



Proposed Marlborough Environment Plan

Decision and Report Variation 1: Marine Farming

Hearing dates: 9 – 11 and 15 – 18 November 2021

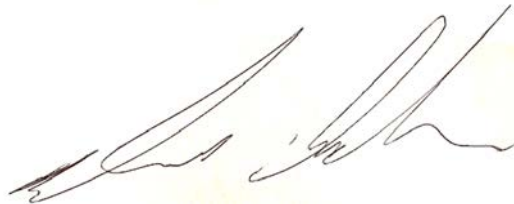
Commissioners: Trevor Hook
David Oddie
Shonagh Kenderdine
Rawiri Faulkner
Sharon McGarry

Date of decision: 28 April 2023

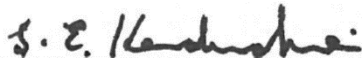
Decision was made under delegation (Minute 18 March 2021) from the Marlborough District Council:



Trevor Hook (Chairperson)




David Oddie



Shonagh Kenderdine



Rawiri Faulkner



Sharon McGarry

Dated this 28th day of April 2023

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List of Abbreviations

AMA	Aquaculture Management Area
ASA	Aquaculture Settlement Area
CMA	Coastal Marine Area
CMU	Coastal Management Unit
CMZ1	Coastal Marine Zone 1
CMZ2	Coastal Marine Zone 2
ESMS	Ecologically Significant Marine Site
MARWG	Marlborough Aquaculture Review Working Group
MSRMP	Marlborough Sounds Resource Management Plan
MDC/Council	Marlborough District Council
NES-MA	Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020
NZCPS	New Zealand Coastal Policy Statement 2010
ONC	Outstanding Natural Character
ONFL	Outstanding Natural Feature or Landscape
PMEP	Proposed Marlborough Environment Plan
RMA	Resource Management Act 1991
RPS	Marlborough Regional Policy Statement
SAG	Sounds Advisory Group
SEA	Structure Exclusion Area
TAG	Technical Advisory Group

Submitter abbreviations

AQNZ	Aquaculture New Zealand
CBRA	Clova Bay Residents Association Incorporated
DOC	Department of Conservation
EDS	Environmental Defence Society Incorporated
FNHTB	Friends of Nelson Haven and Tasman Bay Incorporated
KCSRA	Kenepuru and Central Sounds Residents Association Incorporated
MFA	Marine Farming Association
MPI	Ministry of Primary Industries

Introduction to Decision

Delegation

1. Pursuant to the Resource Management Act 1991 (**RMA**), the Marlborough District Council's (**MDC** or 'the Council') Planning Finance and Community Committee delegated¹ the necessary powers and functions to the Hearing Panel to hear submissions and make decisions on Proposed Marlborough Environment Plan (**PMEP**) Variation 1. The Committee resolved to appoint a hearings panel comprising one councillor, Councillor David Oddie, and four independent commissioners, Mr Trevor Hook, Ms Shonagh Kenderdine, Mr Rawiri Faulkner and Ms Sharon McGarry. The Committee appointed Commissioner Hook as Chair of the Hearing Panel. This is the written decision and report of the appointed Hearing Panel ('the Panel').

Conflicts of Interest

2. Commissioner McGarry disclosed at the beginning of the appearance of submitter Kuku Holdings Limited, that she had recently refused a resource consent application by Kuku Holdings Limited to extend an existing marine farm and would therefore recuse herself from any decision regarding that particular marine farm site.

Hearing Panel Minutes

3. Before the hearing and following the adjournment, the Panel issued a number of minutes addressing procedural matters and requesting further information on substantive matters. A record of these minutes and responses received were made available via the Council's website in a timely manner. Where necessary the Panel references the responses to some of these minutes. The Panel thanks the parties for their prompt responses and their efforts after the adjournment to provide the information requested.

Site Visits

4. Following the adjournment of the hearing, the Panel undertook site visits to a number of areas within the Marlborough Sounds, including Te Hoiere/Pelorus Sound, Kura Te Au/Tory Channel and Tōtaranui/Queen Charlotte Sound.

¹ At a meeting held on 18 March 2021, under section 34A of the RMA. At this date, Mr Oddie, in his role as a Marlborough District Council Councillor, was appointed to the Hearings Panel. Councillor Oddie did not seek re-election at the 2022 local government elections. At its meeting on 22 September 2022, the Council appointed Mr Oddie as an Independent Commissioner to the Panel to enable him to complete the process of making a decision on Variation 1 with the remainder of the Hearings Panel.

Purpose of the Variation

5. Variation 1 was publicly notified on 2 December 2020. The purpose of Variation 1 is to insert objectives, policies, rules and methods into the PMEP to sustainably manage effects of marine farming within the coastal marine area (**CMA**) of the Marlborough Region to **give effect** to the objectives and policies of the New Zealand Coastal Policy Statement 2010 (**NZCPS**) and Part 2 of the RMA. This Variation is part of the Council's strategic planning required under Policy 7 and Policy 8 of the NZCPS to identify areas where marine farming activities are inappropriate and where values identified in the PMEP are under threat or at significant risk from adverse cumulative effects. Variation 1 gives effect to NZCPS Policy 8 which requires recognition of the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities; and gives certainty to the community and the marine farming industry that appropriate marine farming activity can continue for the life of the PMEP. We have focused our decisions on the outcomes to be achieved and what is sought to be recognised and provided for, and the values that must be protected and preserved under the provisions of the NZCPS.
6. Objective 3 of the NZCPS requires the Panel to take into account the principles of Te Tiriti o Waitangi/Treaty of Waitangi and recognise the role of Marlborough's Tangata Whenua as kaitiaki.
7. The Panel acknowledges the need to integrate Variation 1 with the provisions of the PMEP. The Panel has been informed of any developments in relation to appeals on the PMEP and any resulting consent orders up until the date of the release of this decision and has had regard to relevant changes. The Panel has used the guidance of the PMEP provisions to inform its decisions, particularly in relation to cultural relationships and values, ecologically significant marine sites, natural character, natural features and landscape and amenity values.

Background

8. The background to and development of Variation 1 is set out in the Section 42A Report prepared by Mr Pere Hawes, Manager Environmental Policy for MDC, including: the Marlborough Regional Policy Statement (**RPS**) 2007 review process and operative Marlborough Sounds Resource Management Plan (**MSRMP**) 2010 plan review; release of a Council discussion paper and feedback received; development of a draft management framework under the PMEP; testing the draft framework with the Sounds Advisory Group, the Marine Focus Group and Iwi Working Group; and ongoing consultation with the Ministry of Fisheries, Department of Conservation (**DOC**) and the Marine Farming Association (**MFA**). An

amended package of aquaculture provisions was publicly released for feedback in July 2014 and that feedback from 86 people and organisations was received and published in October 2014. This information was used to confirm the provisions to be included in the draft PMEP.

9. In approving the PMEP for notification in 2016, the Council decided to remove the draft provisions relating to marine farming and to continue to review these provisions. In September 2016 the Council appointed the Marlborough Aquaculture Review Working Group (**MARWG**) to assist the Council with the review. The Council provided the MARWG with a starting proposition for the review process², based on the draft provisions and community consultation to date. The document stated that consultation had been sufficient to form 'preliminary' views as to the approach that should be adopted for the management of aquaculture and to give effect to the provisions of the NZCPS, particularly Policy 8. It identified 45 Coastal Management Units (**CMU**) based on geographic factors, within which Aquaculture Management Areas (**AMA**) would be identified. It stated the intent was to create AMA where marine farming already exists, as discrete areas which correspond to the size and arrangement of existing farms. These would be arranged at least 100 metres (**m**) from the mean low water mark, while having regard to landscape, navigation and public access values set out. The document stated that in each AMA space would be allocated as follows:
- i. Existing coastal permit holders will have priority access to the AMA(s) where there are currently sited adjacent to, encroaching on, or within a proposed AMA(s);*
 - ii. Coastal permit holders will have their permit applications processed as a controlled activity where the area of marine farm is unchanged and it is to be located within an AMA;*
 - iii. Conditions may be set on a range of matters including monitoring, navigation, reporting etc.; and*
 - iv. Coastal permits will usually be granted for 30 years.*
10. In addition, the position document stated the working group would consider the values that exist within each CMU and may identify opportunities for new AMA; not allow development of mid-bay farms; preserve headlands and other significant features where aquaculture does not currently exist; and prioritise the allocation of alternative space, where available, to consent holders who choose to replace existing marine farms currently located within Outstanding Natural Features and Landscapes (**ONFL**) or Ecological Significance Marine Site

² 'Marlborough District Council Position Paper for Aquaculture Review Working Group' dated 22 March 2017.

