

TASMAN DISTRICT COUNCIL

**Report and Decision of the Tasman District Council through its Hearings Committee
(including one independent commissioner)**

Meeting held in the New Zealand Fire Service Rooms, Takaka

**commencing on Tuesday, 3 February 2009 at 10.30 am and finishing on
Thursday, 5 February 2009**

A Hearings Committee ("the Committee") of the Tasman District Council ("the Council") was convened to hear the application lodged by Waitapu Fishing Co. Limited ("the Applicant" or "WFCL"), to renew two resource consents (NN940213 – Wainui Site A, and NN940214 – Wainui Site B) for marine farming (spat catching and mussel farming) in Wainui Bay. The application, made in accordance with the Resource Management Act 1991 ("the Act"), was lodged with the Council and referenced as RM071049 and RM071050 respectively.

PRESENT:

Hearings Committee

Dr H Rennie, Chairperson
Cr M Higgins
Cr T King

APPLICANT:

Mr G Downing (Counsel for applicant)
Mr W Rountree (Applicant)
Mr R Pooley (President NZ Marine Farming Association Inc)
Dr K Grange (Regional Manager NIWA)
Mr T Carter (Landscape Architect)
Mr D Smythe (Planning Consultant)

CONSENT AUTHORITY:

Tasman District Council

Ms R Squires (Consent Planner)
Mr G Caradus (Co-ordinator Regulatory Services)

SUBMITTERS:

Support

Mr K Heslop (Pohara Boat Club)
Mr B Cashman
Mr A Kilgour
Mr J Wilson (Sealord Marine Farms Ltd)
Mr W McDonald (Sandford Ltd)
Ms J Stuart (Sea Health Foods Ltd)
Mr B Wallace (Golden Bay Marine Farms Consortium)
Mr P Sangster
Mr F Te Miha (Ngati Tama)

Mr M Rountree (Waitapu Fishing Company Ltd)
Mr D Clarke
Ms C Rose (Area 7 Recreational Fishing Group)
Mr S De Feu

Opposition

Ms V Henderson (Wainui Bay Resident)
Mr A Vaughn (Forest and Bird Protection Society)
Ms A Wright (Wainui Bay Resident)
Mr W Heal (Counsel for various submitters)
Ms J Foxwell (Wainui Bay Resident)
Mr J Beard (Wainui Bay Resident)
Ms S Collins (de Lambert Family Trust)
Mr M Gavin
Mr J Horton Wainui Bay Resident)
Ms B Weatherwell (Wainui Bay Resident)
Mr F Muter (Wainui Bay Resident)
Ms J Trevino (Wainui Bay Resident)

IN ATTENDANCE: Mr J Butler (Principal Resource Consents Adviser) –
Assisting the Committee
Mrs V Gribble (Committee Secretary)

1. DESCRIPTION OF THE PROPOSED ACTIVITY

The applications seek to disturb the seabed and occupy the coastal marine area by placing a maximum of 10 longlines, each up to 140 metres, in length, within each of two three hectare sites to farm mussels and catch mussel spat. The spacing between the longlines varies from 5 to 28 metres. The depth of the spat catching longlines is 0.4 metres below the sea surface, the depth of the mussel farming longlines is two metres below the sea surface. The length of the culture rope is a maximum of seven metres and the minimum distance between the bottom of the culture rope and the seabed is 2.29 metres.

The applicant has applied for a term of consent to 1 January 2025. The applicant currently has two coastal permits (NN940213 and NN940214) for these areas, which expired on 31 August 2008. The application for new consents was made on 1 November 2007, more than 6 months prior to expiry of the existing consents.

The application site is in Wainui Inlet, Golden Bay, approximately 450 metres offshore from Abel Tasman Point. They are the two seaward farms within an existing block of six. At present only spat catching is carried out on these two sites. The remaining four farms are not owned by the applicant and have resource consents that run to 1 January 2025.

2. STATUS OF APPLICATION

2.1 Transitional Regional Plan (TRP)

Under the TRP marine farming on the six Wainui Bay sites is a discretionary activity by virtue of Gazette Notice No. 3286: Ag 9/6/22/7 published in the New Zealand Gazette No. 125 on 10 July 1984.

2.3 Tasman Resource Management Plan (TRMP)

The TRMP was notified on 25 May 1996 and includes the coastal marine area. The Environment Court heard appeals relating to the aquaculture provisions and in December 2004 reported to the Minister of Conservation. The Minister of Conservation approved the aquaculture provisions in June 2005. However, these provisions are not yet operative. The reason they are not operative is that although the Minister of Fisheries has released his final decision on the interim Aquaculture Management Areas (AMAs) in the TRMP, Council has yet to resolve the issue of the 20% allocation to iwi. Under S19 of the Resource Management Act 1991 and S45 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004, the rules are to be treated as if they are operative.

Accordingly the activities for which these coastal permits are sought are discretionary activities under the TRP. Under the TRMP, Rules 25.1.5FF and 25.1.5GG are the relevant rules with respect to these applications.

25.1.5FF Discretionary Activities (Mussel Farming at Wainui Bay)

The occupation and disturbance of any site in the CMA by structures, and the use of those structures, for mussel farming is a discretionary activity if it complies with the following standards and terms:

- (a) *The activity is at Wainui Bay on the site of a coastal permit or marine farm licence that existed on 25 May 1996; and*
- (b) *The activity uses longline structures, incorporating surface buoys.*

Resource consent is required. Consent may be refused, or conditions imposed. In considering applications and determining conditions, Council will have regard to the following matters as well as other provisions of the Plan and the Act.

1. *Degree of exclusive occupation, if sought.*
2. *Treaty values.*
3. *Type, scale, location, density and integrity of structures.*
4. *Ecological matters, including monitoring.*
5. *Natural character.*
6. *Navigation, including the form of compliance with Maritime Safety Authority guidelines for the marking and lighting of aquaculture structures.*
7. *Management of biosecurity risk organisms, such as Undaria.*
8. *Duration of the permit.*
9. *Financial contributions, bonds, covenants, administrative charges.*
10. *Timing and purpose of reviews of any or all conditions.*

In addition, there are a number of standard conditions outlined in the Court's decision which (to the extent that they are applicable) will be applied to any coastal permit granted under this rule.

The prohibited activity rule specifically excludes the sites at Wainui Bay:

25.1.5GG Prohibited Activities (Mussel Farming)

(a) *The occupation and disturbance of any site in the CMA by structures, and the use of those structures, for aquaculture activities in the Aquaculture Exclusion Area, is a prohibited activity for which no resource consent application will be received or granted; except for the sites of the marine farm licences and coastal permits that existed at Wainui Bay on 25 May 1996.*

3. NOTIFICATION AND SUBMISSIONS RECEIVED

The applications were notified on 9 August 2008 pursuant to Section 93 of the Act. A total of 388 submissions were received. A table summarising written submissions is attached as Appendix A to this decision. The content of material presented at the hearing remained within the scope of the original submissions, but provided considerable additional information and clarification.

4. PROCEDURAL MATTERS

The de Lambert Family Trust's submission had been listed in error as a late submission. The "late" submission was in fact a duplicate.

A motion to accept the late submissions was moved and carried.

A Department of Conservation letter received by the Council during the period when the application was open for submissions, but which clearly stated that it was not a submission, had been circulated with the submissions. The letter had been referred to in the report of the Council's reporting officer. It was taken as being for information and not as a submission.

Mr Fred Te Miha on behalf of iwi asked for permission to speak. He claimed to represent Ki Mohia Manua Whenua, Ngati Tama and Ngati Rarua. Mr G Downing (Counsel for the applicant) advised that a Cultural Impact Assessment was lodged and indicated that there was no iwi who individually made a submission. Mr Downing objected to Mr Te Miha speaking on the grounds of process. The Committee noted that Ngati Tama had made a submission in support of the application and Mr Te Miha subsequently spoke for Ngati Tama's submission.

At lunch on the final day of the hearing it came to the Committee's attention that although the Reporting Officer had provided her response to submitters there were submitters present who had not previously been in attendance and who wished to be heard. Mr Downing expressed concern that they might be allowed to speak at such a late stage and when he was about to commence his response. The Chair indicated that the submitters would be heard, but would be given a strict time limit and if the matters had already been covered then they would be asked to move to the next point. The submitters were heard.

The Committee made site visits on the afternoon of 2 February 2009 and before the hearing recommenced on the morning of 5 February 2009. They were accompanied on the first visit by Mr Butler.

5. EVIDENCE HEARD

The Committee heard evidence from the applicant, expert witnesses, submitters, and Council's officers. The following is a summary of the evidence heard at the hearing.

5.1 Applicant's Evidence

Mr Downing, a lawyer for the applicant, provided an opening submission and right of reply. The applicant called five witnesses, Mr R Pooley (Marine Farming Association), Mr W Rountree (Director of Applicant), Dr K Grange (Regional Manager, NIWA), Mr T Carter (Landscape Architect), Mr D Smythe (Planner).

In summary, the applicant sought renewal to 1 January 2025 of coastal permits for mussel farming on two sites where farms had been in existence since gaining coastal permits in 1992. The term sought would continue the past practice of consistency with the adjacent four sites. Those farms had operated under marine farm licences that had become deemed coastal permits and automatically had their term extended by the Aquaculture Reform Legislation of late 2004. The Wainui sites had special characteristics for mussel farming, and in particular spat catching, that made it important as a supply of spat year round to the mussel farming industry and the sites had been identified as suitable and appropriate for marine farming since 10 July 1984. The applicant uses current industry good practice and there had been no matters of concern regarding non-compliance.

The Environment Court in considering appeals of the TRMP had decided that the sites should continue for the life of the TRMP despite concerns as to landscape and natural character. He considered it noteworthy that the Department of Conservation did not oppose the application as long as the term granted was the same as for the other Wainui farms.

The applications were not for a new activity with unknown effects, but for a conventional farm where the effects were known and give no cause for concern and are no more than minor. In particular, no noise complaints had been raised about the operation of the two farms and no complaints known to the applicant about debris. Generally the applicant took the position that the concerns of submitters with regard to noise, light and debris were not, or only to a very minor extent, attributable to these two farms. There was an element of reverse sensitivity on behalf of bach owners and residents saying they do not like looking at the surface floats and the visual effects of the farm were only incremental to those of the other four sites. Mr Downing was in general agreement with the Council's reporting officer over the status of the application and the relevant plans and plan provisions. However, he also stated that under S165ZH (RMA) the existing consent holder now has first priority rights to renew marine farming consents, if the farmer complies with S 124 (RMA).

The applicant is in general agreement with the conditions proposed, but contended that ongoing ecological monitoring of the two farm sites is not required. Only minor impacts had occurred and the modelling evidence provided by Dr Grange, an expert witness for the applicant, that there are no concerns about the future adverse effects

meant the ecological monitoring conditions proposed would waste time, energy, resources and money. The applicant considered that a report on the benthos every eight years would be more than adequate.

Proposed Condition 12(d) should be deleted as biosecurity was dealt with in Condition 20 and Condition 20 should be amended to only relate to “new” unwanted organisms. There was no need for requiring an additional radar reflector on the east corner of the inner farm site as there were reflectors on the seaward corners (proposed Conditions 23-24). Future changes to the operative plan as a ground for review should be removed as it is unreasonable and this is not an effect on the environment. The consent holder is entitled to carry out his activities in accordance with the consent granted.

Minor amendments were proposed to Conditions 1 and 20 for reasons of accuracy and efficacy. The applicant concurred with the Officer’s report that conditions on noise were unnecessary. There are already applicable noise standards in the plan. The present noise condition is replicating the residential land rule. In response to questions from the Committee Mr Downing noted that present Condition 9.2 addressing radio noise, could be retained. He also accepted that the application was for “new” permits, not “renewal” and that the consents sought approval for longlines that were 30 metres longer than the 110 metre length approved under the existing consents, but he maintained that there was a statutory protection for existing marine farmers to renew their consents that did not exist for other resource consents.

Mr Pooley, is President of the NZ Marine Farming Association Inc (NZMFA) which represents the interests of marine farmers in the Marlborough, Nelson and Tasman districts. In summary his evidence was that the region produced 75% of the nation’s aquaculture products which included 75,000 tonnes of Greenshell mussel all from mussel farms stocked with wild spat. 20% of the region’s mussel spat came from Golden Bay, the majority of which is from the Wainui Bay farms which is caught all year round. From a risk management perspective the Wainui Bay sites provide major comfort for the industry when there is a failure of supply from other sources. The Wainui Bay spat is also distinct from Ninety Mile Beach spat, which supplies 75% of the spat, and Pelorus Sound (5%) in that it has a different maturation period. By seeding mussel lines from different sources the industry is able to harvest year round from farms, thereby providing processing efficiency and meeting market demand.

In response to questions about the implications to the industry of not having the Wainui sites, Mr Pooley responded that this would leave a significant hole in the industry’s ability to provide good quality mussels on a regular basis. In terms of mitigating that effect, the only real option available is to start falling back and putting pressure on product from the other two main sources. In order to keep factories processing, the industry would prematurely harvest or harvest less than optimal condition product from other sources. It would be logical to assume some sort of generic reduction in harvested product. Work was underway to develop hatchery rearing of greenshell mussel spat, but it was embryonic in terms of commercial dependability and had a high level of associated cost. In years to come he believed the industry would have the comfort and security of having spat from hatcheries as well as wild, but did not believe Wainui would be totally displaced.

Mr Pooley responded to a number of questions on lighting, biosecurity, noise and the Mussel Industry Council Code of Conduct. In summary, the code does not cover light effects on adjacent properties, but the NZMFA advocates neighbourly consideration and would be surprised if there was a more than minor effect as a full moon would provide more light. Night work is avoided by operators if they can. He was not an expert on spat, but water temperature could affect spat farms whereas mussel farms were affected by impending storms and transport commitments that might lead them to all-night operations. Biosecurity is considered a national issue and hard to deal with, but the industry tries to ring fence it and manage it. Some unwanted species are present in the Marlborough Sounds (“the Sounds”), but not in Golden Bay. The noise problem is more from radios than engines and NZMFA is trying to instil responsibility amongst workers. It has a hot line where noise and other complaints are logged and immediately followed up with the operator. To his knowledge there have been no complaints about the Waitapu sites in Wainui Bay. The NZMFA uses a respected “elder statesman” to visit farms throughout the year to monitor and provide environmental mentoring.

Dr Grange has extensive experience and expertise as a marine ecologist, including undertaking Fisheries Impact Assessments of marine farms for the Ministry of Fisheries. He co-authored the ecological assessment of the two farm sites subject of this application and provided as part of the application. He summarised the main findings of the report he had authored for the applicant. As no information was available for the sites as they existed before development these were assessed by comparison with sites beyond their potential ecological footprint. The assessment of effects was based on spat catching as that is what has been grown on the farms. The assessment of phytoplankton depletion and benthic deposition in the report were, however, based on a mussel farm in full production to enable a “worst case scenario” assessment should the sites be used for either spat holding or mussel farming.

Within and outside site comparisons of observed effects found differences in sediment composition and organic content, and the type of species present. While some differences were statistically significant and indicated elevated organic content beneath the existing farms the values were low compared to other mussel farming areas and indicate no more than very minor organic enrichment. The proportion of water flowing through the farm that would be filtered by mussels was 10-12% and this would be the maximum amount of depletion of phytoplankton that could be expected. The depletion footprint would be <5% within 200 metres of the farms. Although zooplankton depletion was not modelled and could occur on a mussel farm, as opposed to a spat farm, the maximum level would be the same.

He concluded that any changes to the environment associated with the original development have already occurred and the environment was now highly likely to be stable with no more than minor, localised effects. Phytoplankton depletion, given the natural variability and low levels of water processed by farmed species, is unlikely to be detected. Accordingly he considered that ecological monitoring, if required, should comprise a survey completed every eight years covering organic content of the sediment, the extent of shell drop, and the abundance and types of benthic fauna present as these are the parameters likely to be operationally affected.

In relation to biosecurity, he considered identification and reporting of unwanted species should be limited to species new to the region. It was unlikely spat farms would bring in new species as it was exporting product out of the Bay, not bringing it in. In response to questions from the Committee he expressed the opinions that if lead core rope had an effect it would have an effect on the mussels on the rope, but he was not aware of any such effect; spat farms are good for juvenile fish; swells do not get attenuated by mussel farms; he was not aware of any higher retention rate of Wainui spat compared to spat from elsewhere; the recovery rate of a site after farming ended was two-five years; and it was very difficult to hatchery-breed greenshell mussels and it was unknown whether hatchery bred spat might replace wild spat.

