Wainui Bay. The Plan Change proposed a number of conditions to mitigate those effects.

#### Summary of Submissions

A number of submitters supported or opposed the proposed conditions. **Forest & Bird (Golden Bay branch)** (C61. 1421.4), and **Foxwell, Jillian** (C61. 4126.2) requested the current TRMP provisions continue. **Foxwell, Jillian** (C61. 4126.2) requested the Wainui Bay Spat Catching Group remain accountable for their activity. **De Lambert Family Trust** (C61. 1531.1) requested the Plan Change be declined but, in the alternative, suggested new conditions of consent. **Golden Bay Community Board** (C61. 3592.2) supported the continuation of the community liaison meeting as a condition of consent. **Tui Community** (C61.4130.1) supported the changes considering it important for the controls to continue.

**James A Beard** (C61.840.5) discussed the effects of the activity in some detail in his submission and requested the farms be removed.

- Hours of operation interfere with the weekly, daily, nightly calmness of the bay, including visitors and tourists to the national park. Intrusion of the visual, aural, kinaesthetic, odour and senses are considerable. The pattern of the farms contrast with the curvaceous nature of the estuary.
- The noise of ship motors, mechanical gear clanking, shouting, dogs barking, radio and communications have a great impact on the aural qualities. Excessive factory noise drowns out birdsong and affects the natural tranquillity of Wainui estuary.
- The odours of diesel engines is intrusive.

- The movement of gear is inconsistent with nature's kinesthetics. Busy movements contrast with natural kinesthetics.
- The glare of lamps at night from the factories destroys the magic of the rippling water.

**Golden Bay Community Board** (C61.3592.2) requested the annual meetings between residents and the Wainui marine farmers be a condition of the continued use. The meetings were considered essential for residents to voice concerns regarding on shore effects of the spat catching activity. Loud noise from boats, from radios, especially in the mornings and shouting on board between boats has now been minimised. Concerned the problem will re-emerge with new crews and different boats.

**Foxwell, Jillian** (C61.4126.2) wanted the Wainui Bay Spat Catching Group to remain accountable for their activity due to the hours of operation, ongoing noise, light pollution and rubbish issues that are a continual problem. It is by no means an ordinary operation and needs keeping an eye on.

**Friends of Nelson Haven & Tasman Bay (inc.)** (C61.1050.3) requested no changes to species/structures/activities (including mussel farming) or extensions in area allowed.

**Tui Community** (C61.4130.1) considered it important that the provisions for noise restrictions and controlled hours of operation remain as they are. Sought that the area of operation is not increased.

### Summary of Evidence Presented at the Hearing

**Mr Hudson** (for the requestor) believed steps should be taken to minimize adverse amenity effects where feasible. Supported a reasonable limitation on operation time so that either early morning or early evening times could be used, but not both. Hours limited to 12 hours per day could potentially achieve this. Deferred to the knowledge and experience of Mr Roundtree in making these comments.

**Mr Roundtree** (for the requestor) believed Clearwater need to operate with lights for practical and safety reasons at certain times of year, especially winter. Aware that light spill from work boats can cause problems for residents, they had responded. They take care not to shine lights onto land where it may cause nuisance and there was a condition to address this.

The conditions are calm first thing in the morning and calm seas makes for a safer working conditions, they can work more quickly and efficiently. They were not at the site at 6am every day, but there were occasions where they needed to start early. Conscious that there were more people in the Bay during summer. The proposed condition limiting hours of operation to 6am-8pm was considered practical and appropriate.

Setting of ropes was the busiest time and most of the fleet worked on separate sites at the same time. Hours of operation are usually 6am to late afternoon. Transferring of catch rope occurs 5-6 weeks later and the start time is usually 6am til mid-morning. Maintenance etc is undertaken as required. Work hours are weather dependant and reliant on spat spikes. Vessels only occasionally work outside of normal operational hours.

Historically boats were very noisy, all sorts of engines used. Mufflers can and are being used on some boats.

**Mr Davies** (for the requester) advised the consent holders currently have no restrictions on the use of lights. It is proposed that a condition be included that lights will not cause a nuisance on the land. The proposed condition ought to eliminate complaints in this regard.

There is also a request to limit the hours of operation between 7.00 am and 7.00 pm the requestor is seeking 6.0 am to 8.00 pm with limited exceptions.