(ESMS) or within Coastal Marine Zone 1 (CMZ1) under the Marlborough Sounds Resource Management Plan (MSRMP).

11. The purpose of the MARWG was to advise the Council of appropriate and inappropriate areas for marine farming based on the available information. The MARWG was assisted by a Technical Advisory Group (TAG) consisting of marine scientists from science organisations and government agencies. The MARWG also considered the opportunity for marine farming in offshore waters, but did not consider finfish due to the salmon relocation process being underway.
12. The makeup of the ten representatives on the MARWG was set out in the Section 42A Report. Councillor Hook chaired the MARWG meetings and Councillor Oddie attended the meetings. Councillors Hook and Oddie considered their role in the MARWG review process to be one of facilitation only.
13. The MARWG provided the Council with a report '*Recommendations of the Aquaculture Review Working Group*' (dated July 2019) detailing the outcome of the review and recommendations for the draft provisions as a basis for community consultation. The report also identified information gaps in relation to the cumulative effects of marine farms, natural and human use values in some areas, and important habitat areas for endangered and threatened seabirds.
14. The MARWG report highlighted the uncertainty regarding the effects of human activity, including marine farming, on the marine environment of the Marlborough Sounds and the potential for adverse cumulative effects. It noted the real need for data/information on specific matters and at discrete locations to establish the nature of the cause and effect relationship between activities and adverse effects evident in the marine environment. Some members expressed concern that the monitoring proposed is insufficient to allow for the existence of cumulative effects to be established. The issues of uncertainty and cumulative effects monitoring are discussed later in this decision.
15. The MARWG report stated that during the review process 'principles for managing marine farming emerged' and were recorded and used as a basis for preparing the draft Variation provisions. The recommendations of the MARWG were:
 - i. *Areas considered appropriate for marine farming be provided for by way of AMAs;*
 - ii. *AMAs generally be between 100 metres and 300 metres offshore, unless natural and human use values within the Coastal Management Unit make that "coastal ribbon" inappropriate;*

- iii. Where (ii) applies, apply the AMA to reflect existing consented marine farming space;*
 - iv. Applying for replacement consents for existing marine farms to be a controlled activity within the AMA for like-for-like structures and activities;*
 - v. Authorisations be used to provide the existing consent holders the ability to apply for a replacement consent within a specified, but limited time period;*
 - vi. Where existing marine farms are considered to be in inappropriate locations, provide alternative coastal space to relocate those farms to;*
 - vii. Marine farming outside of AMAs but within the enclosed waters of the Marlborough Sounds be a prohibited activity;*
 - viii. Provide the ability to apply for a resource consent to establish a farm in open coastal waters as a discretionary activity; and*
 - ix. Monitoring for the cumulative effects of marine farming (and other activities) should commence and a regime for responding to the monitoring results be included in the variation.*
16. The MARWG recommendations were adopted by the Council and the provisions and spatial allocation formed the basis for preparing the draft Variation. Further consultation occurred with marine farmers and engagement with officials from Fisheries New Zealand and DOC before the Council resolved to proceed to notification of Variation 1 in June 2020.
17. Attached to the MARWG report was a dissenting view to the recommendations provided by Mr Trevor Offen, as a representative of the Kenepuru and Central Sounds Residents Association (**KCSRA**) and Ms Hanneke Kroon, as an alternative representative of KCSRA; and a written concern by Mr Rob Schuckard, as one of the representatives for the Sounds Advisory Group (**SAG**).
18. The dissenting view of Mr Offen and Ms Kroon, as the representative of the KCSRA, identified 'systematic fundamental flaws' in the MARWG starting proposition and therefore the recommendations.
19. The concern raised by Mr Schuckard, as one of the representatives of the SAG, noted difficulties with determining the appropriateness of marine farming in the absence of information to determine the sustainability of marine farming.
20. The Panel accepts the collaborative MARWG process and recommendations have been instrumental in informing the development of Variation 1 and facilitating community

consultation throughout the process. We have had regard to the principles that emerged through our decision-making process and in determining how to give effect to the objectives and policies of the NZCPS. The Panel considers any concerns raised regarding the perceived fundamental flaws of the process due to the MARWG starting propositions are addressed through this hearing process and our obligation to give effect to the provisions of the NZCPS.

21. Concern raised regarding the sustainability of the current level of marine farming activity in the Marlborough Sounds and uncertainty regarding cumulative effects are key considerations for the Panel and this decision.
22. The Panel is cognisant of the need to integrate Variation 1 with the wider provisions of the PMEP and has been guided by these provisions, including taking into account any PMEP developments or consent orders as appropriate at the time of our decision. The Panel has endeavoured to ensure the wording of Variation 1 is consistent with the wider PMEP provisions which reflect and give effect to the provisions of the NZCPS. In all cases, the Panel has focused on what is sought to be protected and preserved under the NZCPS.
23. The Panel acknowledges the willingness and helpful approach of the marine farming industry to look at options for accommodating the outcomes sought by Variation 1, including relocating backbone seaward and to other sites. The Panel also acknowledges the significant contribution made by the Marine Farming Association and Aquaculture New Zealand (**MFA/AQNZ**) in providing coordinated participation of the marine farming industry and in undertaking the spatial mapping. The Panel recognises the enormity of this task and the resources involved.
24. The Panel accepts that MFA/AQNZ represent the collective interests of marine farmers and has worked across the industry to reach agreement on farm layouts that are consistent with MARWG principles and provide workable solutions³.
25. The Panel acknowledges the valuable input of the community and individual submitters to Variation 1 and the hearing process.

Variation 1A: Finfish Farming

26. Variation 1 was notified with Variation 1A: Finfish Farming. The Panel has recommended the Council withdraw Variation 1A to enable further consultation with Marlborough's Tangata Whenua Iwi and the community. All references to 'finfish farming' have been removed from

³ Legal Submissions of Quentin Davies dated 2 November 2022.

Variation 1 in recognition that the provisions relate to aquaculture using conventional longline backbones or intertidal rack structures.

27. In line with the Panel's recommendation to withdraw Variation 1A, the Panel recommends the Council withdraws the proposed general AMAs for the existing finfish farms MF 8396 (AMA 2) located in the East Bay CMU 14, MF 8513 (AMA 2) located in the Crail Bay CMU 11 and MF 8085 (AMA 10) located in Waitata Reach CMU 44.

Resource Management Act First Schedule Clauses 10, 16, 16A and 16B

28. Clause 10(1) of the First Schedule of the Resource Management Act 1991 (RMA) sets out that a local authority (and therefore the Panel acting under delegation as the Council) shall give a decision on the PEMP Variation 1 provisions and matters raised in submissions. Clause 10(2) states that the decision must include the reasons for accepting or rejecting submissions, and may include consequential alterations and other relevant matters arising from decisions. Clause 10(3) confirms that a local authority (the Panel) is not required to give a decision that addresses each submission individually.
29. Under Clause 16(2) of the First Schedule the local authority (the Panel) is able to make amendments to a proposed plan to alter information, where such an alteration is of minor effect, or may correct any minor errors.
30. Clause 16A(1) states that a local authority may initiate Variations to a proposed plan, or to a change, at any time before the approval of a plan. Clause 16A(2) confirms that the provisions of the First Schedule, with all necessary modifications, apply to a Variation as if it were a change.
31. Clause 16B states that a Variation initiated under Clause 16A shall be merged in and become a part of the proposed plan as soon as Variation 1 and the proposed plan are at the same procedural stage.

Timing of the decision

32. Variation 1 was publicly notified on 2 December 2020. Clause 10 of the RMA requires decisions on plans to be made and publicly notified within two years of notification. On the 30 November 2022, Council wrote to the Minister for the Environment in accordance with Clause 10A to seek an extension to the decision-making process to 28 April 2023. The Minister made a decision granting this request on 11 April 2023 and the extension was publicly notified on 26 April 2023.

New Zealand Government Aquaculture Strategy

33. The aim of the New Zealand Government Aquaculture Strategy 2019 ('Aquaculture Strategy') is to make the industry more sustainable, productive, resilient and inclusive.
34. The Panel has been cognisant of these key objectives in making its determinations.
35. The Panel heard evidence from submitters regarding the importance of enabling technology and innovation, and building resilience to respond to climate change and environmental stressors.
36. The Panel recognises the importance of encouraging cross agency cooperation in delivering the key actions under the Aquaculture Strategy. The Panel acknowledges 'The New Zealand Government Report on a method and approach for measuring the environmental effects of aquaculture' (December 2021). The Panel also acknowledges the submissions regarding the development of land based marine farming facilities but consider this is outside of the scope of the Variation.

Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020

37. The Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020 (**NES-MA**) came into force on 1 December 2020. Variation 1 was notified on 2 December 2020. The development of the NES-MA was an important action of the New Zealand Government Aquaculture Strategy. The regulations set out technical standards, methods and requirements relating to the RMA and provide consistent rules across the country by setting planning requirements for certain marine farming activities. The regulations recognise many marine farm consents will expire between 2020 and 2024. The regulations require marine farms to meet best environmental practice while providing a more certain and efficient process for replacement consents for existing marine farms, realignment and change in species.
38. A representative from Ministry for Primary Industries (**MPI**) was a member of the MARWG and was able to raise matters of integration and consistency with the NES-MA regulations during the review process. However, the MARWG review process did not have the benefit of the draft regulations.
39. The NES-MA regulations provide for replacement coastal permits for existing marine farms within an inappropriate area for existing aquaculture activities, as a discretionary activity⁴;

⁴ Regulation 12.

replacement coastal permits for existing marine farms not within an inappropriate area for existing aquaculture, as a restricted discretionary activity⁵; replacement coastal permits for existing farms that include realignment, as a restricted discretionary⁶; and replacement coastal permits for existing marine farms, involving a change to, or addition of, species to be farmed, as a restricted discretionary activity⁷.

40. Under the NES-MA regulations, the Council may have more stringent rules in its plan for a replacement consent for marine farming within an inappropriate area for existing aquaculture⁸; and more lenient rules for replacement coastal permits for existing marine farms not within an inappropriate area for existing aquaculture and replacement coastal permits for existing farms that include realignment⁹. The rules in the plan must not duplicate the NES-MA regulations.
41. Consideration of replacement coastal permits for existing marine farms under the NES-MA regulations as a restricted discretionary activity does not include consideration of cumulative effects, including effects on cultural relationships and values, natural character and landscape values as matters of discretion.
42. Where existing marine farms are relocated to new AMAs, because the existing marine farm site has been identified as inappropriate, the new AMAs are not covered by the NES-MA regulations.
43. The Panel has been cognisant of the provisions of the NES-MA regulations and the relationship with Variation 1 throughout its deliberations to ensure integration and consistency, and to avoid duplication.

RMA Section 32 and Section 165H

44. Section 32 of the RMA directs a local authority making a variation to a proposed plan to carry out an evaluation, both before it is publicly notified, and before making a decision on submission. The evaluation is to examine the extent to which each objective is the most appropriate way to achieve the purpose of the Act, and whether, having regard to their efficacy and effectiveness, the policies, rules and other methods are the best option available; and also to assess the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the policies, rules or other methods. The local authority is required to publish a report summarising the evaluation and giving reasons.

⁵ Regulation 14.

⁶ Regulation 16.

⁷ Regulation 26.

⁸ Regulation 13.

⁹ Regulation 23.

45. The Panel is satisfied the Council carried out a separate evaluation of Variation 1 in compliance with Section 32, before it was publicly notified and published a report by Perception Planning (dated November 2020) summarising the results of the evaluation.
46. Section 165H of the RMA requires a regional council to have regard to and be satisfied about certain matters before it includes an allocation rule in a proposed regional coastal plan. An allocation rule is assessed under Section 165H instead of Section 32 by having regard to the reasons for and against the proposed rule; and the reason why that method is justified (including how this might affect the preferential rights provided for in Section 165W of the RMA). The Panel must be satisfied that a proposed rule in relation to the allocation of space is necessary or desirable in the circumstances of the region; and if the method is not by public tender, that the proposed method is the most appropriate, having had regard to its efficiency and effectiveness compared to other methods.
47. The Panel notes the Section 32 report carried out by Perception Planning for the Council also addressed the requirements of Section 165H.
48. The Panel notes the concerns raised by Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu (collectively referred to as **Ngāi Tahu**) indicate that the section 32 report did not consider the proposed Variation to Te Tai o Marokura (the Kaikōura CMA) or Te Poha o Tohu Raumati: Te Rūnanga o Kaikōura Environmental Management Plan.
49. The Panel considers the Section 42A report writers' consideration of the provisions of Te Poha o Tohu Raumati: Te Rūnanga o Kaikōura Environmental Management Plan and their recommendations to address the takiwā boundary by splitting the affected CMUs in their End of Hearing Report rectifies this omission.
50. The Panel heard evidence from Mr Carl Elkington of Ngāti Koata regarding the Section 32 report, the importance of the Ngāti Koata No Rangitoto Trust Iwi Management Plan and the need for a Cultural Impact Assessment.
51. The Panel is satisfied that the Section 32 report included evaluation of the effect of Variation 1 on cultural values and accepts the conclusion there is no evidence of significant adverse effects of the existing level of marine farming on cultural values. The Panel addresses matters relating to consultation as a key issue further below.
52. The Panel notes the evidence of Mr Peter Clough for MFA/AQNZ concerning the uncertainty of the Section 32 report's cost benefit analysis and the need to undertake a sensitivity analysis on key assumptions.

53. The Panel acknowledged the challenges in undertaking a cost benefit analysis given the limitations of non-market valuation techniques for environmental services. However, the Panel is satisfied that the Council has fulfilled its obligations under Section 32 in this regard. The Panel is also satisfied the Council undertook further evaluations of the proposed changes to the rule framework and methods for allocating space as required under Section 32AA of the RMA, which was recorded in the End of Hearing Report.
54. The Panel's evaluation with respect to the Section 32 evaluation and Section 32AA further evaluation is inherent within its consideration of the relief sought by submitters and its decision-making process. The Panel has examined the options available for achieving the objectives through considering the options for activity status, the effectiveness of the policies and rules in achieving the objectives and the efficiency of the policies and rules (including the environmental, social, and economic costs and benefits, and the risks of acting if information is limited).

RMA Section 42A Reports

55. The Panel had the benefit of the following reports prepared under Section 42A of the RMA for Variation 1:
- (a) *'Variation 1: Marine Farming and Variation 1A: Finfish farming to the Proposed Marlborough Environment Plan - Development of Variation 1 and 1A - Section 42A Hearings Report'* (dated 8 October 2021) prepared by Pere Hawes, Manager, Environmental Policy, Marlborough District Council (referred to as '**Section 42A report Development**');
 - (b) *'Variation 1: Marine Farming to the Proposed Marlborough Environment Plan - General, Definitions, New Provisions and Appendix 11 Report on submissions and further - Section 42A Hearings Report'* (dated 8 October 2021) prepared by Helen Marr, Debbie Donaldson and Lily Campbell, Consultant Planners, Kāhu Environmental (referred to as '**Section 42A report - General**');
 - (c) *'Variation 1: Marine Farming to the Proposed Marlborough Environment Plan - Report on submissions and further submissions - Volume 1 Part A Issue 13N, Objective 13.21 and Policies 13.21.1-13.21.6 – Section 42A Hearings Report'* (dated 8 October 2021) prepared by Helen Marr, Debbie Donaldson and Lily Campbell, Consultant Planners, Kāhu Environmental (referred to as '**Section 42A report - Vol 1, Part A**');