Mr T Carter is a landscape architect with an honours degree from Lincoln University, an Associate of the NZ Institute of Landscape Architects, with 11 years experience specialising in assessing landscape and visual effects of development within a range of environments including coastal. He affirmed that when preparing his evidence he had complied with the Code of Conduct for Expert Witnesses contained in the Environment Court Consolidated Practice Notes (2006). He had been asked to provide an assessment of the effects of the applicant's proposed activities on the natural character of the area and visual landscape amenity values.

In making his assessment Mr Carter had reviewed the Environment Court Interim Decision W42/2001 which found that the existing marine farms within Wainui Bay caused significant adverse visual effects and adverse effects on the natural character of the Bay. In that decision the Environment Court found that Golden Bay had natural character values and is an outstanding natural landscape/natural feature of national importance. He disagrees (para 65) with the Courts finding that Golden Bay is a 6(b) landscape as it does not recognise that the Bay contains areas of significant modification. In his view the Court's conclusion was insufficiently fine grained for an assessment of the impacts of the current application.

The Boffa Miskell Ltd 2005 Coastal Tasman Landscape Character Assessment was the closest to identifying important landscapes within Golden Bay and had recommended that Wainui Bay be considered for designation in the TRMP as a 6(b) landscape, but as the Council had not adopted it there were no S6(b) landscapes under the TRMP. He understood (para 67) that both the Court and Boffa Miskell concluded that Wainui was either within a 6(b) landscape/seascape or was itself a 6(b) landscape and that the marine farms at Wainui Bay whilst they created significant adverse effects those effects were such that they were not significant enough to exclude Wainui Bay from being a 6(b) landscape.

He relied on the NIWA report co-authored by Dr Grange in reaching conclusions on the effects of the proposals on natural character. He had made a site visit, viewing the site from various water and land points.

He concluded that the adverse effects of marine farming within the bay or from localised areas in the bay would not be reduced by removal of the two spat farm sites. Wainui Bay is an important landscape which contains 6(a), (b) and 7(c) landscapes. He concluded that although the two sites have adverse effects, within the wider context of the Bay those effects are not significant. This was because the adverse landscape and visual effects created by the marine farms within Wainui Bay emanated substantially from the four inner farms which are consented until 2025.

In response to questions, Mr Carter commented that there is a more intensive view from those areas where you spend most time on a property, and the same applied for public open spaces as well. The proper thing is to go along a walking track and not go to a remote point when doing an assessment. Boffa Miskell's study was a robust assessment at a broader scale, whereas Mr Carter's was an in depth look at this issue. House 2 was significantly visible from the Bay and Wainui Bay can continue to be a 6(b) landscape while having marine farms in it. The special sense of remoteness is a real, tangible thing that people feel, but that does not exclude certain activities. The approach is to look more at effects than at activities. He does not think marine farms are industrial type activities as he thinks of land-based ones and just does not see how you can draw similarities. There was no standardised approach for looking at landscapes at night although lights are a resource management matter. He had looked at the marine farms at night recently between 9.00 pm and 9.30 pm and could not see any lights.

Mr W Rountree started mussel farming in Collingwood in the late 1980s and in 1992 was granted the original coastal permits for the two sites for which these applications are made. He described the history of the site, the way in which operations were undertaken and then turned his attention to responding to the written submissions. In summary, the terms of the permits have always been set to match the expiry date of the inner four farms to enable the effects of all of them to be dealt with together, the farm's year round spat catching ability provides its value to the industry, the company has invested in ways to address its environmental effects, the farms offer a reef type environment for juvenile fish that benefits recreational fishing and the operation provides and generates employment.

The measures taken to address the "rubbish on beach" issue include biennial beach clean ups and developing a system of reusing "snoods" (the twine used to tie the catching rope to the backbone long lines) and this was recognised through an environmental award from the Council. An average of half a shopping bag of lashing offcuts have been collected during the clean-ups that could be directly attributed to his farms. The farm floats have identification marks and are collected after a storm and he has advertised a \$10 reward in local papers and has collected and paid for them, but his experience has taught him not to pay for or collect floats of other farmers as this may be seen as theft.

Some noise from boat working is unavoidable, but WFCL uses the Kay 7 for these sites and it has one 275hp main engine to power the boat and a 175hp engine that runs hydraulic pumps. Both engines are fitted with large mufflers. The main engine is switched off once the vessel is hooked up to the mussel line and an "accumulator" has been fitted in the hydraulic lines that deadens much of the hum from the hydraulic pump. The WFCL normally operates its workboat during daylight hours and therefore believes many of the complaints of submitters do not relate to his sites. He believes the noise that some submitters complain of may be from boats working the inner farms which include twin engined 500-600hp engined vessels. Similarly, lighting effects could not be from his boat. He considers the mussel workboat noise is not as "interruptive" near the National Park as that of water taxis and charter boats working from Totaranui to Marahau.

Factors affecting work hours are dominated by the weather and most spat “plucking” work is done in the morning before the prevailing North West wind gets a hold. Other factors are the timing of when the crop is ready, when spat is catchable, when other farmers want to take spat, any toxin issues or floods that impact on quality, and maintenance that needs to be done whenever required.

He considered the visual impact of the farms was caused primarily by the four inner farms and that the only view of the farms from the National Park some two miles away were from the track going up the hill from the base of the Wainui spit to Wharewharangi Beach.

In response to questions Mr Rountree said that they work on the farm 95-125 days a year; he could not say how often boats visited the inner farms but knew that there were at least four different local boats operating them; if you stand on Wainui Hill and blank out his two farms there are still mussel farms there; the outside speaker on the boat is VHF which is only turned up for emergencies and in accord with Maritime NZ requirements; any rope used from other farms is dried on land and washed before use to avoid contamination; you cannot catch spat in Collingwood; and in low spatfall years at Wainui the industry draws more on Kaitaia spat which is not always available. The reason for applying for mussel farming permits was because their definition included spat catching and holding whereas the traditional definition of spat was for up to 40 millimetres and did not allow holding of spat that grew beyond that size while being held. He said that he could “live with” a decision that restricted him to spat catching only.

Also in response to questions, Mr Rountree said spat catching is virtually quick in and out. Mussel farming would have a visit from a boat once a week and then at harvest it would be all on seven days per week until harvested and then seven days a week until it is seeded. To turn the spat farm into a mussel farm the area of the sites would have to be reclassified as a growing area. He did not see it becoming a mussel farming operation, because classification of the water takes 12 months testing with product in the site, whereas spat can be taken without the water being classified. His Wainui farms were classified once and because of the cost he turned the whole thing into spat catching.

Mr D Smythe is a planner and registered surveyor, a Member of the NZ Planning Institute with over 40 years planning experience, including work in marine farming and aquaculture since 1983 and is a director of a company that owns and leases a site in Port Underwood.

In summary he confirmed and supported the reporting officer’s summary of the status of the application and relevant statutory and planning provisions and analysis of submissions. He expressed empathy toward many of the submitters views and concerns, but there sometimes is good reason to have “unpleasant-to-some” uses provided for in plans. There has been provision for these sites in Wainui Bay since 1984 whereas it has been effectively prohibited in the rest of the Bay and much of the wider region.

In terms of relevant planning documents the TRMP was the relevant document as the relevant parts of the New Zealand Coastal Policy Statement (NZCPS) are already provided for in the TRMP although the NZCPS must still be considered. The Bay is already comprised by development and the relevant effects have been remedied to a

satisfactory level, therefore granting the application is not contrary to NZCPS policies 1.1.1, 1.1.2, 1.1.3, 1.1.4. It is not contrary to policy 1.1.5 because the natural character of the immediate locality will not be restored by simply refusing consent as the other farms are there until 2025. The provisions of Part III of the TRMP relating to the farm have been well tested during the Environment Court hearings.

He considered an important feature of the TRMP was that there is not an objective to remove any existing marine farm sites when existing permits expire. The TRMP gives no direction as to what is to happen when the existing coastal permits for marine farming in Wainui Bay expire. Rule 22.1.3 explicitly prohibits aquaculture activities except in the sites identified which include the ones in Wainui Bay and these sites are specifically given discretionary status. This meant it was anticipated that they might carry on subject to a grant of consent to an application and that decision had to be on an overall judgement, not on one particular factor. In light of Dr Grange's evidence on ecological effects, in Mr Smythe's opinion the only matter that remained a live matter was the visual impact or adverse effect on natural character and landscape values of Wainui Bay and it must not be given undue primacy or weight.

Mr Carter's is the only independent expert landscape assessment of the application and therefore his conclusions had not been subject to expert challenge. He accepted Mr Carter's opinion and noted that while Houses 1 and 3 in that report were built before the first four sites were established in the Bay, House 2 was recently built.

It was unlikely, given the importance of the spat, that full mussel farming would be established on the application sites and ecological monitoring of benthos at eight year intervals would be sufficient. He reinforced the comments made with regard to some consent conditions by Mr Downing and concluded that in his opinion the incremental effect of the application being granted, subject to appropriate conditions, is small and within the general level of "no more than minor". He understood that Maori concerns had been addressed through the cultural impact assessment report provided with the application.

5.2 Submitters' Evidence

In Support

K Heslop, Commodore Pohara Beach Boat Club, gave evidence in support of the applicant. There is no navigation hazard with the present lines and they are out of the shipping lane. The marine farms are known to be a good habitat for fish and good for recreational fishing which has substantially increased. The presence of the farms creates more over the wharf usage of Port Tarakohe and more income to maintain that harbour. He spoke on behalf of the Boat Club and the submission had been authorised unanimously by the ten members of the Boat Club's committee, but not all of the Club's 200 members were represented by the Committee. None of the ten Committee members were residents of Wainui Bay.

Mr B Cashman gave evidence in support of the application. As a Golden Bay resident all his life he had seen the growth of the mussel farming in Wainui Bay from its inception and had some familiarity with the industry as a former Tasman District councillor. He understood from that experience that the best supply of spat for Sounds mussels was from Waituna with preferred colour and year-round availability

and different maturation dates enabling year-round processing. Waitapu Fishing Company was a family company and he had known the directors for many years. They employed several staff and supported associated businesses in Golden Bay and had always been “very environmentally aware” and deserved support.

In response to questions regarding noise he indicated that it may be possible to restrict hours but he would not like to see the company penalised by harsh restrictions and there were times when weather conditions required working long hours. He could not recall having heard comments “as dramatic” about the effects on noise or visual impact as he had heard at this hearing, and never heard any comments about debris in relation to Wainui Bay.

Mr A Kilgour spoke to his personal submission in support of the application, drawing on his experience as Harbour Manager of Port Tarakohe. Any loss of spat catching areas in Golden Bay will have affects on all Golden Bay. The mussel industry was expanding in the Bay. Any loss of spat catching area will impact on the actual growing capacity of the Bay, on jobs that would keep youth working in the Bay, and on the income of Port Tarakohe. As a former passenger ferry operator for the Nelson to Tarakohe trip, a stop at the mussel farms in Wainui Bay was a feature and mussel farms had huge tourist potential.

In response to questions he indicated he was confident that the jobs from mussel farm expansion would stay in Golden Bay because of the cost of travel from the Sounds to the new offshore Bay sites for the boat operators. 100 hectares would support five mussel harvesters. There are ways of addressing noise problems. It is a reasonably noisy operation when there are motors going for hydraulics, but there must be systems to minimise that noise. Limiting operating hours was a possibility, but this must be realistic. Trawlers going up and down the Bay can be heard. When you live by the sea there will be noise. He was not aware of any resident liaison groups in the area, but was in favour of that as although there would be differences, it would help resolve these. There were no other mussel farms suitable for a tourism venture on the route to the National Park. When he had operated the business he had focussed on ecotourism and included the farms which were well-received when people understood how they worked and the research involved. There are noisy and quiet mussel boats and ones with dry stacks seem to be quiet.

Mr J Wilson, has worked in the mussel industry since 1991 and is an independent consultant, asked by his client, Sealord, to submit in support of its application. He reiterated the common theme of the year-round availability and special desirable qualities of mussels grown from Wainui spat. It is the most cost-effective way of obtaining spat and enables year-round employment of workers. Another 800 hectares of new water space in Tasman Bay and 1000 hectares in Golden Bay will require spat and Wainui is the best source of spat for those farms. Granting the application is very important for all of the industry in the top of the South Island. He could not confirm which farms in Wainui Sealord took spat from, nor could he comment on noise from boats used by Sealord in its neighbouring Wainui farms or ways of reducing it. Hours of operation could be reduced but from a factory processing perspective it was good to have someone harvesting when you needed it. Sealord’s interest was in spat from Wainui, but there were more costly alternatives if it was not available.

Mr W McDonald, Branch Manager, Sanford Havelock in Marlborough appeared on behalf of Sanfords which leases six longlines from Waitapu over their 2 hectare farms in question. They generated 60,000 metres of spat, equating to 80 longlines on various marine farms, producing 2,000 tonnes of crop over an 18 month cycle and 1,600 tonnes of product harvested and processed through the factory each year. Every 50 tonnes grown and harvested produced 11 jobs. They are reliant on these spat supplies and a reduction in availability would affect future plans. Sanfords spend time minimising sound on its vessels and has policies regarding operating music. Vessels outdoor speakers are limited to reasonable hours. It works on silencing boats as much as possible, but even if the engines are silenced there is talking and gear operating so they can never achieve total silence. Retrofitting is expensive and difficult whereas new vessels have as much silencing equipment being fitted as possible. Sanfords would not like hours limited on these farms as bad weather, health and safety and the need to get spat into the water quickly may mean having to work outside daylight hours. Noise reduction practices tend to be more a code of practice matter within each company. They are more circumspect where there are sensitive areas. They abide by the Mussel Industry Code of Practice. Their contractual agreement with Waitapu requires them to adhere to all conditions of the consent. In the Sounds they participate in a residents and industry liaison group which works to resolve issues. With regard to lights, there could be some shielding, but not of navigation lights. Spotlights can be directed.

Ms J Stuart, General Manager of Sea Health Foods Ltd spoke in support of the application. SHF employs 75 staff and 35% of its spat comes from the applicant's Wainui sites. They are "hugely" dependent on this spat supply to maintain their 10 month processing operations.

Mr B Wallace, Golden Bay Marine Farms Consortium, spoke in support of the application. The sites in Wainui are crucial and provide spat that will be held on 130 lines at Collingwood where farms had been restricted to spat catching, but could now be converted to mussel farming. Instead they would hold Wainui spat. He affirmed there are noisy and quite boats and that noisy boats can be heard when operating in Collingwood. The noise issues at Wainui Bay were raised in the Environment Court hearings and considered when AMAs were determined.

Mr P Sangster spoke on behalf of:

- Peter Woods, Jonathan Tripp, Daryl Dickson, Paul Crockford that it was unfair to cingle out the applicants farms from the other four, it was a great fishing spot, beauty was in the eye of the beholder and the farms helped the workforce.
- S Greaves, P Bennett, D Hughes, K Grooby, N Duggan that it was a great artificial reef and shelter for small craft, created jobs, and was ideal for kayakers.
- B Clelland, N Neil, L Clark – it was wrong that so many overseas people live where there is already existing marine farms and they want them removed. With job shortages looming why create unemployment? The notified hearings at high cost was unfair when others have been approved without hearings.
- B Reilly, G Whiting, I Thompson – Wainui farms are birth place of Golden Bay spat producing high quality spat, and should never have been notified.

Mr Sangster, speaking on his own behalf, has been involved in the Golden Bay community since 1969, is a former Councillor, and involved in tourism promotion. There will be noise because people are living by a road that has increased its traffic tenfold. There are noise rules in place that the Council can implement if there is a noise problem. There was an issue of reverse sensitivity of people buying land where there were farms and then complaining about their noise. In his tour guiding he always stops at the top of Wainui hill and has never heard a complaint about the farms although they enquire about them. The Bay needs employment and mussel farming offers that potential. There should not be a farm in every bay, but there are some, like Wainui, that reflect a compromise. They can be used for tourism and the industry should not be forced to move to less highly productive areas. He believes noise problems should be able to be fixed by boat design and cannot recall any of the people working on the spat farms saying they had worked all night. A resident's liaison group was not necessary as there was the company itself, the Community Board and the Port Tarakohe Harbour Master to take issues to. Wainui was the first place mussel farming occurred in Golden Bay in 1977/78. He did not want heritage and historical values considered but future value.