**Friends of Nelson Haven and Tasman Bay** (Submitter) believed the Plan Change does not provide for environmental protection nor meet the concept of sustainable management. The adverse effects on natural character and outstanding natural features/landscape have not and cannot be avoided.

**Ms Foxwell** (Submitter) requested the use of mufflers on the boats as not all have done so. Need investment in proper mufflers. Nine boats operating at the same time are noisy, the boats operate at any time and long periods of time. Noise can travel over the water, can hear conversations on the boats. Traffic noise comes and goes, the noise from the boats is continuous. Noise goes through double glazing. Need to reduce hours. The boats should be suitable to work in all weather. Need more reasonable hours of operation. 7:30am would be a reasonable hour. Requests the exception to the hours of operation be removed.

The farms are a visual eyesore, mostly light pollution. Some boats make an effort. Lots of lighting in winter when there is a spat spike.

A massive effort has been made to sort out rubbish. The rubbish has not gone away. Can be improved.

**Golden Bay Community Board** (Submitter) believed the farms are important to the industry. Acknowledge the MFA work, need independent monitoring, need to control light spill. Need a lesser term imposed on the farms. Rubbish collection should be maintained. Consider reduction of hours and exemption. Noise should be subject to noise provisions. The community liaison meetings should be continued.

Social, economic and cultural benefits – the farms provide huge benefits to the top of the south economy and Golden Bay receives the least of the benefits. There should be a condition that directly benefits the community of Golden Bay e.g. 1% of the final product.

## **A Summary of the Supplementary Staff Evaluation Report**

**Lighting:** If the Code of Practice was complied with and an appropriately worded condition included on the consent then the effect of light spill could be minimised.

**Hours of Operation/Noise:** Hard to quantify the size of the problem. The TRMP contained noise levels and hours when they apply in other parts of the Plan. The Plan Change proposed similar noise levels but there were no hours attached to those levels. The evidence suggested that the cumulative noise, in a small area, early in the morning, over a long period of time had an adverse effect, at least part of the time. Further consideration should be given to the hours of operation and the potential to further mitigate the adverse effect of noise on residential amenity.

## **Summary of Requester's Right of Reply**

No received noise complaints since the June 2015 and only one complaint regarding working outside of approved hours. Ms Foxwell spoke about her experience and the Tui community support the application after previously opposing the farms. The change in position reflects the positive steps taken to address concerns around noise and hours of operation.

People have a duty to take practicable steps to avoid unreasonable noise. The more certainty the consent holder has the greater the obligation the consent holder will have to invest in technology and systems to reduce noise. It is more efficient for Council to ensure that the s16 duty has been met before placing additional constraints on operators. It is difficult for the Council to enforce the hours of operation and noise standard and easier to



ensure that the boats that use Wainui avoid unreasonable noise. Such an audit could be done by appointment. Different vessels could be asked to conduct sea trials. This will provide the opportunity for vessels to be as good as they can reasonably be. Granting controlled activity status would make a greater level of investment in noise reduction “practicable”.

If there is the wish to restrict hours of operation, then a 7.00 am start time could occur on weekends and public holidays. Restricting the hours of operation increases the likelihood that more boats would be operating at one time. In the absence of complaints, the best approach is to leave the issue for the decision maker hearing the consent.

Clearwater Mussels and other users of Wainui Bay contribute significantly to the Golden Bay economy. Eight (soon to be 10) people work for Clearwater, but a number of other crews live in Golden Bay and work on the farms. Local crews rely on various local businesses. Golden Bay High School has an aquaculture group, which is industry lead. A number of spat catchers at Wainui contribute to that exercise, which has substantial value. Clearwater’s number of employees per capita is probably more in Golden Bay than anywhere else. Clearwater would be happy to contribute to an economic forum.

The last complaint about lighting was received in June 2015, since that time the Council has not received any complaints regarding lighting. The Plan Change introduces a new standard, which requires lighting not to cause a nuisance. The Wainui Code of Practice requires spotlights to be turned off and only deck lights to be used when operating at the site. The proposed new control ought to be sufficient. If not, then the consent conditions can be reviewed and a new condition imposed.