- (d) *'Variation 1: Marine Farming to the Proposed Marlborough Environment Plan - Report on submissions and further submissions - Volume 1 Part B Issue 130, Objective 13.22 and Policies 13.22.1-13.22.9 – Section 42A Hearings Report'* (dated 8 October 2021) prepared by Helen Marr, Debbie Donaldson and Lily Campbell, Consultant Planners, Kāhu Environmental (referred to as '**Section 42A report - Vol 1, Part B**');
 - (e) *'Variation 1: Marine Farming to the Proposed Marlborough Environment Plan - Report on submissions and further submissions Volume 2: Rules – Section 42A Hearings Report'* (dated 8 October 2021) prepared by Helen Marr, Debbie Donaldson and Lily Campbell, Consultant Planners, Kāhu Environmental (referred to as '**Section 42A report - Rules**');
 - (f) *'Variation 1: Marine Farming to the Proposed Marlborough Environment Plan - Volume 4: Coastal Management Units and Aquaculture Management Areas - Report on submissions and further submissions – Section 42A Hearings Report'* (dated 8 October 2021) prepared by Louise Walker, Strategic Planner, Marlborough District Council (referred to as '**Section 42A report Vol 4 - Spatial**'); and
 - (g) *'Variation 1: Marine Farming to the Proposed Marlborough Environment Plan – Apex Marine Farm Submission Point 112.15 and further submissions'* (dated 8 October 2021) prepared by Debbie Donaldson, Consultant Planner, Kāhu Environmental (referred to as '**Section 42A report - Apex**').
56. The Section 42A reports addressed the points of relief requested in submissions on Variation 1, evaluated the relief requested and provided recommendations to the Panel on whether to accept or reject the relief requested. The Section 42A reports were provided to submitters who wished to be heard more than 15 working days in advance of the hearing. This decision does not repeat the submission points and recommendations set out in the Section 42A reports.
57. The Section 42A report writers attended the hearing to present their reports to the Panel and were available to answer questions and provide clarifications during the hearing. After hearing the evidence presented to the Panel, the report writers prepared written closing statements followed by written Reply to Evidence statements. These statements set out whether their original recommendations had changed after hearing the evidence and/or legal submissions and why. The Reply Evidence relating to the Section 42A Report Vol 4 Spatial included an excel spreadsheet for each CMU and each AMA, recording the original recommendation and any changes to the recommendation. The Panel has used a similar approach for each CMU and each AMA to record its decision in Appendix 3 of this decision.

58. The Section 42A reports and reply evidence should be read in conjunction with this decision.
59. The Panel acknowledges the valuable input of the Section 42A report writers and the efforts made to provide the reports and replies to evidence in a timely fashion following the hearing adjournment.

Submissions

60. The Council received 115 submissions and 953 further submissions from 112 submitters to Variation 1 and 1A and provided a summary of submissions and further submissions by both provision and by each submitter's relief requested. The Panel has read each submission received and considered the relief sought in relation to Variation 1 in making this decision.

Submitter Appearances

61. The submitters and their expert witnesses who appeared at the hearing to provide evidence to the Panel in support of their submission are set out in Appendix 1 of this decision.
62. The Panel acknowledges the contribution of submitters and the constructive manner in which they conducted themselves. The provision of succinct evidence and legal submissions, and the efficient use of time enable the Panel sufficient time to question and discuss the evidence and submissions with the submitter, their experts and/or their counsel. The Panel found this useful in fully understanding the issues and testing the evidence. We have considered all of the evidence provided in making our decisions. This decision highlights some of the submitter evidence presented at the hearing, which was provided after provision of the Section 42A reports.

Structure of Decision

63. It is important that this decision is read as a whole together with the tracked change version of the Plan (Appendix 2 of this decision). The tracked change version of Variation 1 of the PMEP forms an integral part of the decision. This records all amendments (additions and deletions) to the notified Variation 1 provisions made by the Panel. The tracked change version of Variation 1 shows the Panel's decision changes to the notified provisions with underlining indicating additions and ~~striketrough~~ indicating deletions.
64. This written decision contains the reasons for the Panel's decisions. These comprise either adoption of the reasoning and recommendations of the original Section 42A reports or the replies to evidence, or a specific reasoning by the Panel.
65. Where the Variation 1 provisions **remain as notified**, it is because:

- (a) The Panel has decided to retain the provision as notified for reasons set out in this decision; or
 - (b) The Panel adopted the reasoning and recommendation of the Section 42A report to retain the provision as notified as recommended in the Reply to Evidence; or
 - (c) The Panel adopted the reasoning and recommendation of the Section 42A report to retain the provision as notified in the original Section 42A report.
66. Where there is a **change to a provision** within the Variation 1 provisions, as notified, it is because:
- (a) The Panel has amended a provision for reasons set out in this decision in response to a submission point which the Section 42A report does not recommend in their reports; or
 - (b) The Panel adopted the reasoning and recommendation of the Section 42A report to change the provision to that recommended in the Reply to Evidence; or
 - (c) The Panel adopted the reasoning and recommendation of the Section 42A report to change the provision to that recommended in the original Section 42A report; or
 - (d) A consequential change has been necessary following on from a decision in either (a), (b) or (c).
67. Where there is a **different recommendation** between the Section 42A reports and the reply to evidence (i.e., the recommendation by the Section 42A report writers has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.
68. There are circumstances where the Panel has made changes to give effect to the objectives and policies of the NZCPS or in response to submissions, further submissions and evidence. Where this occurs the relevant decision clearly sets out the nature of the change and the reason for the change.
69. There are circumstances where the Panel has decided that **alternative relief** is more appropriate than that requested by the submitters to give effect to the objectives and policies of the NZCPS but are still within the scope of the relief sought. In these circumstances, this is recorded in the Panel's decision.
70. Where the Panel has made only minor wording changes to the introductory text and provisions to address submissions and recommendations, or to make corrections that do not

change the intent, this is only recorded in the tracked change version of the provisions appended to this decision.

71. The Panel addresses the fundamental changes made to the provisions to give effect to the NZCPS and the key issues upfront in this decision, followed by decisions relating to specific provisions and individual marine farm sites.

New Zealand Coastal Policy Statement 2010

Ecological Effects

72. Variation 1 must give effect to Objective 1 and Policy 11 of the NZCPS. Objective 1 seeks to safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems. Policy 11 seeks to avoid adverse effects on threatened or 'at risk' taxa, ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare, and habitats of indigenous species which are at the limit of their natural range or are naturally rare; and avoid significant adverse effects and avoid, remedy and mitigate adverse effects on indigenous vegetation, ecosystems and habitats for indigenous species.

Evaluation

73. The Panel accepts the Environmental Defence Society Incorporated (**EDS**) submission and the legal submissions of Ms Bella Rollison on behalf of EDS that Policy 11 is an environmental bottom line that cannot be balanced against other objectives or policies of the NZCPS. The Panel agrees and finds a significant number of changes to the provisions are required to give effect to Policy 11. The EDS submission also highlighted the importance of Policies 3, 4, 7, and 8 of the NZCPS. Other submissions raised similar points with regard to the NZCPS and the requirement to give effect to its objectives and policies through Variation 1.
74. The Panel also considered the submission from Friends of Nelson Haven and Tasman Bay (**FNHTB**) seeking changes to Policy 13.21.3 in relation to the Important Bird Area (**IBA**) for the king shag (*Leucocarbo carunculus*) in order to identify new marine farms as inappropriate in these areas. The Panel acknowledges the evidence presented at the hearing from Mr Mike Bell on recent studies into population counts, foraging areas and feeding behaviour. On the basis of this evidence, the Panel accepts the Section 42A report recommendation that there is no evidence of adverse effects on the feeding of king shags.
75. The Panel agrees that to give effect to Policy 11, AMAs should not generally overlap with Ecologically Significant Marine Sites (**ESMS**) identified in the PMEP, areas that meet the significance criteria in Appendix 3 of the PMEP or be sited over reefs, biogenic habitats, cobble

habitats or algae beds. The Panel considers that sufficient separation of these important ecological areas must be provided for to avoid adverse effects on important biodiversity values. The Panel has considered this on a site-by-site basis for the existing marine farms and the proposed AMAs using the best available information.

76. The Panel considers that in the Enclosed Waters CMUs and Nearshore CMUs, a 20 metre buffer from identified ESMS, areas that meet the significance criteria in Appendix 3 of the PMEP and reefs, biogenic habitats, cobble habitats or algae beds is appropriate to protect important benthic species and habitats; and is consistent with Regulation 3 of the NES-MA.
77. The Panel considers in the Offshore CMUs, a 50 metre buffer from areas that meet the significance criteria in Appendix 3 of the PMEP and reefs, biogenic habitats, cobble habitats or algae beds is appropriate to avoid adverse effects on important benthic species and habitats. The Panel considers this increased separation distance of 50 metre is appropriate given lack of information on the specific values of the offshore receiving environment, the increased depth and currents which have the potential disperse material over a wider area, and the lack of evidential basis to support 20 metres. The Panel accepts this uncertainty and lack of understanding of potential adverse effects on ecological values warrants a precautionary approach to the protection of ecological values (Policy 3 of the NZCPS).
78. The Panel acknowledges some existing marine farms have structure exclusion areas (**SEA**) imposed as a condition of consent to avoid adverse effects on important benthic habitats and species. The Panel accepts policy guidance can be provided to achieve protection of benthic ecological values by continuing to impose structure exclusion areas on resource consents. The Panel's findings in this regard are set out below in this decision in relation to the ongoing use of structure exclusion areas. The Panel is cognisant that some existing marine farms have structure exclusion areas imposed under the Fisheries Act, which is addressed further below.
79. Expert advice on the ecological effects of removing the inshore mussel lines and relocating them seaward received by the Council from the Cawthron Institute¹⁰ concluded '*Effects on marine mammals and seabirds, wild fish, and biosecurity are expected to change little, or not at all, in the face of minor relocation of structures*'. However, Cawthron stated this conclusion was reached under the assumptions there is no collective encroachment of the outer boundaries of the marine farms into mid bay habitats or important feeding areas, particularly within smaller or more enclosed bays; and no change in the existing mussel farming intensity. Cawthron noted that '*...if mussel lines were relocated and mussel line droppers were extended*

¹⁰ Section 32 Evaluation – Proposed Variation 1: Marine Farming – Appendix 8 – Letter to MDC dated 13 July 2017 from Emma Newcombe and David Taylor, Cawthron Institute.

to take advantage of greater water depths, the implications of an overall increase in farming pressure may need to be considered'.