Mr F Te Miha, a Director of Challenger Scallop Co, past director of Challenger Oyster and Finfish Company, and spokesperson for Ngati Tama on agriculture, commercial fisheries and customary fisheries. Ngati Tama 100% supports the Waitapu application. He reiterated many of the comments made by others on the quality and importance of Wainui spat, but added that in future biosecurity issues will stop transfer of spat around the country because of disease. This would affect supply from Kaitaia and it is therefore essential that there is more space in Wainui to collect spat to safeguard the industry in Golden Bay. The government had already had to pay iwi for not being able to deliver marine farm space in accordance with their agreements and the more spat farms that were not allowed the more Ngati Tama would have to go to the government. If these two applications are declined iwi will have to look at ways to counteract, like working with the Crown to "get it done". The two farms in question should be carried through to 2025 the same as the other four and then have a review. In his visits to Wainui, sitting on the beach, trucks, trailers and residents' stereos made more noise than the farms.

In response to questions about the Iwi view in terms of their role in managing the environment Mr Te Miha said the holiday homes are a scar on the land as they contribute nothing, their owners are present only during holidays, only use the area for enjoyment and do not put anything back into it. The mussel farms are not a scar and provide mussels for tangi. Noise issues could be dealt with by enforcing rules in plans and talking with boat owners to reduce their noise. Mr Te Miha did not see any need to have conditions on the consents to ensure that the matters identified in the Cultural Impact Assessment as addressing Maori cultural concerns were met. He was happy to work on a voluntary basis.

Mr M Rountree, skipper of the Kay 7 and part of WFCL, provided extensive evidence traversing a range of issues including; the development history of the Wainui Bay area, the positive response of an artist to the original development of marine farming in the Bay, information on visitor use of the region, tourist interactions with the farm, local house prices, specifics about the Kay 7 and operational practices on board the vessel, local weather conditions, and contributions by the company to the community. In summary, Wainui Bay is not a pristine natural environment and has had a history of

development and use. The farms needed to be seen within that context. There had been a 38,000 person increase in visitors through the information centre in the 16 years of the farms operating and 50,000 tourists walk the Wainui Falls track. There is a lot of traffic movement on the Wainui Bay Road. The Aquataxi stops at the farm daily and other tourists visit the site by boat and they are asked to take people out to visit the farms. Mr M Rountree said that there is interest from passers-by in their offloading at Tarakohe. The industry offers employment and income for young people in the Bay. The Tui commune arrived in the Bay in 1982, after the first marine farms.

There were six or seven boats servicing the Wainui Farms and he tabled a statement from the engineers servicing these vessels that said Kay 7 was the quietest in the fleet. In addition to the evidence given by Mr W Rountree he added that they now spend less time in the Bay and have developed gear that lessens the use of winches. The vessel is faced bow into the beach to lessen exhaust noise, and offered to produce logbooks as evidence that they did not work 24 hours a day, seven days per week and do not work at night. Offshore sea breezes dominate in the morning and SE winds carried sound offshore away from land. There were seldom calm days and he doubted they could be heard over choppy water slapping beaches in north westerlies in the afternoon. As they do not work Wainui Bay in the dark, bright lights are not coming from their vessels. He had also contacted the District Council, the Department of Conservation, and the Takaka Information Centre and none had received complaints about noise from the farms in Wainui Inlet, and nor had the applicant in 16 years of operation. It is a beautiful bay, but a big bay of 400 hectares. The spat farm is 6 hectares, less than 2% of the space.

Responding to questions Mr M Rountree said Waitapu uses its own boat for the lines it leases to others and the only time Kay 7 was not used would be when it was being fixed or urgent harvesting was needed. Other boats on the farm would be reminded of the consent conditions. A limit on operating hours of 7.00 am to 6.00 pm would be a problem, although not so much in the evening as they take the spat in the morning for on-growing on other farms, workers on other boats needed ear muffs and there were some noisy boats, whereas Kay 7 workers did not need ear muffs to protect from noise. Morning start time is imperative, 6.00 am is start time, but it takes Kay 7 about 35 to 40 minutes to get to Wainui. They need to start early to keep the spat from being exposed to sun and drying out. Restrictions on hours worked also need to consider equipment breakdown and the need to get back to the farm if that happens. The other farms with boats coming from the Sounds have 2.00 am starts, but will be doing that until 2025. They would have no problem adhering to a requirement that only dry stack boats could use their farm, but every vessel is different and the biggest noise is associated with horsepower.

Mr D Clarke, a Golden Bay cartage contractor, who has developed his business to now have three trucks and five full time staff servicing the mussel industry gave evidence in support of the application. Without the Wainui Spat farms he was concerned his business would become seasonal with potential loss of employment for his staff. Communities benefit from having employment. The farms also provide good amateur fishing grounds, including for campers at the Pohara Beach Camp owned by his brother.

Ms C Rose, representing Area 7 Recreational Fishing Group, in support of the applicant has fished for many years there while the industry has grown. She said it was a good fishing spot, marvellous nursery, prevented trawlers from fishing the area, and the lines buffered wave action providing shelter for boats. When she is fishing, the mussel boats are barely noticeable working just 50 metres away. There is very little light spill from her observations.

Mr S De Feu in support, runs a six motel tourism operation at Pohara, Chairman of the Environment Centre and a member of a waka ama club. Wainui Bay is of outstanding national value and the farms have become a feature and part of the ecosystem. The area is significant for birdlife, and dolphins are sometimes seen. Tourists want to see the country working and Mr Rountree's operation fits with the rural working image. They provide employment and Mr Rountree takes his responsibilities seriously and operates in the most environmentally friendly way possible. The farms are a good alternative site for tourist fishing when there is adverse weather elsewhere. Noise is a low hum from winches and he does not find it offensive, just another country activity. If the consent were to be sold on it comes down to strict guidelines on practice. It could be a condition that future operators should understand requirements of the operation in this area.

Submitters in Opposition

Mr A Vaughan, Forest and Bird, in opposition, drew attention to paragraph 707 on page 126 of the Environment Court's Interim Decision on its enquiry into provisions of aquaculture in Tasman and Golden Bay. There had not been a reference on the Wainui sites, but the Court described the mussel farming in the Bay as a significant adverse effect on the natural character of the coastal marine area of Golden Bay. New Zealand Coastal Policy Statement 1.1.5 had not been specifically mentioned in the reporting officer's assessment of the application and this is an opportunity to comply with the policy by restoring an area. The farms were not guaranteed continued existence by the wording of the TRMP. Additional AMA space is available for spat catching in the new offshore AMAs and on expiry of consents the Council could allocate consent holders new sites within the new AMAs. There was clear evidence of non-compliance with consent conditions by the applicant. Reference has been made by the applicants to the mussel and marine farming industries. The spat catching farms clearly constitute an industrial activity. There appeared to be discrepancies in Mr W Rountree's evidence as to the ability to catch spat in Collingwood.

Mrs A Wright, in opposition, read a letter of supporting evidence from Mrs Paterson and then her own evidence on behalf of the Anatimo Trust. Her ancestors bought the land in the 1920s. The Trust is for the benefit of 20 persons including herself and Mrs Patterson and the family has objected to the farms at every opportunity, but did not have an opportunity to contest the statutory renewal of the four inner farms. New AMAs were now located offshore out of view and the Wainui sites were among a few exceptions. The spat farms should be relocated offshore. The farms had environmental impacts, including creating debris on the beaches. She said that they are visually prominent from their house near Takapou Point, and from beaches and rocks near the farms. Houses and other land structures have been present since the 1860s and might be expected in a rural landscape. The safe harbour and recreational area is reduced with sailing and access restricted. The name Snapper Rock is indicative that fishing had been good before the farms. The noise from boats

working on the mussel farms is clearly audible at night at Takapou Point. Just because the farms are there does not mean they should continue to be present. The TRMP rules and zoning discourage development of any sort around Wainui Bay and declining the applications would be in accord with that and would help remedy the adverse effects of marine farming in the Bay. It would reduce the overall area by a third and remove the most visible farms. She questioned whether farms were legally in existence in 1996 with reference to the TRMP policy 25.1.5FF. Only one house has been built on the Trust's property since these two farms had been established and very few have changed hands. The bach owners had close, long ties with the area and had contributed to the community in many ways. They also paid rates. The timing of the marine farm applications have coincided with economic downturns, this is not a reason to grant the applications. The ecological evidence did not address the effects of the farms on currents and waves and associated effects in an area where there had been increased erosion. She noted that the beaches had had less debris this Christmas and the music from the mussel farms had noticeably reduced.

In response to questions she noted that there are other alternative sites and when the sites were first established there were no other sites. The whole scale of farming has changed since those days and 6 hectares or 18 hectares versus 800 hectares now available is quite a small percentage of the whole industry. It was not easy to take concerns to "local identities" who lived in Takaka and Pohara. The farms have impacts on the landscape and the Waitapu farms are probably the most visible. Coming from an urban area she personally does not have an issue with the noise, but it was an issue for her mother. There are alternative sites, this site is just cheaper.

Mr Heal, counsel for Friends of Golden Bay ("FGB"), tabled evidence and spoke on behalf of James Beard, Hugh Templeton, Jill Foxwell, Virginia Henderson, Richard Scott, Brian Weston, Darren Foxwell. The argument was extensive. In summary:

- the Environment Court's decision considered the farms to be inappropriate because of the outstanding landscape within which they were located;
- the original approval of marine farms in Wainui Bay was a mistake;
- it was arguable that the Court's decision required that the farms should cease on expiry of their permits or on the expiry of the plan;
- no significant benefits from full marine farming, as opposed to spat catching and holding, have been proposed;
- the effects of attracting predators to the area has not been assessed and the effects of farms on the ecosystem has been underestimated in the past;
- the fish may be attracted by noise, and research elsewhere has indicated that farms had probably lead to the decline of some species;
- the fish attraction effect of the farms is not supported by scientific research elsewhere;

- the opponents to these farms have described it as industrial and that marine farming is an industrial type of activity is a view shared by the Environment Court in the Kukumara case (W25/2002) and they are inconsistent with natural character which is of national importance in terms of section 6 and the NZCPS Policy 1.1.4;
- they impinge on visual amenity and are clearly visible from several often elevated viewpoints;
- removal of the outer farms would remove a substantial visual assault;
- the ecological report shows that there have been environmental impacts from the spat farming and the environmental impact of mussel farming (as opposed to spat) would be greater than that currently experienced;
- the modelling does not discuss the type of plankton removed by mussels;
- noise from boats working the farms is highly irritating and prevents sleep;
- spat catching activity carries on at all times of the day and night to complete the task on hand which is primarily a financial justification;
- the voluntary reduction of noise might not continue if the conditions on noise were removed;
- the decline of the application would reduce the noise by nearly 40 percent;
- noise is a contaminant inappropriate in a National Park;
- light spill is a contaminant and enables a witness to read a book in her home over a kilometre distant;
- the farms generate rubbish and debris with over 50 buoys located on the beach in a year and ten in one day;
- rope (and particularly irritating is the pink plastic twine) washes up on shore;
- the Bay has important historical connections being close to the contact point between Abel Tasman and Maori;
- the application contravenes NZCPS 1.1.1, 1.1.3, 1.1.5, 3.1.1 and 3.2.2;
- there are alternative sites for spat catching and while people cannot be directed to farm there these sites can be considered in terms of the future needs of the industry and the desirability of addressing a matter of national importance (natural character);
- the establishment of a particular farm on a particular site is not necessary to promote the region's wellbeing and personal hardship is not a relevant consideration when considering the imperatives of the RMA;

- Mr Carter's report consistently understates the relative size of the area covered by the spat farms and was asked to report on visual landscape amenity values rather than the overall landscape value;
- the effects are more than minor within 1.5 kilometres of the buoys; and
- the existing environment is that which would exist if the activity to which the consents relate was discontinued.

Mr Heal proposed a number of conditions should the consents be granted: limiting the site to spat catching, limit the activity to between 7.00 am and 9.00 pm, impose meaningful light and noise controls, limit the consent to seven or a maximum of ten years, limit dropper ropes to existing lengths.

He called evidence or read statements from Mr J Beard, Mr H Templeton, Ms J Foxwell, Ms V Henderson, Mr R Scott, Mr B Weston, and Mr D Foxwell.

Mrs V Henderson gave evidence in opposition to the proposal, on behalf of herself, Friends of Golden Bay Inc, E Schulman, J McKie, J Hoch, J and K Watchman, W Hoy, K Thurston, S King and A Schrader and L Ahearn. Mrs Henderson's property is 1.3 kilometres from the marine farms and she has lived in the Bay since 1995. She gave evidence that the farm was not as significant in scale as it is now. There was longstanding local opposition to the farms expressed at hearings and the failure to succeed had meant locals were disinclined to complain as they felt these complaints would fall on "deaf ears". The marine farms are an inappropriate activity, an extractive industry ruining the natural character of an area with important scenic, ecological and historical values and in a National Park area.

The new Golden Bay sites should be able to provide enough spat. The boats servicing the farms stay for long periods with engines going and, as equipment size increased, so has the noise. They work several days at a time without stopping and are an industrial droning sound. The noise of men working on the vessels is also an issue but the applicant has reduced the noise from radios and music and that is appreciated, but still heard on occasion as well as crews talking and dogs barking. The noise is especially irritating, especially at night and she has been woken at 3.00 am, and continues on Sundays. It is the type of noise that is a problem, it is persistent and more acute because of the quiet environment into which it is emitted and it travels well over water.

Tourists come to the area for the National Park and the Bay. Tourists have complained to tourist operators and hosts she is speaking for. They find the farms interesting, but abhorrent. The farms can be heard from the track into the Park and the water taxis do not come there and make noise.

Spat farming has less ecological impact than mussel farming, but the application includes mussel farming. The fish attracted to the area may affect the other species using the area and this has not been assessed. The marine farms create rubbish and debris on beaches especially when the buoys break free and wash up. People leave the beach areas because of the unpleasantness when the marine farm boats are working. Mussel farming is a much more intensive use than spat farming and enabling it through this application is also opposed.

The service vessels have bright lights and the whole of the Bay is lit up like a fairground after dark. It is different from a full moon which happens only once a month. There are no street lights or other artificial lighting other than that generated by dwellings, which is insignificant.

The argument that the applicant's farms should be allowed because the other farms continue on ignores the increases over time with the cumulative increased detrimental effects and fails to give effect to the decision of the Environment Court that the site is inappropriate. The area needs protection and restoration. The sites extend the furthest seaward and declining the sites would be at least a 20 percent reduction in adverse effects, an approximately 40 percent reduction in the size of the farmed area, and 100 per cent reduction in visual effects from her house's viewpoint. It would start the restoration of the Bay. There should be conditions on lighting and noise as these are significant adverse effects on a beautiful area and if not able to be limited the application should be refused. If granted then limit the hours of noise and the light glare.

In response to questions, Mrs Henderson indicated she was unaware that the spat farms operated more limited hours than the mussel farms and when disturbed at night had not looked to see where the boats were operating. She has had no contact with farm operators other than at hearings. Tourists were struck by the surprise of seeing the farms allowed when they did not expect them to be present in such an area and did not understand why they were allowed. Those who live in the area receive a different impact from tourists and bach owners because residents are there all the time. Tourists' abhorrence is that the farms should be allowed to be in an unspoilt area. Bach owners and visitors only have a certain number of days in the Bay and if they land when mussel farms are working it is tough on them. As the farms have expanded she has had more comments about them from visitors, but not a reduction in visitors. In response to a suggestion that a liaison group be established between farmers and local residents she indicated that it might be worth a try, she was still opposed to the farms, but could plan other activities if knowing in advance that the boats would be operating in the evening.

Mr J Beard, has a Bachelor of Architecture (Auckland), Master of Landscape Architecture (Harvard University) and Diploma of Town Planning (London), has 55 years experience in architecture, planning and landscape architecture and is a fellow and an honorary fellow of the NZILA. He has lived in Wellington and spent time in Golden Bay for 37 years and is a settler and trustee of the James Beard Environmental Trust which owns 44 hectares on the Peninsula at the south end of Wainui Bay overlooking the farms. He was giving evidence for both the Friends of Golden Bay and on his own behalf.