**Council reserves control over matters such as noise, hours of operation, and lighting.** It makes more sense to prepare detailed conditions on those matters at the consent stage rather than now. The consents do not need to be reviewed until 2024 and it is appropriate to delay additional controls until the resource consent stage. Additional controls should only be imposed where they can be justified. Controls on hours of operation, vessel lights, limitations to spat catching and holdings and 5-yearly benthic monitoring are conditions not normally imposed on other farms.

## 5.6.2 Decision

That the conditions proposed in the Plan Change remain unchanged except the Hours of Operation the Hours of Operation are to be modified as shown in Appendix 1 Schedule of Amendments:

## 5.6.3 Reasons

The amended hours of operation will mitigate some of the adverse effects of noise during the weekend and public holidays, by deferring the time that operational noise is experienced by neighbours early in the morning. In addition, vessel owners are required to consider methods to reduce unreasonable noise under Section 16 of the Resource Management Act 1991, this requirement applies at all times. The Plan Change includes noise as a matter for control, should noise be identified as an adverse effect at the time of consent application then further specific conditions can be imposed. The hearing panel encourages marine farmers to adopt best practice and to actively minimise the noise from the activity e.g. use of mufflers, noise audits.

The adverse effects of lighting can be adequately addressed between the code of practice and future conditions on consents. Until new consents are applied for all farms are required under the Code of Practice for Wainui Bay to turned off spotlights after lines are located and the vessel is secured to the line.

The proposed provisions in the Plan Change are able to adequately address the adverse effects arising from waste (rubbish) produced on the boats and landing on beaches. The hearing panel encourages marine farmers to continue considering least waste practices like Clearwater's mussel float pegs and beach cleanups.

There are no provisions under the Resource Management Act 1991 that enables part of the profit arising from a commercial activity be returned to the community in which the activity occurs. Such an agreement would need to be through a private side agreement between the requestors and the community. The requestor has offered to contribute to an economic forum.

## 5.7 Biosecurity

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### 5.7.1 Introduction

Wainui Bay is an important source of spat for the Top of the South. There is a risk that unwanted organisms could be transferred with the Wainui Bay spat to different marine farming areas.

#### Summary of Submissions

**Minister of Conservation** (C61.4127.4) requested TRMP 25.1.3.1(4) and 25.1.3.2(5) be amended as follows (with new text shown underlined):

*Management of biosecurity risk organisms, such as Undaria and the prevention of arrival and the movement of unwanted organisms.*

Two further submitters opposed this request.

**Minister of Primary Industries** (C61.4128.2) requested that Council ensure spat catching and holding operations are managed under the Plan Change with specific requirements for best practice biosecurity management. Two further submitters opposed this request.

#### Summary of Section 42A report

The Minister of Conservation's request was discussed with Mr Paul Sheldon (Co-ordinator, Biosecurity and Biodiversity) and he agreed with the intent of this request. The following wording was recommended 25.1.3.1 and 25.1.3.2.

(#) *Management of biosecurity risk organisms declared by a Chief Technical Officer as unwanted organisms or contained with a Regional Pest Management Plan, within AMA 4-Wainui Bay.*

It was further recommended that the wording also be applied to TRMP 25.1.3.1A – Mussel Spat Holding.

The Minister of Primary Industry request was discussed with Mr Paul Sheldon and he also agreed with the intent of this request. The following wording was recommended for TRMP 25.1.3.1, 25.1.4.1A and 25.1.3.2:

- (#) *Prevention of arrival and transfer of marine pest species including, but not limited to, those declared as unwanted organisms or as pest species contained with a Regional Pest Management Plan, within AMA 4-Wainui Bay.*

## **Evidence Presented at the Hearing**

**Mr Davies** (for the requester) requested the changes suggested in the s42A report are accepted.

**Minister of Conservation**(submitter) considered the recommended wording from the 42A report would give effect to the Minister’s submission. The recommended wording change to TRMP 25.1.3.1A in the 42A report change to was accepted.

**Friends of Nelson Haven** (submitter) believed the risk of new species introduced to Golden Bay is presently greatest from hull fouling from domestic vessels and mari-cultural activities, particularly at Port Tarakohe and marine farms at Wainui Bay and offshore of Collingwood. Self-regulation by the marine farming industry combined with the consideration of biosecurity issues through consenting and permitting processes is likely to provide the most effective means of managing the risks of new species introductions over the long term.