80. The Cawthron letter stated that ecological effects change with depth and that some farms will have greater potential for longline movement to have ecological implications than others. It noted that enrichment and smothering effects may be less problematic in deeper water due to greater dispersal of waste and debris, and higher tolerance to deposition and a more rapid return to control conditions of communities in soft, muddy sediment habitats. However, it highlighted the potential for valuable species and biogenic habitats in deeper waters (such as branchiopods, hydroid trees and horse mussel beds) and potential negative effects if such habitats are likely to be found on the outer edge of the farms and within the depositional footprint.
81. Cawthron noted that shading effects of mussel farms are not well quantified but are more likely to be detrimental in the shallows. Overall, Cawthron concluded the effects of the offshore movement would be minor and mainly positive.
82. Overall, the Panel accepts there are likely to be ecological benefits from moving the marine farms out from the shore to within a band of 100 – 300 m from the mean low water mark, provided the deeper waters do not encroach on areas utilised by important species and significant habitats; and there is no significant increase in marine farming intensity. The Panel acknowledges that there could be some short term, localised negative effects on the seabed through disturbance of the seabed during mussel line relocation.
83. The Panel considered the potential for adverse benthic effects associated with the removal and relocation of backbone and anchoring structures. The Panel finds there will be circumstances where the relocation and removal of anchoring structures may have greater adverse effects and cause more disturbance to benthic habitats than leaving them *in situ*. The Panel considers it is appropriate for Policy 13.22.2 to recognise such situations.
84. The Panel notes that ecological changes are more likely where there is a large depth range between the inner and outer area of the farm and that there is potential for older farms to have been placed over notable habitats with no assessment of the ecological effects. The Panel has been cognisant of these risks in considering each proposed AMA on a site-by-site basis and the activity status for replacement consents. In many areas, the Panel has had the benefit of the Council's multibeam sonar survey data to identify areas of hard substrate and rocky outcrops within and near proposed AMAs. This seabed survey technology utilised by MDC has been of great assistance in the Panel's deliberations. The Panel highlights that

where there was no multibeam sonar survey data available a precautionary approach to the protection of benthic values has been taken. These areas are identified below in this decision.

Decision

85. The Panel’s decisions relating to individual AMA, in order to give effect to Objective 1 and Policy 11 of the NZCPS, are recorded in Appendix 3 of this decision.

86. The Panel determines to amend Policy 13.21.3 clause (e) to give effect to Objective 1 and Policy 11 of the NZCPS:

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

87. The Panel accepts the Section 42A report recommendation to amend Policy 13.21.3 clause (b) as follows:

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

88. The Panel determines to add the following new clause to Policy 13.21.4 to give effect to Objective 1 and Policy 11 of the NZCPS as follows:

(e) Ecologically significant marine sites identified in Appendix 27 and shown on the Volume 4 planning maps.

89. The Panel accepts the Section 42A report recommendation to amend Policy 13.21.5 clause (b) as follows:

(ab) an assessment of the seafloor beneath a proposed AMA and its immediate environs has been completed which shows that there are:

- (i) no areas that meet the ecological significance criteria in Appendix 3 as having significant marine biodiversity value underneath or within 50~~20~~ metres of the AMA that may be adversely affected by the installation or operation of a marine farm;
- (ii) no reefs, biogenic habitats, cobble habitats or algae beds within 50~~20~~ metres of the AMA that may be significantly adversely affected by the operation of a marine farm;

90. To give effect to Objective 1 and Policy 11 of the NZCPS, the Panel rejects the Section 42A report recommendation to amend Policy 13.21.6 clause (g) from 50 metres to 20 metres.

91. The Panel determines to amend Policy 13.22.2 to give effect to Objective 1 and Policy 11 of the NZCPS as follows:

Policy 13.232.12

- (a) Consent holders for marine farms in the coastal marine area will be required to remove marine farm structures from the site:
 - (i) on expiry or surrender of the coastal permit, unless continued operation is allowed by s124 or 165ZH of the RMA or a new coastal permit is granted to allow marine farming to continue using the same structures; or
 - (ii) if marine farming activity ceases for a period of 5 years or greater (other than for operational reasons such as periodic fallowing of a site) on the site and structures are derelict, unused or obsolete, whether or not the coastal permit has expired or been surrendered.
- (b) An exception may be made to the requirement to remove all structures in (a) if the for anchoring structures in the following circumstances:
 - ~~(i) the anchoring structure is a screw anchor, and the screw anchor is cut off at sea floor level and the part of the screw anchor previously protruding from the seafloor is removed; or~~
 - ~~(ii) the anchoring structure is a block anchor, and the block anchor cannot practicably be removed or reused and the remaining block anchor anchoring structure will not be an impediment to navigation or safe anchoring.~~

Marine farming occurs ~~Because a marine farm will be located in the public domain, it is therefore important that if the marine farming activity is to cease, the marine farm structures are removed from the site. then the site is able to be restored to its previous state to enable it to be used for other activities or enjoyed for other values.~~ This policy sets out this requirement, which will be imposed through conditions on any coastal permit granted. An exemption is provided for anchoring structures in limited circumstances, as set out in (b), in recognition that disturbance of the seabed may result in greater adverse effects than leaving the anchoring structures in situ.

Natural Character, Landscape and Visual Amenity Effects

92. Variation 1 must give effect to Objective 2 and Policies 13, 14 and 15 of the NZCPS. Objective 2 seeks to preserve the natural character of the coastal environment and to protect natural features and landscape values. Policy 13 seeks to preserve natural character of the coastal environment from inappropriate use and development by avoiding adverse effects on outstanding natural character; and avoiding significant adverse effects and avoiding, remedying or mitigating adverse effects of activities on natural character in all other areas of the coastal environment. Policy 14 seeks to promote restoration and rehabilitation of natural character in the coastal environment by identifying areas and opportunities for restoration or rehabilitation. Policy 15 seeks to protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate use and development by avoiding adverse effects on outstanding natural features and natural landscapes; and avoiding significant adverse effects and avoiding, remedying or mitigating adverse effects of activities on other natural features and natural landscapes in the coastal environment.

93. The Council received expert advice from Boffa Miskell in 2018¹¹ assessing the adverse effects of existing marine farms within ONFL overlays of the PMEP to inform the ‘appropriateness’ assessment from a natural character and landscape values perspective. This work informed the notified AMAs in Variation 1.
94. The MARWG considered the appropriateness of existing marine farms in relation to the protection of natural character and natural features and landscape values. Of approximately 580 marine farms within the enclosed waters of Marlborough Sounds, the MARWG recommended 22 marine farms not be provided an AMA primarily based on adverse effects on natural character and landscape values, as outlined in the Boffa Miskell Report 2018.
95. The EDS submission sought to ensure the avoidance requirements of Policy 13 and 15 of the NZCPS are given effect to in the provisions, including policies, rules and matters of control/discretion.
96. Submissions from CBRA and KCSRA raised concern that the Council’s assessment of effects on natural character and landscape values had failed to consider whether an area would have outstanding natural character and landscape values without the existing marine farm activity. The submissions noted the existing marine farms and any associated adverse effects should only be considered to be part of the existing environment until the expiry date of the consents, in acknowledgement that the consents are limited and the marine farming structures can be removed.
97. The submission from FNHTB raised concerns that the PMEP assessment and mapping exercise had been deficient resulting in the provisions (including Appendices 1 and 2) being invalid and unreliable. It submitted this deficiency was clear given only the 22 marine farms within the ONFL/ONC overlays, out of 580 existing marine farms, were deemed ‘inappropriate’.