Mr Beard described the purpose of the land of the Trust as being for regenerating the native bush and noted that one of the dwellings let by the trust is directly overlooking the applicant's two sites. The concerns were that the capture and on-growing of mussel spat was an extractive industry fundamentally incompatible with the purpose of a National Park, the ecological studies were too localised, the farms were not sustainable in that they were not natural, landscape is more complex than simply visual and requires a comprehensive assessment that includes many levels, including cultural. There is a dearth of information to make an integrated assessment of the maintenance of life supporting capacities of the environment. He considered the area to lie within the National Park by extending the area of the park to include the

protected Tata Islands. The outstanding landscape values of the Bay and catchment required protection and enhancement of its amenity values and the mussel farms did not contribute positively to the attributes of an area of high natural character and landscape. The farms intrude as a landmark or cultural human made feature and the accompanying activity emanating in and around, to and from it, suggests that it is a node in the complex landscape. This landmark nodality constitutes a distraction of the natural landscape, a denial of the balanced ecosystem and “some claim” an eyesore. The farms are totally inappropriate in a location of such historical importance. The alteration of tidal flows are detrimental to conservation values and the farms significantly affect wave heights and flows leaving a visually discernable impact on the tidal demarcation, wave and current patterns. The farms produce an artificiality that detrimentally affects the beauty of the location and the nodal activity and farm presence overloads the senses. The occupants of the three houses of the Trust complain about the loud daily noise from the farms, including the applicant’s existing farms. The lights are bright and in contrast with the darkness of the Bay, are highly intrusive and offensive. The decline of the application would remove at least twenty percent of the existing problem.

Mr H Templeton’s letter was tabled to read. As a former Minister of the Crown familiar with the area he had supported opposition to the Wainui Bay development at its outset, and in hindsight considered it an administrative mistake for many of the reasons advanced by other submitters, notably noise, debris, the impact on a historic place, the disregard of the social impact on the community, both permanent and holiday, and the physical effects on the environment.

Ms J Foxwell is a resident at Wainui Bay where her family has lived since 1926. She is a member of the Anatimo Trust, fifth generation on the site, belongs to the community and can see the spat farms from her property. She fishes and kayaks in the Bay. She tabled and read her evidence in opposition on behalf of the FGB and herself. Her principal concerns were with visual pollution, noise, rubbish and the impact of lights from vessels. Her comments were in accord with the other opponents. She found the industrial type of activity inappropriate visually, the noise, a consistent drone, is very upsetting and distressing at times, and the size of the boats using the bay had been increasing. It is impossible to tell at night which boat is making the noise or lights, but the servicing boats sometimes work all night and the lights have been so bright that she reported being able to read a book in her bedroom. She has recovered pink string and rope and black floats from the beach. The Waitapu farms are the most visible and exposed and its removal would be a good start to the process of removing the farms to a more appropriate site. She had not known that the company was picking up its rubbish and thought that was good and appreciated it. It was a concern to her that the applicant had not been in compliance with the previous conditions of the farm. She had not complained because she had to live in Golden Bay and felt the hearing process was the best opportunity. A liaison group would possibly help and she had not been aware there was a phone-in number. She reported an altercation with Mr W Rountree who she said had refused to pay for some floats recovered by her children.

A statement in opposition by Mr R Scott who lives at 1427 Wainui Hill Road in a house on the Beard Trust land was tabled to read. Mr Scott has lived there for eight months, about 400 metres from the two outer farms. Noise, glare and the impact on views, which are dominated by the outer two farms, were considerably distressing. The longer he has lived there the less the presence of the farms bother him,

however, they are still ugly and noisy and still wake him from sleep, sounding as if a truck was idling next door. A reduction in size would provide substantial relief from noise, glare and enhance the view.

A statement in opposition by Mr B Weston was tabled to read. He is the joint owner of an accommodation business at Pohara and a resident there for approximately ten years. Typically visitors first view the marine farms from the top of Wainui Hill or from inside Abel Tasman National Park. The most common observation is that the farms are inappropriate for the area. He agrees with this assessment. The farms are visually ugly. The tourism industry is bigger than the marine farming industry and the maintenance of the visual qualities of the National Park are more important to preserving jobs in the long term.

A statement by D Foxwell was tabled and read. He has lived in his house with his family for 14 years at a distance of approximately 1.7 kilometres from the farms. His principle concerns were the same as those of Mrs Foxwell. Even a third reduction in the industrial activity, glare, noise, rubbish and visual effects would be welcome. The applicant's two farms are the ones visible from his house.

A statement by Mrs D and Mr B Carmody was tabled to read. They have visited the bay for over 50 years and been ratepayers and part-time residents for the past 25 years. The mussel farms offend and are ugly and are an expanding industrial site. The boats are noisy It is aesthetically inappropriate, a commercial intrusion in the peace and tranquillity of the Bay.

Ms S Collins, representing the de Lambert Family Trust, tabled and presented evidence opposed to the granting of the application. There are 13 Trust members. The property at 1447 Abel Tasman Drive has been owned since 1966 and consider it an area of outstanding natural value. They have opposed farms at hearings since the original hearings in 1978. The farms affect the outstanding natural beauty and the sense of remoteness. Adverse effects include: debris, noise, the visual impacts for both the public and tourists using the road or walking around the shore, and for the Trust members using their property, the shore and when in boats. The farms restrict kayaks and dinghies. Alternatives exist in the new AMAs. Light is not an issue for her because of the angle of the house and where the bedrooms are.

Mr M Gavin tabled and presented his evidence in opposition to the application. He has a Bachelors degree in Chemical Engineering and experience as a metallurgist. He has lived in Whanganui Inlet for 22 years. He considers the application is incomplete and requires consents for take of water and discharge of contaminants. Any consent should include a maximum upper size limit to mussels on the site and the current half shell size is appropriate. The farms should not grow mussels beyond current half shell size. A full analysis of zooplankton effects in the context of the wider development of the Golden Bay region AMAs is necessary.

Mr J Horton in opposition represented himself and his family, the Tui Trust, the Track Trust, and the Tui Events Park. He tabled for reading a letter from his son. He described contributions made by the Tui Community to the wider region. The noise ("like tinnitus"), debris on beaches, and visual pollution are the adverse effects with the last two being of most concern. The debris on the beach is light blue string and buoys.

Ms B Weatherwell in opposition lives at Tui community, up on the hill overlooking mussel farms. Her submission requests regulation of activity on the mussel farms in terms of impacts in late night/early morning periods. The noise of lines being pulled up, the quality of sound is disturbing and breaks sleep. She would like some restriction placed on hours of activity.

Ms J Trevena lives at Tui community. Points submitted have been covered and relate to the effect on the physical area not being in the interests of the Park. In addition there was a need to build the relationship with the operators and community. A resident's liaison group might address this.

Mr F Muter expressed concern about the noise generated from the activities. Not the volume so much, but the timing, as early as 2.00 am. Would like some conditions put on it and liked the suggested hours of between 6.00 am and 8.30 pm.

5.3 Council's Reporting Officer's Report and Evidence

Mr G Caradus, Co-ordinator Regulatory Services for the Council, has ten years experience partly as harbour master and partly as environmental health officer, dealing with navigation and safety issues and noise issues on shore. He was asked to be present to answer questions from the Committee with regard to noise.

In response to questions:

- there had been no specific complaints associated with Wainui farms;
- he had dealt with complaints in association with Collingwood farms
- the harvest criteria that applies to Collingwood marine farms is more restrictive than what generally applies at Wainui Bay;
- handling of mussel spat has no restrictions imposed by the bacteriological condition of the water at the time of harvest;
- they could work better hours at Wainui Bay.

Mr Caradus stated that the degree of complaint is sometimes proportionally to background noise. If the background noise is low it does not require much noise to generate a complaint but it still may not trigger noise limits. If an intrusive noise is 10 decibels above the background then can expect complaints. In a quiet area such as Wainui Bay it would not be hard for noise to exceed 10 decibels. There are all sorts of natural phenomena that would raise the level beyond that, even though the noise would be well below that imposed by the RMA.

Operators know that some boats are noisier than others. His enquiries at Collingwood revealed that the operators were also aware of the situation and tried to juggle their fleets so as not to cause nuisance. There were occasions when other imperatives drove them to have noisy vessels working on sites. Noise is easiest addressed from the design stage of boats, not retrospectively. It is an exceptionally expensive process for existing vessels to change engine configuration. Measurement of noise of vessels while at sea is problematic and he has not seen evidence of satisfactory noise measurements on-shore of vessels in the distance.

Frequently noise is assessed as being unreasonable and provisions in the RMA are used to deal with those, but he is not aware of any situation when these have been applied to spat harvesting or mussel farming in New Zealand. He felt compelled to deal with these sorts of noises by viewing it as a rural area in which a farming activity is occurring and recognise there are sometimes compelling reasons to undertake activities outside normal office hours. Provided it is done so in a reasonable manner, that motors do have reasonable silencing and radios are not loud, then they can argue they have been reasonable.

If there was a complaint about noise at night then the Council has an after hours service throughout the majority of Tasman District, based on security guards who are trained to determine what may or may not be reasonable. Council actively discourages their use of sound limit meters as that introduces a technical component that it can not be sure about with untrained security guards. Therefore, there are people that turn up at a site and agree a noise may or may not be reasonable. If one wishes to call out the Environmental Health Officer with a noise meter that would be a lengthy process as the meter is kept in Richmond. It would be something he would be reluctant to embark upon. His experience in rushing around the district investigating noise is that usually the time taken to travel is time for the noise to stop happening. The response is usually that "you should have been here half an hour ago". He also stated that the meter is ineffective in drizzle, a breeze, with birds or with cicadas. In Tasman during summer months you waste time trying to do noise measurements with background noise around 35 to 40 decibels.

The Council has resisted imposing noise limits in the coastal marine area because of real practicalities associated with it. Activities associated with marine farming may be seen as equivalent of farming in rural areas where temporary or intermittent noises are exempt from standards.

Recording of calls that come after hours. The call goes to the call centre, the person at the end records details of the complaint. If it is about noise there is a protocol by which it is referred to a security guard operator working in that part of the district. That operator also records the complaint, they would record time of receipt, time they arrived on site and observations and any action taken. Both the record of the initial complaint from the call centre and the record of the investigation from the security firm are referred to the Council. In the case of the call centre they come the next working day. All records are entered and stored digitally and can be interrogated looking at particular classes of complaint. That system has been operating for the last few years, but the complaint about Collingwood occurred before that and Mr Caradus relied on his memory of it.

An L₁₀ of 40 decibels for a residential zone is entirely reasonable. 40 – 45 decibels would be a reasonable expectation. Long term noise is more pervasive than short term, and logic suggests it would be 10 or 15 minute measurements. Noise for a minute or two is simply not going to be something that would be measured.

Ms R Squire's report was taken as read. In responding to the evidence presented and issues raised she noted that the farms had had an existing impact on an existing environment and the effect of the other farms is allowed until 2025. The status of the permits between 1994 and 1998 had been raised and her view was that the farms were operating under Section 124 of the Act. The Decision of Council in 1998 was that the effects of the two outer sites were no more than minor in context. It was also

noted that when considering an application under Section 104(2)(a) a consent authority must have regard to the value of the investment of the existing consent holder and that this is another matter that should be considered.

The applicant had requested that radar reflectors are not necessary on the eastern side of site "B". She had discussed this with the harbour master and both agree it would be helpful to have navigation aids at that site to provide aids if a vessel is seeking shelter. She stood by the recommendation that consents be granted.

The applicant has suggested that the Council should not impose a condition regarding monitoring, or only after an eight year period. The existing consent has a monitoring provision, but Council had not received monitoring data, only information regarding the number of lines, and product removed. The reason for the monitoring is to give confidence to be able to say "yes, this is sustainable in this location".

Her assessment was that natural character has been and will continue to be compromised on site until 2025. She noted that it probably did not fully recognise the level of effects of the two outer farms on two of the landowners.

She noted that ensuring compliance with the existing noise condition is problematic and consequently it was not recommended. However the second part of that condition regarding radio noise should have been incorporated into the recommended conditions.

The Council has been requiring marine farmers to check structures on a regular basis to ensure that there are no unwanted organisms. It is also in their interest to do so. This could be changed to include "new organisms introduced to the area", but there is a need to be careful about defining "the area".

Submitters suggest that the duration could be reduced to a period where Council has more information regarding the ability of offshore sites to generate spat. However it is hard to know at what point the industry will have certainty about availability of offshore spat. It is likely to mean that this application process will just have to be repeated between now and 2025.

The applicant submitted that banks have an issue with amending a bond in accordance with CPI. They have suggested an alternative which is acceptable to the Council.

In terms of Ms Squire's assessment against Part II of the Act, overall she acknowledged that there are adverse affects resulting from the farms and a degree of adverse effects specifically from the two outer farms, but when one works through Part II, on balance, she came to the conclusion the positives outweighed the negatives.

In response to questions she commented: Theoretically it would be possible to have conditions requiring that the exhausts of vessels operating on the farm to be dry stack, assuming it would reduce the level of noise. She had considered recommending a condition constraining the hours of operation on the farms but did not do so because this had not been supported by other councils or by the Environment Court for inshore sites. But she suspects that this could have applied to mussel farming as opposed to spat catching sites. The Council has initiated a review

of conditions on the deemed coastal permits but have not released a decision yet. It is intended that farms operating on deemed conditions would be made consistent with conditions on a farm that had gone through the RMA consent process. Conditions applied in this farm will automatically be picked up for consideration and adaptation for the other farms. Lights might be able to be shielded and a condition might be able to be drafted for that. Having heard evidence and given weighting in terms of Part II, her preference was to support the spat catching activity not mussel farming, because of the important role the spat farms play in supplying the industry with consistent good quality spat. She noted that she is not recommending monitoring for the sake of it as over time there is more and more information being provided from monitoring farms in other parts of New Zealand. However, in the absence of anything else she would support Dr Grange's advice because she is dependent on his expertise and has not sought independent advice.

Ms Squire noted that the area does have high natural values but they have been compromised but the existing farms and will continue to be for the four inner sites until 2025. However, the effects on the natural character of the two outer farms from the majority of viewing places in Wainui Bay are not significant. From the top of the hill the marine farm is the dominant part of the view, as you proceed down the hill, they are the dominant part of the west view, however, their view is somewhat obscured by the existing vegetation. The effects of the farms on the natural character of the bay can be considered to vary from being dominant at the residence at the top of the hill overlooking the sites to insignificant around Taupo Point.

There has been some non-compliance in terms of number of lines. As with a lot of marine farms in Marlborough there are issues in terms of offsite lines. However, the levels of non-compliance have not been sufficient for them to apply to legalise offsite farms, and the offences have been comparatively minor and improving over the years. When the issue has been raised with the applicant they have taken measures to bring the lines back within their boundary. The existing farm had conditions for 110 metres and they have got 140 metre lines but they still fit within the site.

With regard to NZCPS Policy 1.1.5 this is an opportunity to some degree to restore the area, but her assessment was that the level of restoration or rehabilitation is limited in the context of the existing four farms.

5.4 Applicant's Right of Reply

In his right of reply, Mr Downing added to the above points by emphasising the lack of expert evidence challenging the applicant's experts. Photos produced by opponents had used a magnifying lens whereas Mr Carter had used standard 50 millimetres lenses, the lack of evidence connecting light and noise issues to the specific sites, the lack of complaints about noise, the existence of the an element of reverse sensitivity in relation to houses built or bought that have views over the pre-existing farms and some compliance issues.

In relation to the applicant's conduct, a March 2007 compliance report was done by Mr Galbraith of the Council. This identified an outer light maintenance issue and lack of monitoring reports. The light maintenance matter was resolved. The monitoring report issue was also resolved in discussions with Mr Rountree on the basis that he was about to instruct NIWA to do the comprehensive report required to renew the application and that would resolve that issue.

The NIWA measuring devices were put in the water in July 2007 and the report produced in September 2007 and provided as part of the application in October 2007.