## **5.7.2 Decision**

Accept the changes recommended in section 5.7.3 of the Section 42A report and as show in section 5.7.3 of this decision.

## **5.7.3 Reasons**

The specific reference to *Undaria* was considered dated and was only one of the many potential marine pest species which pose a threat to the marine farming industry. The inclusion of the wording to make the provision specific to Wainui Bay was considered necessary to keep the provision within the scope of the Plan Change.

Wainui Bay farm spat is distributed throughout the top of the south and it is important that controls be put in place to prevent the arrival and transfer of organisms to other farms. The wording to make the provision specific to Wainui Bay was considered necessary to keep the provision within the scope of the plan change.

## **5.8 Minister of Conservation-Minor Amendments**

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### **5.8.1 Introduction**

The Minister sought minor wording changes to the proposed plan change.

### **Summary of Submissions**

**The Minister of Conservation** <sup>(C61.4127.2)</sup> The proposed wording for 25.1.3.3 would not encompass activities which do not comply with rule PC61 25.1.3.2 and needs to be amended. PC61 25.1.3.3 refers to scallop spat and needs to be changed. The standard

conditions for the controlled activity for mussel spat holding (Rule 25.1.3.1A) should also apply for spat catching in Wainui Bay (Rule 25.1.3.1). One further submitter opposed this request.

### **Summary of Evidence Presented in the Hearing**

**Mr Davies** (for the requester) accepted the changes, however, advised scallop spat is a by-catch of harvesting mussel spat and, in practical terms, cannot be separated at harvest. In the TRMP scallop spat as by-catch may be harvested. The following wording was proposed:

*“25.1.3.1(ga)(vi) Scallop spat caught as a by catch in mussel spat-catching subzones may be harvested.”*

### **A Summary of the Supplementary Staff Evaluation Report**

The reseeded of the CMA with the scallop spat by-catch was a more efficient use of the natural resource. It was recommended that the wording proposed by Mr Davies be accepted.

## **5.8.2 Decision**

Accept the wording proposed by the Minister of Conservation and Mr Davies as shown in Appendix 1: Schedule of Amendments.

## **5.8.3 Reasons**

The proposed amendments to the wording in rule 25.1.3.1 and 25.1.3.3 are considered beneficial for the management of unwanted organisms on the spat farms in Wainui Bay. The rule enabling the use of scallop spat caught as a by catch is considered a more efficient use of a natural resource.

## Appendix 1: Decisions on Submissions

### General

Submitter	Remedy	Decision
Golden Bay Marine Farmers Consortium Ltd. C61.327.1	Rename Wainui Bay as AMA 4 Wainui	Allow
James A Beard C61.840. 1	Relocate the six factories elsewhere.	Out of scope. The existing farms hold resource consent and have the right to remain in the current locations until 2024. Council is unable to create new locations for the farms to move to through this Plan Change.
James A Beard C61.840.2	Tasman District Council to consider the operation illegal.	Out of Scope The submitter raises matters that are covered by legislation other than the RMA and subsequently there is no ability to consider the matters raised through this process.  The RMA specifically provides for aquaculture and the Plan Change is generally in accordance with those provisions. The decision sought is considered to be <i>out of scope</i> .
James A Beard C61.840.3	Oppose the continued extraction of mussel spat at Abel Tasman Point	Disallow
Friends of Golden Bay C61.1328.1	Oppose Plan Change rezoning the spat sites to AMA 4 and the designation as a controlled activity	Disallow
Friends of Golden Bay C61.1328.3	Request the [Plan] remain as it is until 2024 as designated by the Environment Court.	Disallow
Vaughan, Alan C61.1377.1	Oppose the re-designation of the Wainui Bay spat catching sites as an AMA	Disallow
Forest & Bird (Golden Bay branch) C61.1421. 1	Request the current TRMP policy to continue.	Disallow
Forest & Bird (Golden Bay branch) C61.1421.3	Accept the permitted time [for farming] to extend beyond 2014 if there is no environmental or social reasons against it.	Disallow
Minister of Conservation C61.4127.1	Make further or alternative relief to like effect to that sought in the submission.	Allow
Minister of Primary Industries C61.4128.1	Supports the intent of the Plan Change subject to requested amendments	Allow in part
Reed, Denis C61.4129.1	Retain the status quo	Disallow
Wallace, William (Bill) C61.4131.1	Rename Wainui Bay as AMA 4 Wainui	Allow