Evaluation

98. The Panel is cognisant of submissions received regarding the need to integrate identification of inappropriate areas for marine farming and remediation of adverse effects with the PMEP provisions requiring preservation of natural character, and protection of natural features and landscape values. The Panel has paid particular attention to adverse effects on outstanding natural features and outstanding natural landscapes (**ONFL**) and outstanding natural character (**ONC**), as identified and defined in the PMEP provisions.

¹¹ Boffa Miskell, February 2018: ‘Existing marine farms in Outstanding Overlays: Appropriateness of marine farms in the Marlborough Sounds – Natural Character and Landscape Assessment on existing aquaculture locations within Outstanding Natural Features and Landscapes and Outstanding Natural Character in the Marlborough Sounds’.

99. The Panel agrees with the EDS submission and other submissions that Policies 13 and 15 of the NZCPS are environmental bottom lines that cannot be balanced against other objectives or policies of the NZCPS. The Panel agrees that to give effect to Policies 13 and 15, AMAs should not generally be located within areas of high natural character or ONFL and should provide sufficient separation from these areas to avoid adverse effects on identified areas of significant value. The Panel has considered this on a site-by-site basis, both from the evidence and our site visits, and has also considered the adverse effects of existing marine farms adjacent to or close to areas of high natural character or ONFL to give effect to Policies 13 and 15, and in giving effect to Policy 14 of the NZCPS. Again, the Panel acknowledges the EDS submission also highlighted the importance of Policies 3, 4, 7, and 8 of the NZCPS.
100. The Panel considers amendments to the provisions are required to give effect to Objective 2 and Policies 13 and 15 of the NZCPS.
101. Expert advice on the proposed AMAs and their natural character, landscape and visual amenity effects received by the Council from Mr James Bentley, Boffa Miskell¹² concluded that moving existing marine farms seaward from 50 m to 100 m offshore '*...will ensure there is a greater level of access provided to the coastal edge which will assist in improving amenity and recreational pursuits*'.
102. In the Boffa Miskell memorandum, Mr James Bentley confirmed the existing marine farms were assessed as part of the existing environment and that effects were measured against the change proposed, using a seven-point scale¹³. He outlined key design principles for aquaculture changes including:
- (a) Greater opportunity for larger, broader bays with more expansive seascapes to accommodate changes;
 - (b) Avoiding AMAs next to areas of ONFL, or if unavoidable, avoid expanding or building on these sites;
 - (c) Avoiding small bays being dominated by moving marine farms into limited central waters;
 - (d) Maintaining a better relationship with the adjacent landform and coastline; and
 - (e) Understanding the sensitivity of some bays and stretches of coastline.

¹² Section 32 Evaluation – Proposed Variation 1: Marine Farming – Appendix 9 – Memorandum dated 5 April 2019 from James Bentley

¹³ A universal scale to rate quantitative assessments as recommended in Te Tangi A Te Manu Aotearoa New Zealand Landscape Assessment Guidelines 2021.

103. The Section 42A report - Spatial included a Memorandum by Mr Bentley (dated 6 October 2021) addressing natural character and landscape matters relating to selected submissions¹⁴. Mr Bentley attended the hearing and provided a written draft closing statement (dated 18 November 2021) and a written Right of Reply (dated 31 January 2022), which included responding to the matters in Minute 15 (dated 30 November 2021). The Panel acknowledges Mr Bentley's methodology for determining 'appropriateness' includes landscape value and landscape susceptibility to assess the sensitivity of a site to development. The Panel agrees with Mr Bentley that adverse effects need to be assessed both individually and cumulatively, based on context, while acknowledging the ongoing ability of a landscape to continue to 'absorb' the effects created by aquaculture on the natural character and landscape values.
104. In reply evidence, Mr Bentley noted that the landscape values set out in Appendix 1 of the PMEP are not exhaustive and emphasised it is the combination of values that work together. He cautioned that extracting one value may surrender the ONFL and that a landscape may be outstanding for a single reason. In assessing effects on those values, he considered it was vitally important to bring them all together again and make sense of place, and to tie the landscape back to its specific context.
105. The Panel accepts Mr Bentley's evidence that CMUs are not based on landscapes but are defined areas that form part of a broader 'nested' landscape within the Sounds. The Panel considers use of the CMUs is an appropriate spatial methodology to manage marine farming activities within the Sounds. The Panel accepts this spatial methodology provides natural boundaries for the assessment of appropriate locations for marine farming activity.
106. Mr John Hudson provided evidence for MFA/AQNZ on the key principles of assessing and locating marine farms, the co-existence of marine farms with identified outstanding areas and cumulative effects. He concluded that marine farms in outstanding areas can co-exist with the guiding principles and not be inappropriate. The Panel has considered this on a site-by-site basis.
107. Some submissions raised matters relating to the identification and boundaries of high natural character areas and ONFL. The Panel finds this is outside the scope of the Variation. The Panel has been informed of any relevant changes to ONC and ONFL boundaries which may have occurred through the PMEP appeal process before the date of release of this decision.

¹⁴ Vincent Smith (Site 8040, T.R. Elkington and S.G.T. McCarthy (Site 8002), multiple submitters concerning sites in Catherine Cove, Clifford Bay Marine Farms, Scott Antis, Red Sky Trust, Talley's Group, Waitui Holdings Limited and notified AMAs in Richmond Bay.

108. The Panel is cognisant that the Boffa Miskell 2018 report assessed the adverse effects of existing marine farms within ONL or high natural character overlays of the PMEP and not the effects of those adjacent to these identified areas.
109. The Panel shares the concern of some submitters that the approach to the assessment of adverse effects on high natural character and outstanding landscape values was limited to marine sites located within the ONFL or ONC areas. The Panel notes that in some cases, it is apparent that the boundaries of these significant areas identified in the PMEP have been drawn to exclude the existing marine farms or the waters/marine environment in a bay where the terrestrial values remain high, despite the presence of the marine farm(s). The Panel considers the adverse effects of these marine farms on significant natural character and landscape values are not avoided by drawing boundaries around existing marine farms. In considering the appropriateness of each AMA, the Panel had regard to the boundaries of the overlays and the effect of marine farming within the AMA on the values which are required to be protected.
110. The Panel has had regard to Te Tangi A Te Manu Aotearoa New Zealand Landscape Assessment Guidelines 2021 which directs landscape assessors to treat ONFL boundaries in a reasoned way and cautions that delineation of boundaries does not necessarily determine whether an activity/development is appropriate or not. In line with the guidance, the Panel has focussed on assessing adverse effects on ONFL values rather than the 'outstanding' threshold and accept that whether a landscape in question remains outstanding is not determinative of whether there is an adverse effect or not.
111. In response to concerns raised regarding the Council's assessment of the adverse effects of existing marine farms located within areas identified as high natural character and/or ONFL, the Panel sought further expert comment on the adverse effects of existing marine farms adjacent to such areas.
112. Mr Bentley visited a number of sites adjacent to ONFL areas and where boundaries had excluded the marine environment due to the presence of existing marine farms, and provided further comment in his reply evidence.
113. Mr Bentley concluded the presence of AMAs in Kauauroa Bay would '*...continue to adversely affect the landscape and natural character of the embayment*' but that these effects are '*...managed and contained mainly due to landform*'. On this basis, he recommended to provide AMAs for all the existing marine farms in Kauauroa Bay.

114. Mr Bentley revisited Tawhitinui Bay and highlighted his evidence given at a recent consent hearing for the expansion of MF 8217¹⁵. He maintained his view that the existing marine farms (and any expansion) are inappropriate from a landscape and natural character perspective.
115. On the basis of the Panel's site visit and the evidence of Mr Bentley, the Panel considers the existing marine farms at Tawhitinui Bay (MF 8216 and MF 8217) are located in an inappropriate location due to more than minor adverse effects on significant natural character and landscape values. The Panel acknowledges the Council did not have the benefit of Mr Bentley's assessment of the effects of these marine farms prior to notification of the Variation. The Panel recommends the Council withdraw the notified AMAs for these sites to give effect to Policies 13 and 15 of the NZCPS. For completeness, the Panel addresses the Kuku Holdings Limited submission requesting expansion of the notified AMA below in relation to the site-specific decisions.