In addressing the conditions, Mr Downing noted the suggestions made by Dr Grange and importance of distinguishing between a benthic report and a benthos and water column report. There was no reason to monitor the water column. The sites had always been used exclusively for spat catching and the application had been made for mussel farming to ensure there were no difficulties with the holding of spat on site. The current TRMP definitions of spat catching did not include holding whereas mussel farming included the catching and holding of spat. It was not the intention of the applicant to farm mussels to commercial size. The applicant was prepared to accept a condition limiting the consent to the catching and holding of spat up to 60 millimetres in size (again spat is defined in the plan as being less than 40 millimetres in size, so theoretically they should not be referred to as spat if they are greater). Mussel farms harvest at between 90 millimetres and 120 millimetres in size.

Addressing possible mitigation measures for amenity, Mr Downing noted the applicant had difficulties with limiting the hours of operation to between say 6.00 am and 8.00 pm as this would set a precedent for marine farming. The four inner farms do not have restrictions on hours but are probably having more effects on amenity than the spat farms, so why should it be penalised? It was a farm not an industrial or factory operation and land-based farms did not have restrictions on their hours of operation.

He reaffirmed that the applicant was prepared to accept the condition on the present consent regarding no radio noise and offered to accept the L₁₀ dBA condition from the existing consent. That would bring it into line with other provisions of the plan, the same noise controls that would apply to an activity in the Rural 2 Zone that some submitters are in and it is measurable. It is an objective measure. As far as enforcement, like any activity impacting on residential boundaries, if noise from this farm exceeds the noise standard accepted throughout the TRMP then action can be taken. He said this was a transparent process, tried, tested and it works and this would resolve the noise issue. He did not consider there was sufficient or consistent evidence on technical ways to reduce noise through requiring drystack as opposed to wet exhaust, or to muffler performance and looking at mufflers would not address the real issue as the noise of boats working on site. The applicants turned their engine off when on site and had fitted an accumulator to deaden the hum. Noise of other boats travelling in the area could not be controlled by these consents.

There had been no evidence on operating lights, nor connecting light issues to the spat farms. It might be possible to come up with light spill conditions similar to those used on land, but it was not necessary for these farms.

Worksheets for the two farms were tabled. These were for times operating on the farm sites.

6. PRINCIPAL ISSUES

The principal issues that were in contention were couched in the context of the effects of the existing two farms to which the applications applied. The principle issues in contention were:

- a) The extent to which the adverse effects of marine farming in Wainui Bay could be attributed to them in terms of:
 - i) Debris, litter and rubbish
 - ii) Sound or noise
 - iii) Visual impacts
 - iv) Light pollution
 - v) Effects on the ecosystem
- b) Do the spat catching farms have a significant visual impact on Wainui Bay?
- c) Will declining the applications restore natural landscape character to Wainui Bay?
- d) Will declining the applications have a significant effect on the industry and local employment?
- e) Do the farms restrict movement in the area and comprise a navigational hazard?
- f) In a context where there were adjacent farms that had permits to operate until 2025 the pivotal issue that emerged from the hearing was: Will the incremental or cumulative adverse effects of the marine farming area (in addition to that which exists until 2025) outweigh the benefits to the marine farming industry and Golden Bay Community of the ongoing operation of the spat farms? The inverse of this was: Will the removal of adverse effects created by the existing farms outweigh the benefits of the farms continuing to operate?

7. MAIN FINDINGS OF FACT

The Committee considers that the following are the main findings of facts relating to this application:

- a) Spat catching and holding activities currently undertaken on the sites:
 - are not the source of *significant* amounts of debris on adjacent beaches;
 - are not the cause of *significant* adverse noise effects;
 - are not the cause of *significant* light spill, glare or light pollution;
 - have minor effects on the ecosystem

Evidence presented by the submitters and the applicant clearly demonstrated that noise was produced by aquaculture activities in Wainui Bay, but the measures taken to reduce noise by the applicants and the ongoing use of their vessel "Kay 7" almost exclusively during the day and not at night would cause no more than minor noise and light pollution in the context of the existing permitted farms in the adjacent sites. The Waitapu boat very seldom operates outside the times of 6am to 8pm and therefore could not be the source of the noise disturbing residents in the early hours of the morning or excessive light at night. These disturbances are more likely to be from mussel farming operations on adjacent farms. Evidence also showed that the applicant was not the source of most of the debris on the beaches and had employed mitigating measures that enabled their twine to be identified and included beach clean ups and removal of their buoys from the beach.

The nature of spat farming differs significantly from farming mussels for commercial harvest. The latter may need to harvest for extended – possibly 24 hour – periods to avoid weather or algal threats that might prevent mussels from being harvested due to health risks of consumers. Because the boats that operate on mussel farms in Wainui Bay may have come from significant distances (e.g. the Sounds) they also continue operations from commencement until completion of harvesting, around the clock. In contrast, spat farming does not have the same imperatives to harvest for extended periods in short bursts, but the farms are more frequently visited over a year than are the adjacent farms. The Committee concluded that as currently operated these two spat farms are not the source of noise distinguishable from that made by operators on the other farms in Wainui Bay and that noise from the spat farms at times when other boats were not operating in the bay was of a relatively low level.

Evidence presented by Dr Grange was not challenged by other experts. He considered the removal of up to 10% of phytoplankton or zooplankton in the water passing through these sites would have minor effects in the context of the impacts on the ecosystems of Wainui Bay as a whole. His evidence included models and field surveys. The models included consideration of the effects of the farm if it were operated for commercial mussel harvesting. The effects on zooplankton were not modelled and spat will not affect zooplankton, but Dr Grange's oral evidence was that when mussels become large they can consume zooplankton. In his opinion a potential reduction in zooplankton of 10% of that moving through the farm sites would not be very significant.

- b) The spat catching farms have a significant visual impact from some viewpoints. The evidence heard, confirmed by site visits, is in agreement that the set of six farms collectively have a significant visual impact from particular viewing points, especially elevated sites. The outer two farms are visually dominant from house two, and are the only farms visible from the perspective of Mrs Henderson. As one moves around Wainui Bay on land the viewing perspective changes it becomes more difficult to distinguish the outer two farms from the remaining block of farms
- c) Declining the applications would enable restoration of the natural character to a significant amount of the Bay's marine farm area, but this is a minor amount of the Bay's total area and would not significantly improve the visual amenity of the area while the remaining farms are present.
- d) Mussel farming profitability and industry expansion in the Golden Bay region is, and will continue to be, significantly influenced by the availability of spat from Wainui Bay until alternative sources are available. This is due to the year round availability of the spat and the high quality of mussels that grow from spat caught at the Wainui sites. No expert evidence was provided as to the impacts on the Region's economy and employment of the refusal of the application, but it appeared from evidence presented that it would at least be disruptive to local employment.
- e) The spat catching farms restrict movement through the area but, if appropriately marked, are not a navigational hazard. They also attenuate waves creating more shelter for small boats.

- f) The approval of the spat catching farms would not significantly affect the outstanding landscape values of the area. If they were removed there would remain an activity node of the other four farms in the Bay, which would remain as a significant feature of the Bay. Although the spat farms would significantly increase the amount of farmed space, it would not be more than minor in the scope of the overall perception of the Bay and the scale of the Bay.

Spat catching and holding of the level currently undertaken at these two sites is appropriate at this time due to the relatively minor adverse effects of this activity in the context of the existing adverse effects of marine farming that is currently permitted on adjacent sites.

Overall, while the removal of the two spat catching farms would certainly reduce the landscape impact of all the farms as discussed above, it would do little to reduce the other adverse effects presented by many submitters. Based on strong evidence from a large number of submitters, the removal would also cause significant impacts on the mussel farming industry and associated industries in Golden Bay.

8. RELEVANT STATUTORY PROVISIONS

8.1 Policy Statements and Plan Provisions

In considering this application, the Committee has had regard to the matters outlined in Section 104 of the Act. In particular, the Committee has had regard to the relevant provisions of the following planning documents:

- a) the New Zealand Coastal Policy Statement
- b) the Tasman Regional Policy Statement (TRPS);
- c) the Transitional Regional Plan (TRP);
- d) the Tasman Resource Management Plan (TRMP).

The Committee has considered whether regard should be had to the Proposed New Zealand Coastal Policy Statement (PNZCPS). The inclusion of the word “proposed” in S104(1)(iii) and (iv) highlights its absence from (ii). Accordingly the Committee has concluded that a consent authority is not required to have regard to the PNZCPS. As the Board of Inquiry has yet to report on the outcomes of its hearings into the PNZCPS the Committee has concluded that the PNZCPS is not sufficiently advanced through the decision-making process to be able to give its provisions any weight in its decision-making on these applications.

The Committee heard a submission that the proposed activity contravenes Section 15 of the Act, and therefore that the Council has also to have regard to the matters outlined in Sections 105 and 107 of the Act and relevant provisions in the TRMP. This is addressed in section 10 of this decision.

8.2 Part II Matters

In considering this application, the Committee has taken into account the relevant matters set out in Sections 6, 7 and 8 of the Act, as well as the overall purpose of the Act as presented in Section 5.

9. DECISION

Pursuant to Section 104B of the Act, the Committee **GRANTS** consent subject to conditions.

10. REASONS FOR THE DECISION

In reaching its findings of fact the Committee has been aided by the applications being in part to undertake activities that are currently being carried out at the sites. This has meant that the effects of the application are largely known based on the effects of the existing sites.

Technical Matters

There were four technical matters of particular importance in the Committee reaching its decision: the application was for new coastal permits for sites where there were existing farms and so matters of existing environment and permitted baselines had to be considered; the status of the application; whether additional consents were required; and the application of Section 165ZH

In assessing the application the Committee was mindful that it was for a new application over which it had full discretion. The site was therefore considered in the absence of the existing spat farms, but with the permitted baseline including the effects of the adjoining four farms which have deemed permits through to 2025. The effects were taken as both with and without the changes that have occurred as a result of the farms having been on site. This reflected the requirement to consider the existing environment as it would be if the application was declined and, secondly, as it would be if the application was granted. In the second instance the effects are cumulative on top of the effects of the existing spat farms as there would not have been a period for recovery of the sites to the pre-existing natural state.

Declining the application would remove 6 hectares (approximately 37.5%) of the current marine farm space. Viewed from the perspective of the permitted farms (the ones for which consent has not expired) the application is for an increase in the size of the area to be covered by marine farms from the permitted approximately 10 hectares to approximately 16 hectares, or a 60% increase. This is clearly a significant increase over the area permitted to be farmed.

The status of the application had been challenged during the hearing and this has some bearing on the decision.

The applicant holds coastal permits for mussel farming and spat catching, the latter as a result of being deemed to be coastal permits by the 2004 aquaculture legislation. The application is for mussel farming, but most of the argument provided was for spat catching and holding.

Rule 25.1.5BB Prohibited Activities (Spat Catching) of the TRMP states

(a) The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures for spat catching in the Aquaculture Exclusion area is a prohibited activity for which no resource consent application will be received or granted. This rule does not apply to the marine farm licences

115-118 and coastal permits NN940213 and NN940214 that existed at Wainui Bay on 25 May 1996.

Rule 25.1.5FF Discretionary Activities (Mussel Farming at Wainui Bay) states;

The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures, for mussel farming is a discretionary activity if it complies with the following standards and terms:

- (a) The activity is at Wainui Bay on the site of a coastal permit or marine farm licence that existed on 25 May 1996; and*
- (b) The activity uses longline structures, incorporating surface buoys.*

Rule 25.1.5GG Prohibited Activities (Mussel Farming) states:

(a) The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures for aquaculture activities in the Aquaculture Exclusion Area, is a prohibited activity for which no resource consent application will be received or granted; except for the sites of the marine farm licences and coastal permits that existed at Wainui Bay on 25 May 1996.

NN940213 and NN940214 were the numbers given to new consents granted to continue the activities undertaken by consents NN925445 and NN925446 issued in 1992. The coastal permits NN925445 and NN925446 had an expiry date of 1 September 1994 but, as the holders of those consents had applied for new coastal permits on 2 July 1993 to continue their activities, section 124(1) and (3) applied. These had the effect of preserving or extending the *existing consents* until the new consent application was finally determined. For the purposes of rule 25.1.5FF the antecedent permits lawfully existed as at the 25 May 1996.

There is a curious difference in wording between rules 25.1.5BB Prohibited Activities (Spat catching) and those providing for marine farming in Wainui Bay as discretionary (rule 25.1.5FF) or prohibited (rule 25.1.5GG). Rule 25.1.5BB prohibits spat catching activities in the Aquaculture Exclusion Area “except the marine farm licences 115-118 and coastal permits NN940213 and NN940214 that existed at Wainui Bay on 25 May 1996”.

The coastal permits NN940213 and NN940214 were not issued until 1998 when they replaced consents NN925445 and NN925446 that had been issued in 1992. On the face of it, then, this rule is nonsensical as the permits did not exist.

In contrast, Rule 25.1.5GG and 25.1.5FF refer to the *sites* of the marine farm licences and coastal permits that existed at Wainui Bay on 25 May 1996. They do not specify which coastal permits. As there were coastal permits lawfully existing, the sites were therefore those covered by those permits and the current application is allowed.

The applicant had indicated that the intention was for spat farming and holding, but the application lodged also enabled mussel farming to full harvest size and the ecological impact assessment provided with the application included modelling of effects of a full grown mussel farm operation. The potential for the site to change from its current spat catching and holding operation to a full size mussel farming operation was of some concern to opposing submitters. No strong argument was

made by the applicant for having a mussel farm for other than spat catching and holding was presented. Indeed the arguments presented for having a farm there at all were primarily couched in terms of the importance of spat to the mussel farming industry and this was the basis for most of the supporting submissions.

When questioned as to why the applicant had not applied only for spat catching the response was to the effect that the difference in wording between rules 25.1.5BB and the rules for mussel farming gave cause for concern that a spat catching application might have been a prohibited activity. In addition the applicant had been concerned that the definition of spat catching might have prevented the holding of spat on site until an appropriate time to transfer them to mussel farms for growing out to commercially harvestable mussels. In contrast, the TRMP's definition of mussel farming *includes spat catching*. For several reasons the intention was to use the farms for spat catching and holding, but not for ongrowing mussels to full market harvest size. Consequently the application had been made for mussel farming.

The applicant indicated that it was prepared to accept a grant of consent for mussel farming that included a condition on the consent to the effect that the activity was restricted to mussel spat catching and holding of spat up to 60 millimetres shell length. On the balance of evidence this seemed the only purpose that could be considered appropriate and the decision and conditions reflect this.

The Committee also considered the issue of whether consents were required for the take, use and discharge of water and contaminants, but concluded that this would be an overly narrow interpretation of the rules of the TRMP. That naturally occurring marine material that is discharged by any organism or from any aquaculture structure is not a contaminant is specified in Rule 25.1.5FF standard condition (a). Water is a naturally occurring marine material and its use in aquaculture has been commonly accepted practice without requiring specification in consents. Incidental discharges of contaminants during the process would be expected to be of a level to meet the *de minimus* effect test. If incidental contaminant discharges were in excess of such a level then the issue might have relevance, but could be addressed if it arose. Submitters with concerns over this matter had alternative avenues through which it could be addressed.

A further technical matter that arose during the hearing was whether weight should be given to the applicant's history of compliance. This relates to Section 165ZH a new, largely untested section of the Act.

Section 165ZH of the Act applies to applications for coastal permits for aquaculture activities, made on or after 23 August 2004, in aquaculture management areas in which no method for allocating space for aquaculture activities is specified in the plan (Section 165ZG). A deemed aquaculture management area is an AMA (under S45 (ARA)) and S2 (RMA)). There is no method set out in the TRMP for allocating space within these two deemed AMAs and counsel for the applicant specifically invoked Section 165ZH section in claiming priority for the application over any competing application. Therefore we consider Section 165ZH applies in accordance with Section 165ZG.

Section 165ZH (RMA) states:

- (1) *This section applies if-*
 - (a) *a person holds*

- (i) *a deemed coastal permit under section 10 or 20 or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 [ARA]...*

And

- (b) *the permit referred to in paragraph (a)(i)...*
 - (i) *is in force at the time of any application under subsection)20; and*
 - (ii) *applies in relation to an area located in an aquaculture management area*

It then proceeds to give priority to the applicant over accepting, processing and determining any other application for the space being applied for.