## Controlled Activities

Submitter	Remedy	Decision
Golden Bay Marine Farmers Consortium Ltd. C61.327. 2	Make mussel spat catching and holding controlled activities.	Allow
James A Beard C61.840.5	Relocate the six factories elsewhere.	Out of scope. The existing farms hold resource consent and have the right to remain in the current locations until 2024. Council is unable to create new locations for the farms to move to through this Plan Change.
Forest & Bird (Golden Bay branch) C61.1421.2	Oppose the Controlled Activity Status; retain as a Discretionary Activity.	Disallow
Golden Bay Community Board C61.3592. 1	The farms continue to be consented to operate.	Allow
Anatimo Trust (Anna Wright) C61.4125. 1	Oppose the Plan Change. Request spat catching in Wainui Bay remain a discretionary activity under 25.1.4.4 of the TRMP requiring a resource consent and compliance with any conditions set by Council.	Disallow
Foxwell, Jillian C61.4126.1	Leave the Wainui site as a discretionary activity	Disallow
Wallace, William (Bill) C61.4131.2	Mussel spat-catching and -holding to become controlled activities.	Allow
Whitehead, Beryl C61.4132 1	Retain the status quo	Disallow

## Landscape

Submitter	Remedy	Decision
James A Beard C61.840.4	Relocate the six factories elsewhere.	Out of scope. The existing farms hold resource consent and have the right to remain in the current locations until 2024. Council is unable to create new locations for the farms to move to through this Plan Change.
Friends of Nelson Haven and Tasman Bay C61.1050.1	Decline the Plan Change and retain the status of the spat sites as discretionary with no changes to species/structures/activities (including mussel farming) or extensions in area allowed.	Disallow
Friends of Golden Bay C61.1328.2	Oppose Plan Change rezoning the spat sites to AMA 4 and the designation as a controlled activity	Disallow
Vaughan, Alan C61.1377.2	[Spat catching sites] should be subject to a periodically renewed resource consent.	Allow
Forest & Bird (Golden Bay branch) C61.1421.5	Request the current TRMP policy to continue.	Disallow
De Lambert Family Trust C61.1531.2	Decline the Plan Change in its entirety.	Disallow
Golden Bay Community Board C61.3592.3	The farms continue to be consented to operate.	Allow
Foxwell, Jillian	Leave the Wainui site as a discretionary activity.	Disallow

Submitter	Remedy	Decision
C61. 4126.3		
Reed, Denis C61. 4129.2	Retain the status quo.	Disallow
Whitehead, Beryl C61. 4132.2	Retain the status quo	Disallow

## Biosecurity

Submitter	Remedy	Decision
Minister of Conservation C61.4127.4	Amend matter (4) to: “ <i>Management of biosecurity risk organisms such as Undaria and the prevention of arrival and the movement of unwanted organisms.</i> ”	Allow in part
Minister of Conservation C61.4127.5	Amend matter (4) to: “ <i>Management of biosecurity risk organisms such as Undaria and the prevention of arrival and the movement of unwanted organisms.</i> ”	Allow in part
Minister of Primary Industries C61.4128.2	Ensure spat catching and holding operations managed under the Plan Change contain specific requirements for best practice biosecurity management.	Allow in part

## Minister of Conservation Minor Amendments

Submitter	Remedy	Decision
Minister of Conservation C61.4127.6	Amend rule 25.1.3.3 to: (a) <i>Scallop and mussel spat catching in subzones (a) – (k) of AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara and mussel spat catching and holding in AMA 4 Wainui that does not comply with conditions (a) – (h)(i) of rule 25.1.3.1, rule 25.1.3.1A (a) – (e), or with rule 25.1.3.2 (a) or (b) is a prohibited activity for which no resource consent application will be received or granted. For the avoidance of doubt, this does not preclude an applicant from applying for consent to catch spat across all spat-catching subzones in an AMA in successive years, subject to compliance with rule 25.1.3.1(b) and (f) in any spat-catching season.</i> (b) <i>The catching of spat of species other than scallops or mussels in subzones (a) – (k) of AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara and other than mussel spat in AMA 4 Wainui is a prohibited activity for which no resource consent application will be received or granted.</i> (c) <i>Aquaculture other than the catching of scallop or mussel spat in subzones (a) – (k) of AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara and catching of mussel spat and holding mussel spat in AMA 4 Wainui is a prohibited activity for which no resource consent application will be received or granted.</i>	Allow in part
Minister of Conservation C61.4127.2	Amend first paragraph of rule 25.1.3.1 to: <i>The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures, for;</i> <ul style="list-style-type: none"> <li><i>scallop spat catching or mussel spat catching in subzone (a) AMA 1 Waikato, subzones (a) – (k) AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara; and</i></li> <li><i>mussel spat catching in AMA 4 Wainui;</i></li> </ul> <i>is a controlled activity, if it complies with the following conditions:</i>	Allow