Decision

116. The Panel decisions relating to individual AMA, in order to give effect to Objective 2 and Policies 13, 14 and 15 of the NZCPS, are recorded in Appendix 3 of this decision. The Panel recommends the Council withdraws AMA 14 in CMU 28 (Maud) for MF 8216 and MF 8217.
117. The Panel amends Policy 13.21.3 clause (d) to be consistent with Objective 2 and Policies 13 and 15 of the NZCPS as follows:

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

118. The Panel determines to insert the following new clause to Policy 13.21.3 to give effect to Objective 1 and Policies 13, 14 and 15 of the NZCPS:

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

119. The Panel determines to amend the commentary to Policy 13.21.3 to reflect the changes made to the policy to give effect to the provisions of the NZCPS and to provide greater clarity.

¹⁵ Decision of Marlborough District Council for resource consent application U200493 by Kuku Holdings Limited dated 10 September 2021.

This policy reflects the principles that the Council used when deciding where to locate or relocate existing marine farms and AMAs, while giving effect to the provisions of the NZCPS. The Council intends that the new spatial layout achieved through AMAs will result in the maintenance and enhancement of the values of the Marlborough Sounds, ~~being better off.~~

Te Tiriti o Waitangi/Treaty of Waitangi and Role of Tangata Whenua as Kaitiaki

120. Variation 1 must give effect to Objective 3 and Policy 2 of the NZCPS. Objective 3 seeks to take into account the principles of Te Tiriti o Waitangi/Treaty of Waitangi and the role of Tangata Whenua in the management of the coastal environment. Policy 2 seeks to recognise Tangata Whenua's traditional and continuing relationship with areas of the coastal environment, involve iwi authorities and hapu in the preparation of plans, provide opportunities for Māori in decision making, take into account any relevant iwi management plan, provide opportunities for Tangata Whenua to exercise kaitiakitanga, and recognise in consultation and collaboration with Tangata Whenua that they have the right not to identify places or values of historic, cultural or spiritual significance.

Evaluation

121. The Panel acknowledges the submissions received from some of Marlborough Sounds Tangata Whenua Iwi highlighting Objective 3 and Policy 2 of the NZCPS.
122. The submission from Ngāti Kuia noted the cultural values of each CMU were not well understood due to the lack of research into cultural values and sought consideration of the effects on cultural values be included in the rules. They supported bay by bay carrying capacity assessments, the removal of marine farms from Waitata Reach and the prohibited status of marine farming outside AMAs. Concerns were raised regarding the ability to establish a Mātaitai Reserve at Anakoha, the effects of new AMAs at Kapaua/Richmond Bay and the lack of restorative aquaculture requirements.
123. The submission by Te Ātiawa sought iwi involvement in decision making processes, net enduring restorative outcomes, coastal occupancy charges, the development and inclusion of applicable Māori Cultural Marine Indicators, consideration of climate change and use of a precautionary approach.
124. The Panel heard evidence on the cultural relationships and values from Mr Carl Elkington and Mr Lindsay Elkington for themselves and as Ngāti Koata, Mr Frank Burns, for himself and as Te Ātiawa, and Mr Maurice Manawatu and Mr Rakhia Tau for Ngāi Tahu.
125. The Panel has used the PMP provisions to guide recognition and provision of sites of historic, cultural and spiritual significance to Marlborough's Tangata Whenua. The Panel recognises

that marine farming is a contemporary expression of mahinga kai practices and that some existing marine sites are located in areas with which Tangata Whenua have ancestral and spiritual relationships. Catherine Cove is an example where the Panel acknowledges Tangata Whenua's traditional and continuing cultural relationships, traditions and taonga, as outlined in the evidence of Mr Allen Hippolite and Ms Alice Woodward for Kapua Marine Farms Limited, and Mr Carl Elkington and Mr Lindsay Elkington.

126. The Panel has taken into account the relevant iwi management plans and in particular the desire to achieve net enduring outcomes, as outlined in evidence by Te Ātiawa.
127. The Panel has taken into account the principles of Te Tiriti o Waitangi/Treaty of Waitangi in making its decision. The Panel recognises that Council's relationship with Marlborough's Tangata Whenua is evolving and explored opportunities for recognising their role as kaitiaki with hearing participants.
128. The Panel acknowledges the role of Tangata Whenua as rangatiratanga is inseparable to the duty of kaitiakitanga; and that kaitiakitanga is intertwined with mahinga kai and marine farming.
129. The Panel considers it is necessary to make changes to the policies to give effect to Objective 3 and Policy 2 of the NZCPS to take into account the relationship of Marlborough's Tangata Whenua Iwi with the coastal environment, to recognise the role of Tangata Whenua as kaitiaki and to provide for Tangata Whenua involvement in the management of marine farming activities. It is appropriate to provide opportunities for Tangata Whenua involvement in new future marine farming activities that have not been provided for in this Variation by ensuring that the relationship of Marlborough's Tangata Whenua Iwi with the moana and sites of significance are recognised and provided for. The Panel considers it is also appropriate to make amendments to provide consistency in the wording of the provisions.
130. The Panel accepts the submissions of Ngāi Tahu and the recommendations of the Council to divide the South Marlborough CMU 38 and Offshore CMU 8 to recognise Ngāi Tahu's takiwā boundary.
131. The Panel rejects Ngāi Tahu's requests for policy provisions that relate specifically to the newly created CMU 38A and CMU 8A (as outlined in the evidence of Ms Tanya Stevens) given the purpose of Variation 1. The Panel accepts the Section 42A report recommendation that the policy framework of Variation 1 should apply to the newly created CMU 38A and CMU 8A within Te Tai o Marokura to give effect to the provisions of the NZCPS and avoid duplication. The Panel is cognisant that future marine farming activities are not prohibited within CMU

38A and CMU 8A and that further information is needed to fully understand the implications of the above findings in the context of the NZCPS.

132. The Panel considers the outcomes sought by the policy framework of Variation 1 are consistent with the relevant provisions of the Te Poha o Tohu Raumati: Te Rūnanga o Kaikōura Environmental Management Plan (3.6.15 Aquaculture and marine farms).
133. The Panel has made a number of additions to the provisions requiring recognition of and provision for the relationships and values of Marlborough’s tangata whenua iwi to strengthen the policy framework in this regard.

Decision

134. The Panel determines to insert the following new clause to Policy 13.21.3 to give effect to Objective 3 and Policy 2 of the NZCPS as follows:

(e) To recognise and provide for the traditional and continuing relationships of Marlborough’s tangata whenua iwi with the moana and sites of significance.

135. The Panel determines to amend clause (f) of Policy 13.21.5 to give effect to Objective 3 and Policy 2 of the NZCPS as follows:

(ef) the AMA is located away from areas with significant ~~Māori~~ cultural values where that is necessary to protect the relationship of ~~Māori~~ Marlborough’s tangata whenua iwi with those places.

136. The Panel determines to insert the following new clause to Policy 13.21.6 to give effect to Objective 3 and Policy 2 of the NZCPS:

(i) Outside areas of cultural significance to Marlborough’s tangata whenua iwi where the marine farm would have adverse effects on cultural values.

137. The Panel determines to amend the fourth bullet point under Issue 130 in relation to the management of cumulative effects as follows:

- the relationship of Marlborough’s tangata whenua iwi with the moana and sites of significance, and their cultural values of Marlborough’s tangata whenua iwi;

Public Open Space, Public Access, Amenity Values, Navigation Safety and Recreation Opportunities

138. Variation 1 must give effect to Objective 4 and Policies 6 and 18 of the NZCPS. Objective 4 seeks to maintain and enhance the public open space qualities and recreation opportunities of the coastal environment. Policy 6 seeks to recognise the need for public open space within the

coastal environment for active and passive recreation by ensuring the location and treatment of public open space is compatible with the natural character, natural features and landscape, and amenity values; and taking into account future need for open space within the coastal environment. Policy 18 seeks to recognise the need for public open space and public access to and along the coast.