Section 165ZJ provides additional criteria for considering applications covered by Section 165ZH(2). Specifically

- “(1)... a consent authority must not only consider the relevant matters under this Act, but also consider the applicant’s conduct in relation to-*
 - (a) compliance with the relevant regional coastal plan; and*
 - (b) compliance with resource consent conditions for current or previous aquaculture activities undertaken by the applicant; and*
 - (c) the use of current industry good practice for any current aquaculture activities.*
- (2) In making an assessment under subsection (1)(a) and (b), the council must, in relation to any successful enforcement action under Part 12, consider –*
 - (a) the number of breaches that have occurred; and*
 - (b) the seriousness of the breach; and*
 - (c) how recently the breach occurred; and*
 - (d) the subsequent behaviour of the applicant after enforcement action.*

That the applicant had at times been in breach of conditions of the existing consent in regard to location, length of lines, number of lines and monitoring requirements was not disputed. The Committee accepted the views of the reporting officer that the offences were at the lower end of the scale, in the case of monitoring may have been due to miscommunication, had had no lasting significant detrimental affect on the environment, had not been of such a scale as to require formal enforcement action to be taken, and had been rectified when brought to the attention of the applicant.

The efforts by Mr W Rountree and Mr M Rountree to implement environmentally friendly and mitigating measures and practices in their operations indicated a reasonably responsible consent holder. Accordingly, application of Sections 165ZH and 165ZJ did not result in any reasons not to grant the consent.

There are no existing use rights for aquacultural activities other than those noted and addressed above.

Substantive Matters

In considering the substantive issues of adverse environmental effects a distinction had to be made between the effects of the Wainui Bay marine farming block as a whole and the spat farm sites. A further consideration was the extent to which the incremental effects of the applied for space would significantly adversely affect matters in section 6(b) and if declining the farms would contribute to the provisions of the NZCPS Policy 1.1.5 which encourages restoration.

A difficulty in assessing the scale and significance of the adverse effects of the application was the need to separate the effects of the spat farms from those of the other farms permitted in the Bay.

Noise and Light

The weight of evidence, supported by the time sheets, was that the spat farms were not operated before 6.00 am nor after 8.00 pm. Many of the complaints regarding light and noise appeared not to be caused by these two farms. However, if spat farming was replaced by full mussel farming then operational practices were likely to change leading to more operations at night. Conditions limiting the operating hours coupled with existing conditions on noise would effectively mitigate the concerns regarding these impacts and provide greater certainty that changes in current operating practices that might give rise to such adverse effects are avoided.

The applicant accepted the re-imposition of the conditions on noise that had been present in the existing consent, but was opposed to restrictions on operating hours. The restrictions to operating hours that are placed on these consents were considered carefully and were assessed against the worksheets provided by the applicant. It was readily apparent from this comparison that the restrictions impose no penalty on the applicant. The restrictions were considered necessary in the event that the farms changed ownership or an alternative vessel was used that might not be as quiet as the Kay 7 or operated in the same way. If it was intended that the farm be operated as a full scale mussel farm then further consideration of the restrictions might be necessary.

The Committee notes that the conditions may be considered as possibly being applied to the adjacent farms as part of a review of their conditions to bring a degree of consistency. While such consideration is appropriate, it should not mean that the conditions are automatically applied to the other farms and this should not be seen as a precedent. Consideration would need to be given to the different circumstances of those farms and the reality that these conditions are being applied to a spat farm.

Debris

The applicant had taken steps to reduce the level of debris on the beaches through beach clean ups and offering rewards for return of his buoys, and his twine was not the same colour as that most complained about.

Ecosystem Effects

The only expert ecological evidence presented clearly indicated that observed impacts of the spat farms had not been significant and that they would continue to be of a minor level and enable restoration after removal of the farm if required. Modelling of the effect of mussel farms was less convincing as it did not take into account effects on the composition of phytoplankton and zooplankton and would be an introduction of a more significant level of impact to the site. The ecological data did not enable a testing of the claim that the spat farms acted as fish aggradation devices but anecdotal evidence suggested this was occurring.

The effects of wave attenuation and implications for hydro-physical processes and sedimentation were not addressed in any expert evidence and remained largely unknown. However, the lack of attention to these aspects by submitters suggested that any effects were unlikely to have been of a significant scale in this context to date.

Visual Impact

Visual effects were significant from some viewpoints and our site visits identified deficiencies in the evidence of the expert landscape witness for the applicant.

The removal of the sites would amount to a reduction of about 37 percent of the existing area within the authorised marine farms and this comparison with the existing environment appeared a more useful comparison than considering a hypothetical situation as if the real visual impact was not there to be assessed.

Visual affects on House 2 (Mr Scott's or the Gatehouse) were not considered significant as the House was built well after the spat farms were put in place. It is accepted that views from Mrs Henderson's and other adjacent houses are affected only by the spat farms, but Mrs Henderson moved in after the farms were consented and although they may have grown in scale they were permitted to do so prior to the time of her arrival. The affects are considerably lessened by distance and the low elevation of the viewpoint and the availability of a wide vista over other parts of the Bay.

From the top of Wainui Hill and down the road toward the foot of the hill the elevated view does give the spat farms a prominent visual impact. We do not agree with Mr Carter that the impact of the spat farms is substantially less from this viewpoint than more shoreward farms. Removing the spat farms, however, would still leave a prominent visual impact from the other farms. In reaching its decision the Committee assessed the incremental visual impact of the spat farms in the context of the contribution the spat farms made to the sustainability of mussel farming and concluded that, at least until all the farms could be considered together, the visual impact of the spat farms was not sufficient to warrant declining the consent.

Outstanding Landscape

Many of the submitters, regardless of whether they supported or opposed the application, referred to the outstanding beauty and natural character of the landscape. Their views on the effects of the spat farms depended on the way they perceived the farms as variously iconic features, rural activities or industrial.

In his assessment Mr Carter, the only independent expert landscape witness, emphasised the visual landscape and natural character. He did not place as much weight on other landscape values, such as a sense of remoteness, which he acknowledged was present. He made the valid points that the landscape has not been categorised as an outstanding landscape in the TRMP and that the area was considered an area of outstanding landscape in other assessments even with the farms present.

The Committee favoured the deeper layered landscape approach of Mr Beard. Although Mr Beard was giving evidence as an affected party this does not necessarily detract from the conceptual structure of his methodology, but may affect the weight given to his opinion based on that structure. He identified the farms as a node of artificial activity that affected people at many different levels and not simply from a visual perspective. He concluded that the farms should be declined on this and a number of related grounds.

The key point in the Committee's view is that declining the spat farms' application will not remove the presence of the permitted farms and the sense of a node of activity that is substantially artificial will remain. Seen in that context, the effect of the spat farms on the outstanding landscape is not significant. This is a similar conclusion to that reached by Mr Carter although for different reasons.

Proximity to Abel Tasman National Park and Historic Sites

The farms do not lie within the Abel Tasman National Park nor are they over or close to an historic site. The effects of a number of activities outside a National Park or historic site may be seen or heard within it. The arguments that the application should be turned down because of the proximity to the National Park did not carry significant weight. The farms are a discretionary activity.

Social and Economic Effects

No expert evidence was presented that provided an analysis of the economic effects of the consequences of declining the application. It appeared it might reduce the year-round supply of spat and operations of a number of businesses, and this would increase the level of risk and associated costs faced by the industry and reduce profitability. This was particularly as there are currently no readily identifiable alternatives to Wainui spat. The overall thrust of the TRMP is supportive of aquaculture development in the Golden Bay area in a manner that maintains, enhances or protects the natural and physical resources of the coastal environment. The development of the offshore farms is part of that planning approach, but has some way to go to be realised. The apparent degree of vulnerability of the industry at this stage to the loss of Wainui Spat was surprising. Effects on tourism use were uncertain, but minor in the context of the benefits to aquaculture.

No health impact assessment was provided and in the absence of such an assessment the relative impacts of the effects of employment and noise irritations could not be reasonably compared. On balance it appeared more people used the Bay for recreational fishing than might otherwise have been the case in the absence of the farms, but this does not include an analysis of the opportunity for alternative recreation in the area if the restrictions on movement created by the farms were removed.

Section 104(2A)

A consideration of the value of the investment of the existing consent holder was another matter taken into account, but as no evidence was advanced as to the value this had little weight in the final evaluation.

Maori and Treaty matters

The applications have been supported by the local iwi representative who saw no need for conditions to be attached to ensure that the applicant met cultural obligations. The view of the iwi representative that if the application was not approved then iwi would take the matter to the government is not a matter relevant to considerations of the applications. The allocation of space to iwi is addressed through other mechanisms.

Summary

The committee was of the view that, in the context of the ongoing presence of the permitted farms, the adverse effects of the applicant's farms were generally either able to be mitigated or not significant. The exception was the visual impact. This impact is lessened by the presence of the other farms.

Adopting a broad overall judgement approach to the purpose of the RMA, the Committee concluded that granting the consent for the period through to 2025 would provide the security to enable the planned development of the industry and the investigation and proving of viable alternatives to the Wainui Spat. The capacity to implement NZCPS Policy 1.1.5 to restore the natural character of the Bay would still exist at the expiry of these consents. The spat farming use is an appropriate activity at this time in this location. The objectives and policies of Sections 9 and 12 of the Regional Policy Statement have been met

11. COMMENTARY ON CONDITIONS OF CONSENT

Conditions regarding noise were re-imposed with the agreement of the applicant. However, the Committee noted also that the current provisions with regard to the noise standards were difficult to give effect to in a practical sense given the time, in normal circumstances, that it might take for the necessary equipment and expertise to be brought to the location and the associated technical difficulties of measurement when there were significant other sources of noise. The imposition of operating hours on the spat farms provided the benefits of being workable in addressing the noise and light issues of most concern to the submitters in opposition. The operating hours selected, with provision for exceeding these hours on a limited number of occasions for exceptional reasons, also did not impose any penalty on the applicant as the basis for much of its argument that it was not the cause of the noise and light problems was that it did not work outside these hours. No reason was given that might lead to operating outside those hours except in exceptional circumstances of gear failure. Spat farming, being distinctly different from full mussel farming or land farming, did not require operating outside these hours except in exceptional circumstances, such as gear failure. The "operating hours" condition would avoid changes in operating practices that might lead to persistent adverse effects at night.

It was apparent during the hearing that there was generally goodwill on all sides but a degree of miscommunication and misunderstandings had occurred at times. There appeared to be general support for the concept of building an improved relationship between the applicant and the community and that a liaison group would assist in this.

Accordingly a condition has been included to facilitate the improvement of communication and resolution of issues between the parties involved. The establishment of a complaints register further provides security to the operator and the submitters as to the handling of concerns raised by the community.

In deciding to include such conditions the Committee took into consideration that the consents could be transferred to parties that might not have the same commitment to being as socially and environmentally responsible as the applicant.

The monitoring requirements have been altered to reflect a balance between the low-level of ecological effects identified to date from the spat farms and the rapidly advancing knowledge of the ecological effects of such aquaculture activities. The addition of a requirement to provide monitoring information on the effects of the sedimentation and hydrodynamic processes beyond the farm site represents a balance between the lack of information available at this time with regard to such effects and the rapidly growing information on the effects of restrictions on hydrodynamic and sedimentation processes.

The remaining conditions in contention were those relating to the bond and the navigation buoy. With regard to the bond, the applicants concerns over the difficulties of getting inflation indexed bonds had to be balanced against security for the Council over the life of the consent in the event of the consent being abandoned or bankruptcy. The strengthening of the navigational markings was considered necessary to provide adequate provision for boats in the bay in adverse weather conditions.

All conditions have been specified in order to avoid, remedy, or mitigate adverse effects that may result from the granting of the consent. As such, the conditions placed on these consents that restrict the exercise of the marine farming operation are an important part of the justification for granting this consent. Without some of these conditions, particularly regarding noise and hours of operation, the Committee does not consider that the effects will be sufficiently avoided, remedied or mitigated to allow approval of the consent. Therefore, the Committee does not consider it appropriate that any future application to relax the conditions without very good supporting evidence of significantly altered circumstances should be viewed favourably by the Council.


12. LAPSING OF CONSENT(S)

Pursuant to Section 125(1) of the Act, resource consents, by default, lapse in five years unless they are given effect to before then.

13. EXPIRY OF CONSENT(S)

The consents are to expire on the 31 December 2024. This is to bring the period of the coastal permit in line with the expiry date of the coastal permits for the adjacent marine farms which were by deemed by the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 to have consents granted for a term of 20 years beginning on the commencement of the Act (i.e. commencing on 1 January 2005).

Issued this 25th day of March 2009

A handwritten signature in black ink, appearing to read 'H. Rennie', with a long horizontal stroke extending to the right.

Hamish G Rennie
Commissioner and Chair of Hearing Committee

APPENDIX A:

Table of written submitters issues and requests for relief

ISSUE	SUBMITTER
Waitapu Fishing Co have been unjustly singled out by TDC	11, 15, 16, 18, 94-96, 98, 100, 101, 103-232, 236, 237, 241, 242, 245, 246, 269, 270, 279, 301, 317, 330-331, 351b, 358-359, 372-376, 384-386
The six sites in Wainui were all gazetted as suitable for marine farming under the Marine Farming Act	11, 15, 16, 18, 94-96, 98, 100, 101, 103-232, 236, 237, 241, 242, 245, 246, 269, 270, 279, 301, 317, 330-331, 351b, 358-359, 372-376, 384-386
All the Wainui Farms should be treated with the same terms and conditions/equal	1, 8, 9, 12-13, 17, 19-21, 43-59, 99, 233, 234, 235, 254-256, 259-264, 302-308, 311-313, 319-329, 332-340, 349, 351a, 353, 355, 360-362, 369-371, 1-8, 22-32, 60-63, 314-316, 318, 280
All the Wainui Farms act as an artificial reef attracting fish & porpoises	12-13, 17, 19-21, 43-59, 64, 233, 235, 254-256, 259-264, 302-308, 311-313, 319-329, 332-340, 349, 351a, 353, 355, 360-362, 369-371, 363
Farms provide good habitat and nursery for young fish stocks	1, 8, 9, 363, 365
Supports little blue penguin thru supporting small fish	363
Little effect after 28 yrs at site (or effects beneficial)	1, 8, 9, 10, 66-70, 273-274 347
Mussel farming a great employer/support local employment	1, 8, 9, 66-70, 347, 71-93, 97, 239-240, 243-244, 247-248, 250. 299-300, 309-310, 341-342, 348, 351, 387, 38-42, 345-346, 33-37, 238, 298, 299, 357
Loss of the farms would significantly impact on support and user industries (eg freighting, etc through to local restaurants and retailers)	38-42, 234, 345-346, 275
Owner has given a lot to Golden Bay	233, 250
Sustainable recreational fishing at these sites is great/improved (esp over summer/for holiday makers –mullet, kingfish, snapper)	1, 8, 9, 66-70, 347, 1-8, 22-32, 60-63, 314-316, 318, 71-93, 97, 115, 234, 239-240, 243-244, 247-248, 250. 299-300, 309-310, 341-342, 348, 351, 387, 365
Farms provide tourist facility/attraction	64, 65, 278, 363
Wainui is a unique/one of best spat catching area for year round spat	9, 10, 12-13, 17, 19-21, 43-59, 99, 233, 235, 254-256, 259-264, 302-308, 311-313, 319-329, 332-340, 349, 351a, 353, 355, 360-362, 369-371, 1-8, 22-32, 60-63, 314-316, 318, 71-93, 97, 239-240, 243-244, 247-248, 250. 299-300, 309-310, 341-342, 348, 351, 387, 273-274, 275, 280, 290
Wainui spat or seed is crucial/important to mussel farming	10, 38-42, 250, 345-346, 273-274, 280, 290, 357
Production would be reduced	10, 273-274