## Heritage

Submitter	Decisions Requested	Decision
James A Beard C61.840.6	Relocate the six factories elsewhere.	Out of scope.  The existing farms hold resource consent and have the right to remain in the current locations until 2024. Council is

Submitter	Decisions Requested	Decision
		unable to create new locations for the farms to move to through this Plan Change.
Friends of Nelson Haven and Tasman Bay C61.1050.3	Decline the Plan Change and retain the status of the spat sites as discretionary with no changes to species/structures/activities (including mussel farming) or extensions in area allowed.	Disallow
Forest & Bird (Golden Bay branch) C61.1421.6	Request the current TRMP policy to continue.	Disallow

### Controlled Activities

Submitter	Remedy	Decision
Forest & Bird (Golden Bay branch) C61.1421.4	Request the current TRMP policy to continue.	Disallow
De Lambert Family Trust C61.1531.1	Incorporate the following controlled conditions. <ul style="list-style-type: none"> <li>The community Liaison Group is maintained;</li> <li>The hours of operation are limited (for all maintenance/operations) to after 7 am start and 7 pm finish;</li> <li>No artificial lighting is allowed for extending operation beyond natural light;</li> <li>Controls on noise are included, considering also the way in which noise travels over water. This should include noise from music on the boats; and</li> <li>The operators should be required to undertake beach/coastal clean up to keep the beaches clean of debris from the farms.</li> </ul>	Allow in Part
Golden Bay Community Board C61.3592.2	Annual meetings between residents and the Wainui Marine Farmers be a condition of the continued use of Wainui Bay for the purpose of spat catching	Allow
Anna Wright for Anatimo Trust (land owner) C61.4125.1	Oppose the Plan Change. Request spat catching in Wainui Bay remain a discretionary activity under 25.1.4.4 of the TRMP requiring a resource consent and compliance with any conditions set by Council	Disallow
Foxwell, Jillian C61.4126.2	Leave the Wainui site as a discretionary activity	Disallow
Minister of Conservation C61.4127.3	<p>Include after matter (7) "Timing and purpose of reviews of any or all conditions":</p> <p><i>In Wainui Bay:</i></p> <p><i>In addition, the following standard conditions (to the extent that they are applicable) will be applied to any consent granted under this rule:</i></p> <p>(i) <i>Where any structure or part of a structure sinks, breaks free or otherwise causes a navigation hazard, steps are taken as soon as practicable to recover, secure, and make safe the structure. The consent holder, or site manager, whoever is first aware of the matter, is to notify the Council Harbourmaster of any such incident as soon as practicable on becoming aware of it.</i></p> <p>(ii) <i>The consent holder removes from the site any structure or material that is superfluous to the activity, including any discarded equipment.</i></p> <p>(iii) <i>The consent holder notifies Maritime New Zealand immediately prior to the placement of structures; and within 24 hours of the placement of structures notifies Land Information New Zealand, and the Council Harbourmaster.</i></p> <p>(iv) <i>The whole or any part of the interest in the coastal permit for the activity may be transferred to any other party. The transferor remains</i></p>	Allow



	<i>responsible for compliance with the terms and conditions of the permit until written notice of the transfer is given to the Council.</i>	
Tui Community C61.4130.1	Support the changes so retain the Plan Change.	Allow

### Climate Change

Submitter	Remedy	Decision
Friends of Nelson Haven and Tasman Bay C61.1050.2	Decline the Plan Change and retain the status of the spat sites as discretionary with no changes to species/structures/activities (including mussel farming) or extensions in area allowed.	Disallow