ISSUE	SUBMITTER
and risk to industry increased as forced to look for alternative source.	
The 6 farm sites precede RMA and have existing use rights	1, 8, 9, 71-93, 97, 239-240, 243-244, 247-248, 250. 299-300, 309-310, 341-342, 348, 351, 387,
Aquaculture is sustainable	33-37, 238, 298
Aquaculture promotes (clean) green NZ	33-37, 238, 298
The site is a good site because - Proximity to port reduces fuel use, - The site is sheltered and able to be worked most days - Area cannot be trawled - Provides a safe fishing site for small recreational craft	1, 8, 9, 290
Aquaculture funds Port Tarakohe Development	33, 298, 280
Farms have become a visual icon after 26 yrs	1, 8, 9
Farms are for renewal of existing activities on the same sites	273-274
Employment provides +ve health benefits	357
If sites used for growing mussels to maturity for harvest for human consumption must meet requirements under Animal Products Act	357
Not a navigation hazard for Pohara boat club	365
Against	
Noise pollution	14, 249, 252, 253, 257, 265, 276, 277, 283, 284, 285, 288, 289, 291, 292, 293, 293a, 296, 343, 344, 352, 354, 356, 363, 366, 367, 378, 379, 381, 383
Negative effect on food chain/nutrient flow/ecosystem	251, 286, 287, 383
More mussels = more noise	14
Encroaches on rights of future generations	257
Mussel farms detract from natural beauty, are inappropriate	249, 257, 265, 267, 277, 282, 283, 285, 287, 291, 292, 293, 296, 354, 356, 366, 368
Activity and effects inappropriate in proximity to national park	249, 251, 252, 253, 257, 265, 276, 277, 282, 284, 285, 288, 293, 293a, 295, 296, 363, 366, 367, 368, 378, 379, 381, 383
Debris	249, 251, 253, 257, 265, 283, 284, 285, 288, 292, 293, 293a, 295, 352, 354, 356, 366, 381, 383
Lights	249, 283, 284, 285, 343, 344, 352, 354, 356, 366, 383, 381

ISSUE	SUBMITTER
Possible contamination from lead core ropes	253
Intrude on view/visual impact	249, 252, 257, 265, 282, 284, 285, 286, 287, 289, 292, 293a, 295, 296, 343, 354, 356, 363, 366, 367, 368, 378, 379, 361, 383
Degrades landscape value (Natural, serene, tranquil, remoteness)	251, 257, 265, 276, 277, 282, 286, 287, 289, 292, 293, 293a, 295, 296, 343, 354, 356, 363, 366, 367, 378, 379
Incompatible with a proposed ecological reserve	251, 296, 383
Removing farms a step towards restoration/do not compound effects of inner farms/reduces scale of effect	249, 265, 267, 282, 285, 286, 287, 293, 354, 356, 363, 366, 367, 378, 379
Impedes/restricts ability to move freely through the area by boat/limit safe harbour	265, 289, 292
Negative impact on recreational users (Walkers, hikers, campers, kayakers)	14, 253, 265, 277, 282, 289, 292, 293, 366
Operation exceeds food consumption of naturally occurring mussels	251
Operation is in direct opposition to s.4 National Parks Act and s5, 6a RMA	251
Historical associations	251, 282, 354
Impact on Maori culture	251
Cultural values	253, 288, 293a, 295
Amenity values	282, 366, 367
Intrinsic values	282, 285, 381, 383
Aesthetic values	253
Heritage values	251, 282, 284, 288,
Environmental values/effects	253, 285, 293a, 366
Natural character	251, 257, 265, 277, 282, 286, 289, 293, 293a, 354, 356, 366, 367, 379
Affects on seabed habitat	285
Navigation hazard	286, 296
Detrimental to human health	289, 366
Inadequate impact assessment of impacts on natural systems and effects of pollutants	251, 253, 296, 377
Discharges	251
Alternative sites available/should be used	253, 257, 271, 277, 282, 283, 292, 293a, 295, 366
No benefits to those who own and/or live in the area	257
Loss of these two farms not as significant impact on incomes as claimed	253

ISSUE	SUBMITTER
Impacts of farms on tourism/visitors is negative	253, 265, 289, 291, 344, 354, 363
Unfair that inner farms extended without locals being notified and able to object	265, 292
No logic to expanding to mussel farm from spat farms	271,
Wainui Bay identified as aquaculture exclusion area by Court, farms prohibited/inappropriate/permits supposed to be temporary	271, 276, 282, 286, 292, 296
Renewal applications have to be treated on merit, no presumption or expectation that application is ore likely to be granted than declined	282
Farms have not complied with conditions of consent	271, 296, 343, 354, 356
Additional resource consents required	377
More interaction, communication and relationship between Waitapu Fishing Co and Community/area from which harvesting is done is desirable	379
Relief sought	
Grant Consent	9, 10, 12-13, 17, 19-21, 43-59,64, 65, 233, 235, 254-256, 259-264, 302-308, 311-313, 319-329, 332-340, 349, 351a, 353, 355, 360-362, 369-371, 11, 15, 16, 18, 94-96, 98, 99, 100, 101, 103-232, 236, 237, 241, 242, 245, 246, 269, 270, 279, 301, 317, 330-331, 351b, 358-359, 372-376, 384-386, 66-70, 347, 1-8, 22-32, 60-63, 314-316, 318, 71-93, 97, 239-240, 243-244, 247-248, 250. 299-300, 309-310, 341-342, 348, 351, 387, 38-42, 345-346, 273-274, 275, 278, 290, 363, 365
Grant consent, no reason given	297
Refuse/Decline Consent	14, 249, 252, 253, 257, 265, 266, 267, 268, 271, 276, 277, 282, 283, 284, 285, 286, 287, 288, 289, 291, 292, 293, 293a, 295, 296, 343, 344, 352, 354, 356, 364, 366, 367, 368, 377, 378, 379, 383, 381
Decline no reason given	266, 268, 294
Neither support nor oppose	357
Conditions of consent	
Terms and identity should align with the other four sites	12-13, 17, 19-21, 43-59, 233, 235, 254-256, 259-264, 302-308, 311-313, 319-329, 332-340, 349, 351a, 353, 355, 360-362, 369-371,

ISSUE	SUBMITTER
	280, 313, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 332, 333, 334, 335, 336, 337, 338, 339, 340, 349, 351, 353, 355, 360, 361, 367, 369, 370, 371, 388, 389, 280
Remain the same	9, 12-13, 17, 19-21, 43-59, 64, 65, 233, 235, 254-256, 259-264, 302-308, 311-313, 319-329, 332-340, 349, 351a, 353, 355, 360-362, 369-371, 11, 15, 16, 18, 94-96, 98, 99, 100, 101, 103-232, 236, 237, 241, 242, 245, 246, 269, 270, 279, 301, 317, 330-331, 351b, 358-359 372-376, 384-386, 66-70, 347, 1-8, 22-32, 60-63, 314-316, 318, 71-93, 97, 239-240, 243-244, 247-248, 250. 299-300, 309-310, 341-342, 348, 351, 387, 38-42, 345-346, 278, 363
25 year term	10
Term to expire in 2025	383, 381
No more than 10yr term	283
12 longlines can be installed on site	10
Farms to be lit in accordance with MSA guidelines	10
Not to be out in noisy boats between 9.00 pm and 7.00 am, restrict work to 8.00 am-5.00 pm (mon-Fri), 9.00 am-5.00 pm	14, 252, 381
Reduce visual impact/Plant trees at top of Wainui Hill to block view of farms	14, 379
To continue farming and spat catching as done for last 16 yrs	281
Total review of all marine farms in this area within 5 to 10 yrs	292
Further restrict times boats servicing farms to reduce noise and light effects	344, 383
Require harvesting before mussels exceed some sensibly chosen size/filtration rate capability	377
Reduce the noise (extra mufflers/slower driving around islands)	378, 379, 381
Additional efforts to improve communication and relationships between applicant and community	379

Notes:

Submission by W. Hoy between 293 (Schulmann) and 294 (Satterwhite) is unnumbered. I refer to it as 293a.

Submission 383 (late) is a duplicate of 265



RESOURCE CONSENT

RESOURCE CONSENT NUMBER: RM071049 and RM071050

Pursuant to Section 104B of the Resource Management Act 1991 (“the Act”), the Tasman District Council (“the Council”) hereby grants coastal permits to:

WAITAPU FISHING COMPANY LIMITED
(hereinafter referred to as “the consent holder”)

ACTIVITY AUTHORISED BY THESE CONSENTS:

To occupy and disturb the coastal marine area by the placement of structures, and the use of those structures, for mussel farming.

Pursuant to Section 108 of the Act, these consents are issued subject to the following conditions:

RM071049 (Seaward Farm)

Area and Location

1. The total area occupied by the authorised structures shall not exceed 3 hectares and shall be located within the following co-ordinates and as shown on Plans A and B attached to these consents:

Latitude (World Geodetic System 1984 Degrees Decimal Minutes)	Longitude (World Geodetic System 1984 Degrees Decimal Minutes)
172°55.688'E	40°47.833'S
172°55.755'E	40°47.928'S
172°55.661'E	40°47.966'S
172°55.594'E	40°47.871'S

2. The northern corner of the site shall be marked using special marks that have the following characteristics:

Radar reflectors/reflective tapes shall be provided in association with the special marks.

- a) the light must be yellow and flash in a group five times every 20 seconds;
- b) the light must be at least 1 metre above water level;

- c) having an intensity as specified in the technical specifications at the end of this section, so as to be visible at a minimum range of 1 nautical miles.

The character of the special marks shall be yellow F1 (5) 20 sec. The minimum flash length shall be 0.5 seconds.

Radar reflectors/reflector tape shall be provided in association with the special marks set at least 60 centimetres above the waterline shall be at least 50 millimetres in diameter and extend around the circumference of the tube. The tape shall be visible by torchlight at a distance of at least 50 metres in normal conditions.

RM071050 (Landward Farm)

Area and Location

3. The total area occupied by the authorised structures shall not exceed 3 hectares and shall be located within the following co-ordinates and as shown on Plans A and B attached to these consents:

Latitude (World Geodetic System 1984 Degrees Decimal Minutes)	Longitude (World Geodetic System 1984 Degrees Decimal Minutes)
172°55.773'E	40°47.954'S
172°55.840'E	40°48.050'S
172°55.746'E	40°48.088'S
172°55.679'E	40°47.993'S

4. The eastern corner of the site shall be marked using special marks that have the following characteristics:

Radar reflectors/reflective tapes shall be provided in association with the special marks.

- a) the light must be yellow and flash in a group five times every 20 seconds;
- b) the light must be at least 1 metre above water level;
- c) having an intensity as specified in the technical specifications at the end of this section, so as to be visible at a minimum range of 1 nautical miles.

The character of the special marks shall be yellow F1 (5) 20 sec. The minimum flash length shall be 0.5 seconds.

Radar reflectors/reflector tape shall be provided in association with the special marks set at least 60 centimetres above the waterline shall be at least 50 millimetres in diameter and extend around the circumference of the tube. The tape shall be visible by torchlight at a distance of at least 50 metres in normal conditions.

Conditions Common to Both Consents

5. No more than 10 longlines with a maximum length of 140 metres may be placed within the authorised area. The farms shall be constructed and operated in accordance with the applications and information provided to the Council and in accordance with Plans C and D attached.

Expiry Date

6. The consents shall expire on 31 December 2024.

Species

7. The activity is limited to the farming (including spat catching and holding) of, green-lipped mussels (*Perna canaliculus*) to a maximum size of 60 millimetres. No green-lipped mussels held on the farm shall exceed 60 millimetres in size.

Activity in Accordance with Plans

8. The activity shall be undertaken and the structures placed and maintained in accordance with the information supplied with the application received on 1 November 2007 and with Plans B and C attached to these consents. Notwithstanding this, if there are any inconsistencies between this information and the conditions of consent, the conditions of consent shall prevail.
9. Any minor change to the structures shall be submitted in writing to the Council's Co-ordinator Compliance Monitoring. However, the Environment & Planning Manager retains the discretion to require any change to be applied for as a request for a change of consent condition under Section 127 of the Act.
10. All subsurface lines shall be negatively buoyant.

Advice Note:

This can be achieved through the use of leaded rope, the weighting of lines or other method available to the consent holder.

Transfer

11. 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 responsible for compliance with the terms and conditions of the permit until written notice of the transfer is given to the Council. This condition is subject to the requirements of Condition 34 having first been fulfilled (new bond required on transfer of the resource consent).

Monitoring

12. The consent holder shall, no later than four months following the decision (by the Council or Court, whichever applies) prepare and submit to the Council's Co-ordinator Compliance Monitoring for technical approval, a Monitoring Programme that will be used to monitor the effects of the mussel farming activity on the environment.

The Monitoring Programme shall be designed to assess any ongoing changes in sediment characteristics under the marine farming structures (including the rate of accumulation of organic and inorganic material onto the sea floor), changes to the existing benthic organisms beneath the farm (in particular the effect and changes to the density of specified macro-invertebrates), any water column depletion effects the marine farm may be having, and also to assess any effects on coastal sedimentation and hydrodynamic processes resulting from implementation of the consent. The Monitoring Programme shall include, but not be limited to, the following:

- a) identification of monitoring sites and control sites;
- b) test methodologies and sampling frequencies; and
- c) quality assurance methodology.

Advice Note:

The monitoring programme may be limited to surveys and investigations undertaken sufficient to enable reporting at five year intervals from commencement of these consents.

13. The consent holder shall commission an independent person (or organisation) to undertake the approved Monitoring Programme required to be prepared in accordance with Condition 12. The person who undertakes the monitoring shall be suitably qualified and experienced in such monitoring. The consent holder shall prepare a report every five years which outlines the results of the monitoring conducted during the period since the commencement of the consent and, subsequent to the first such report, to the period since the previous report. The report shall include discussion on any trends that may be occurring. A copy of each report shall be sent to the Council's Co-ordinator Compliance Monitoring by 1 June in each reporting year.
14. The consent holder may submit to the Council's Co-ordinator Compliance Monitoring amendments to the monitoring programme required to be prepared in accordance with Condition 12 (including procedures, sampling and analytical requirements, and the frequency of monitoring) that are considered appropriate for the remainder of the term of the consent. Any changes to the monitoring programme shall be subject to the written approval of the Co-ordinator.

Works and Maintenance Programmes

15. The consent holder shall, no later than four months following the decision (by the Council or Court, whichever applies), prepare and submit to the Council's Co-ordinator Compliance Monitoring for technical approval, a Management Plan that covers all aspects of the operation and maintenance of the marine farming activity. The Management Plan shall include, but not be limited to, the following:
 - a) a schedule, including minimum frequencies, of regular inspection, servicing, and maintenance items to be carried out on all structures, ropes, buoys and navigational aids;

- b) contingency measures for rectifying unauthorised discharges, including parties (and their contact details) to be contacted in cases where unauthorised discharges occur;
- c) procedures that will be followed to ensure that all refuse from the marine farm is collected and transported in a safe manner to a site that is authorised for the disposal of such waste; and
- d) measures, including the removal and cleaning of anchor warps and longlines and the cleaning and inversion of floats, that will be implemented to minimise the risk of new unwanted organisms (refer Conditions 22 and 23) which have a pest potential being transferred or released into the coastal marine environment. In addition, the Management Plan shall include procedures that will be followed if unwanted organisms are identified during marine farming operations.

Advice Note:

“New” means organisms new to the region which is defined as new to the Golden Bay coastal marine area which is taken as bounded by a line drawn between the eastern tip of Farewell Spit and the northernmost point of Separation Point.

- 16. The operation and maintenance of the marine farming activity shall be carried out in accordance with the approved Management Plan, required to be prepared in accordance with Condition 15, but also always subject to the conditions of these consents. Any changes to the Management Plan shall be subject to the approval of the Council’s Co-ordinator Compliance Monitoring.
- 17. The marine farm shall be maintained at all times by a suitably qualified person who has proven experience in maintaining such farms. The consent holder shall no later than four months following the decision (by the Council or Court, whichever applies) provide to the Council’s Co-ordinator Compliance Monitoring, in writing, the name and contact details (mailing address and telephone numbers) of the person who is responsible for the overall maintenance of the marine farm. In the event that this responsibility is transferred to a new person, the consent holder shall immediately advise the Council’s Co-ordinator Compliance Monitoring of the name and contact details of this new person.

Discharge of Contaminants

- 18. The consent holder shall not discharge contaminants to the sea. For the purposes of this condition, naturally occurring marine material that is discharged by any organism or from any aquaculture structure is not a contaminant. All refuse from the marine farm shall be collected and either reused or disposed of on land at a facility that is authorised to accept such waste material.
- 19. Tributyl-tin anti-fouling shall not be used on any structure or equipment and no artificial feed shall be added to the sea.

Removal of Navigation Hazards

20. Where any structure or part of a structure sinks, breaks free or otherwise causes a navigation hazard, steps shall be 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, shall notify the Harbourmaster of any such incident as soon as practicable on becoming aware of it.
21. The consent holder shall remove from the site any structure or material that is superfluous to the activity, including any discarded equipment.

Management of Biosecurity Risk Organisms

22. In the event that any unwanted organism (as defined in the Biosecurity Act 1993) that is new to the region is identified during any part of the operation and maintenance of the marine farm, the consent holder shall, collect a sample of the organism and forward it to the Council's Policy Planner (Biosecurity) or equivalent officer who will arrange for confirmation identification. The consent holder shall undertake any actions that may be necessary to minimise the spread of any such organism as directed by the Council's Policy Planner (Biosecurity).
23. In addition to the requirements under Condition 22, the consent holder shall inspect the farm structures at harvest to identify the presence of any unwanted organism that is new to the region. Samples are to be sent to Council's Policy Planner (Biosecurity) or equivalent officer who will arrange for confirmation identification. The consent holder shall undertake any actions that may be necessary to minimise the spread of any such organism as directed by the Council's Policy Planner (Biosecurity).

Advice Note:

In Conditions 22 and 23 the "region" is the same as that described in Condition 15(d).

Noise

24. All activities related to this site shall meet the following noise standards as measured in accordance with NZS6801:1999 and NZS6802:1999, at any point on land above MHWS:

	Day	Night
L ₁₀	50 dBA	40 dBA
L _{max}	70 dBA	

Advice Note:

For the purposes of this condition

Day = 7.00 am to 8.00 pm, Monday to Friday inclusive and 7.00 am to 6.00 pm
Saturday (but excluding public holidays)

Night = all other times plus public holidays.

25. No broadcast radio station noise is to occur at Site A or Site B.

Advice Note:

Broadcast radio does not include Marine Radio which vessels must have turned on.

Hours of Operation

26. All operational activities on the farm sites are restricted to occurring between the hours of 6.00 am to 8.00 pm 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 the consent, there are to be no more than 5 (five) 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.

Community Liaison

27. The consent holder shall, during the months of January and July each year, invite all landowners in Wainui Bay to a public liaison meeting at a specified time and location. One or more representatives of the consent holder shall be present at the meeting. The meeting shall be facilitated by an independent person appointed subject to the approval of the Council’s Co-ordinator Compliance Monitoring. The cost of the facilitator is to be met by the consent holder. Evidence of these invitations and minutes of the meetings shall be kept by the consent holder and provided to the Council’s Co-ordinator Compliance Monitoring immediately upon request.

Advice Note:

The meeting shall provide an opportunity for issues and concerns to be raised by landowners and for constructive discussion to enable improvements to the management of the spat catching farms. There is nothing in this condition that requires either landowners to attend nor the consent holder to implement management practices except as is required by the conditions of these consents. However, it is strongly recommended that all parties involved in such meetings use them constructively. In the event that either, consistently, no landowners attend the meeting (say 3 or more meetings in a row) then this may be sufficient grounds for the applicant to apply, under Section 127 of the Act, to amend or delete this condition. However, any such application will need to be assessed at the time it is lodged

28. The consent holder shall maintain a “complaints register” which records in sufficient detail the nature of the complaint, the name of the complainant, the date of the complaint and any action taken by the consent holder to address the complaint. The complaints register shall be kept by the consent holder and provided to the Council's Co-ordinator Compliance Monitoring immediately upon request.

Navigation Aids and Corner Special Marks

29. Orange coloured floats, of the same dimension as the other floats on the longline line, shall be placed at the end of every longline or line of floats and:
 - a) they must be no more than 50% submerged; and
 - b) they must be maintained in such a condition that the orange colour is readily visible over the surface exposed to the air.
30. There shall be an orange coloured float at the centre of the seaward long line of the mussel farm site, which shall be no more than 50% submerged.

31. All navigation marks and radar reflectors required by Conditions 2 and 4 shall be constructed to remain substantially upright and withstand and remain effectively operational in all sea conditions reasonably anticipated at the site.
32. All navigation aids shall be maintained in a reliable condition by the consent holder.

Removal of Structures

33. Unless a new consent is granted that allows the continuation of the activities permitted by these consents, at the end of the term of these consents the consent holder shall remove all structures from the site and undertake any works considered necessary by the Council's Co-ordinator Compliance Monitoring for the remediation of adverse effects on the seafloor caused by the operation of the consent. All costs associated with the removal of structures shall be met by the consent holder.

Bond

34. The consent holder shall, within six months following the grant of consent, provide a bankers bond to the Council. The bond shall be \$24,000.00. The form of the bond is to be in a form similar to the draft bond attached as attachment 1, and approved by the Council's Solicitors. The consent holder is to pay the Council's costs on approval and execution of the bond.

Purpose of Bond

The purpose of this bond shall include the following:

- a) to avoid, remedy or mitigate any adverse effects on the environment (including the costs of longline retrieval, on land disposal of both the structures and any non-harvested marine growth and any remedial works required) in the event of abandonment or bankruptcy by the consent holder.
- b) to help cover costs born by the Council in the event of emergency repairs or rescue of part of the structure on behalf of the consent holder in the event of it breaking loose or otherwise causing a hazard to navigation.

Term of Bond

The terms of the bond shall include a provision that the bond is payable to the Council in the event of it being required.

The bond shall have a term sufficient to ensure that the funds are available for the purpose described above, until the final removal of the marine farm, at which time any funds remaining shall be reimbursed to the consent holder.

Transfer

The transfer of the whole or any part of the interest in the coastal permit is subject to the transferee providing a bond on the same terms as the existing bond to the satisfaction of the Council.

If the consent is transferred in part or in whole to another party or person, the bond or deposit lodged by the transferor shall be retained until any outstanding work at the date of transfer is completed to ensure compliance with the conditions of the consent secured by the bond unless the Council is satisfied adequate provisions have been made to transfer the liability to the new consent holder.

In the event of any such transfer of the consent, the consent holder shall ensure that the transferee forthwith provides a fresh bond to the Council on the terms required by this condition.

Review

35. The Council may, in accordance with Section 128 of the RMA, serve notice on the consent holder of its intention to review the conditions of these consents. Such notice may be served during the Month of March each year. The review may be initiated for any one or more of the following purposes:
- a) to deal with any adverse effects on the environment that may arise from the exercise of the consent and which it is appropriate to deal with at a later stage, or to deal with any such effects following assessment of the results of the monitoring of the consent and/or as a result of the Council's monitoring of the state of the environment in the area;
 - b) to require the adoption of the best practicable option to remove or reduce any adverse effect on the environment;
 - c) to provide for compliance with rules in any regional plan that has been made operative since the commencement of the consent;
 - d) to deal with any inadequacies or inconsistencies the Council considers there to be in the conditions of the consent (including the location co-ordinates);
 - e) to deal with any material inaccuracies that may in future be found in the information made available with the application. (Notice may be served at any time for this reason.);
 - f) to provide for compliance with any changes to navigation aids in response to changes to the Maritime Safety Authority guidelines or rules;
 - g) to impose coastal occupation charges for the purpose of promoting the sustainable management of the CMA.

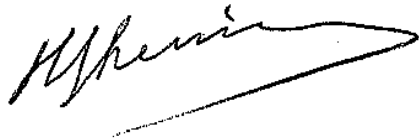
The consent holder shall meet all reasonable costs of any such review.

Advice Notes

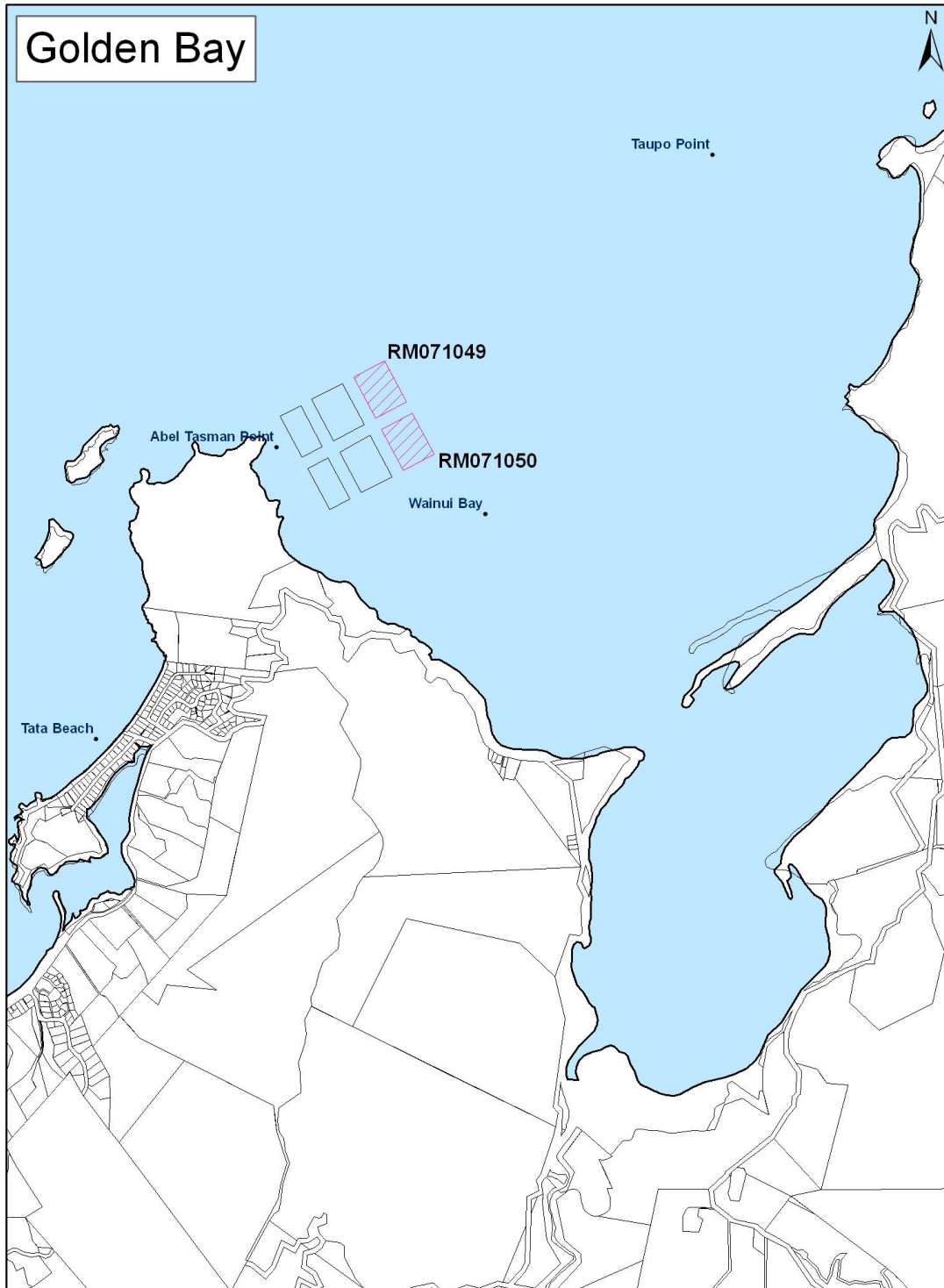
1. The consent holder shall pay to the Council an annual fee plus administrative and monitoring charges fixed by the Council from time to time in accordance with the Act, for the purposes authorised by these consents.

2. The obligation to pay any annual fee commences on the date these consents commence. Initial payment is due within 30 days of that date, and subsequent payments are due on 1 July each year. The initial payment will be calculated on a pro-rata basis to the next 1 July.
3. Officers of the Council may also carry out site visits to monitor compliance with resource consent conditions.
4. Plans attached to these consents are (reduced) copies and therefore will not be to scale and may be difficult to read. Originals of the plans referred to are available for viewing at the Richmond office of the Council. Copies of the Council Standards and documents referred to in these consents are available for viewing at the Richmond office of the Council.

Issued this 25th day of March 2009

A handwritten signature in black ink, appearing to read 'H Rennie', with a long horizontal stroke extending to the right.

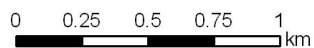
Hamish G Rennie
Commissioner and Chair of Hearing Committee

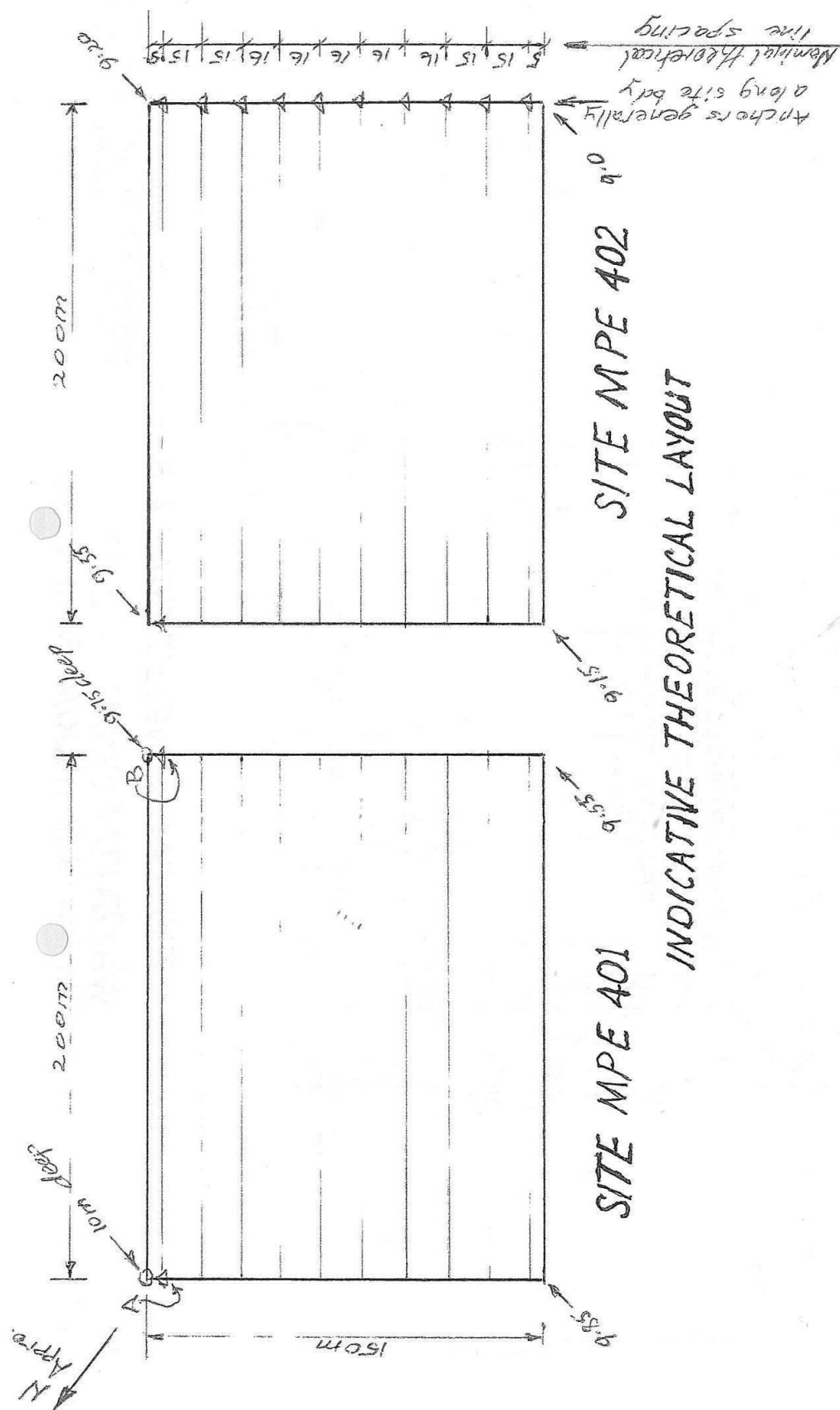


Sourced from Land Information New Zealand data. Crown copyright reserved. Aerial photography copyright: Terralink International Limited. Rural Imagery flown Dec2000-April2002. Urban Imagery flown Dec2004. The information on this map is prepared for indicative use only and is not intended for definitive legal, location or formal reference purposes. Printing Date: August 1, 2008. File: V:\Projects\Leinry\E3\RoscoastalRosS_AquacultureSite_FC_1_Aug08.mxd

Resource Consents on Aquaculture Sites

July 2008





Scale 1:2000 SHEET 1
 Drawn D.R. Smythe May 2008

WAITAPU FISHING Co LTD
 WAINU BAY MARINE FARM SITES