Evaluation

139. Submissions raised concerns relating to the need to maintain and enhance public open space within the CMA; and to avoid adverse effects on recreational opportunities, point to point navigation and amenity values.
140. Legal submissions by Mr Julian Ironside for the CBRA and KCSRA highlighted the importance of the 100-300 m ribbon band and requested consistent application, with only exceptional cases allowed for outside of this development pattern.
141. Mr Luke Grogan, Harbourmaster for the Council provided advice to the Section 42A report writers on navigation safety.¹⁶ Mr Grogan recommended marine farms should be generally located in a strip or 'ribbon' arrangement with a consistent pattern and marked with navigation lights. His expert view was that this is an 'extremely effective risk control'.
142. The Reply Evidence included further comment (dated 28 January 2022) from Mr Grogan relating to matters of navigation safety raised in relation to specific bays and marine farms. Mr Grogan considered that consistency with the ribbon or strip pattern of the existing marine farms is an effective risk control for navigation safety. In terms of the size of farms or the width of strip in relation to submitters' concerns in Clova Bay, Beatrix Bay and Kauauroa Bay, he considered the key to effective risk control was consistency and the avoidance of fluctuating between narrow and wide strips. He noted that the width of the strip would impact on the experience of navigation as well as recreational and amenity values. He noted a key consideration was whether a marine farm would result in speed restrictions across a bay or adversely impact areas of high recreational use.
143. The Panel has considered the issue of the 'double parking' of marine farms in light of the evidence of Mr Grogan that a consistent pattern is an effective risk control for maintaining navigation safety. The Panel has considered this issue on a site-by-site basis and finds it is one of a number of relevant considerations to be weighed up in determining the appropriateness of AMAs. In some cases, the Panel has found the fact that a marine farm is 'double parked' does not of itself deem a site inappropriate for aquaculture. The Panel acknowledges the

¹⁶ Email to Louise Walker dated 7 October 2022.

specific concerns raised by submitters including Mr Ronald Bothwell (in relation to existing marine farms at Port Underwood) and Mr Mervyn Whipp for Aroma (N.Z.) Limited (in relation to Catherine Cove) regarding adverse effect on mussel yields from nutrient depletion. However, these concerns do not relate to navigation safety and are considered by the Panel in relation to the cumulative effects of existing marine farms.

144. The evidence of Mr Robert Greenway for MFA/AQNZ *et al.*¹⁷ reviewing the relationship between mussel farming in the Pelorus Sound and recreation and tourism concluded the activities can co-exist and are generally compatible, with the consideration of site-specific farm placement. He considered the research (albeit dated) suggested the ability of the Sounds to absorb increased mussel farming needed to be carefully considered from a recreation amenity perspective. He outlined the types of recreational activities undertaken. At a high level, he classed the Sounds as having some areas of nationally significant recreational boating, but not each bay within the area; and most of the inner Queen Charlotte Sound, and Ship Cove and Endeavour Inlet as nationally significant for boating. He noted the dominance of Queen Charlotte Sound as the primary recreation and tourism setting.
145. Mr Greenway considered freeing the inshore space for recreation access to and along the coast by relocating AMAs is generally appropriate. He agreed with the findings of Mr Grogan. Mr Greenway considered there was no basis to the CBRA and KCSRA submissions in relation to problematic navigation and public access issues within Clova Bay.
146. The Panel is cognisant of the need to at a minimum maintain these values and where possible to improve these. The Panel accepts the movement of marine farms seaward will enhance public access to and along the foreshore, and improve open space for active and passive recreation opportunities in inshore areas.
147. The Panel has considered navigation safety and public access in terms of maintaining the gaps between existing marine farms to maintain open space and public access. The Panel has addressed this in its approach to maintaining at least 50 metre gaps between marine farms by creating discrete AMAs, which is addressed further below. However, the Panel considers it is also appropriate to provide policy direction to provide sufficient gaps between longline backbones (generally spaced at 15-20 metres) and between blocks of longline backbones within marine farms to maintain existing public access.
148. The Panel considers it is appropriate to include policy direction to take into account existing and future public needs in considering the creation of new AMA for the relocation of existing

¹⁷ Beleve Limited, RJ Davidson Family Trust and Treble Tree Holdings Limited.

marine farms to maintain and enhance public open space, public access and recreational values. The Panel finds this is consistent with and gives effect to Policies 6 and 18 of the NZCPS.

149. The Panel also finds it is appropriate when considering new AMA (i.e. AMA not provided for through this Variation) under Policy 13.21.5 that these new marine farms will not adversely affect navigation by introducing speed restrictions across the majority of a bay. The Panel considers this is consistent with the expert advice of Mr Grogan.

150. The Panel accepts the Section 42A report recommendation that clause (d) and (e) of Policy 13.21.5 should be amended to delete the word 'significant' given Objective 13.21 seeks to provide for marine farming in appropriate locations while protecting and maintaining coastal values.

Decision

151. For the reasons set out, the Panel determines to amend clause (c) of Policy 13.21.3 to give effect to Objective 4 and Policy 18 of the NZCPS as follows:

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

152. The Panel determines to amend clause (c) of Policy 13.21.5 to give effect to Objective 4 and Policies 6 and 18 of the NZCPS as follows:

(~~b~~e) the location of an AMA and subsequent marine farm will not adversely affect navigation caused by introducing significantly narrow the navigable channel resulting in speed restrictions across the majority of a bay;

153. The Panel accepts the recommendations in paragraphs 238 and 240 of the Section 42A report Vol 1, Part A to amend clauses (d) and (e) of Policy 13.21.5 as follows:

(~~c~~d) public access for recreational opportunities near the proposed AMA will not be ~~significantly~~ adversely affected by the AMA or subsequent marine farm activities; and
(~~d~~e) amenity values including visual amenity will not be ~~significantly~~ adversely affected by lighting and noise arising from the operation of the subsequent marine farm;

154. The Panel determines to amend the fifth bullet point under Issue 130 in relation to the management of cumulative effects to give effect to Objective 4 and Policies 6 and 18 of the NZCPS as follows:

- public open space and recreational use of the coastal marine area, including restrictions that may occur on public access within the coastal marine area;

155. The Panel accepts the s42A report recommendation to insert 'in Enclosed Water CMUs,' to Policy 13.22.7(b).

156. The Panel also determines to amend clause (b) and (c) of Policy 13.22.7 guiding the layout, positioning, design and operation of marine farms and associated structures to maintain public access through and between blocks of marine farms within the same AMA as follows:

- (b) in Enclosed Water CMUs, for marine farms using conventional longline structures, the lines are generally positioned with a 15-20 metre space between each line;
- (c) existing gaps between adjacent blocks of backbone within the same AMA are maintained ~~that a gap of 50 metres between adjacent marine farms is provided~~ to allow for public access between marine farms to the foreshore (including for recreational access and access for other boating traffic);

157. In conjunction with the amendment to clause (c), the Panel determines to insert a new paragraph in the explanation of Policy 13.22.7 as follows:

The plans approach using discrete AMAs provides for public access between marine farms. Some marine farms have multiple blocks of backbone within the same farm. Historically, a gap of about 50 metres has been applied between those blocks of backbone. The policy sets out that this approach should continue in order to maintain the existing level of public access between the marine farms to the foreshore.

Coastal Hazard Risk and Climate Change

158. Variation 1 must give effect to Objective 5 and Policies 24 of the NZCPS.

Evaluation

159. The Panel has had regard to coastal hazard risks, where relevant, and the effects of climate change. The Panel has had regard to the climate change provisions of the PMEP.

160. The Panel acknowledges the risks posed to the marine farming industry from climate change and ocean acidification. Evidence presented by MFA/AQNZ highlighted potential opportunities

for marine farming to assist in addressing the effects of climate change such as farming seaweed¹⁸.

161. The Panel is satisfied the Variation includes provisions to enable flexibility for the marine farming to adapt by changes to species farmed through Rule 16.4.5 and Method 13.M.36.

Decision

162. No decisions are required.

Economic, Social and Cultural Effects

163. Variation 1 must give effect to Objective 6 and Policies 6 and 8 of the NZCPS. Objective 6 seeks to enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits.
164. Policy 6(2) seeks to recognise potential contributions to the social, economic and cultural well-being of communities from use and development of the coastal marine area; recognise the need to maintain and enhance public open space and recreation qualities and values of the coastal marine area; recognise there are activities that have a functional need to be located in the coastal marine area and provide for these activities in appropriate place; and promote the efficient use of occupied space.
165. Policy 8 seeks to recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities.

Evaluation

166. An economic assessment of the proposed changes received by the Council from Perception Planning¹⁹ set out the benefits and costs, and concluded the economic impacts are considered to be 'minimal' given little change to the overall size of the marine farming industry. The assessment noted positive impacts from the change to controlled activity status for replacement consents, potential increases in productivity through longer grow lines, the opportunity to apply for consent in the Offshore CMU, improved access and amenity near shore, and improved protection of the foreshore photic zone. The assessment acknowledged marine farmers will incur the costs of relocating lines and estimated the cost to relocate a longline to be approximately \$5,000 - \$10,000 and that no more than 180 longlines would need to be relocated. However, it noted that this cost is balanced by avoiding re-consenting

¹⁸ Evidence of David Taylor for MFA/AQNZ

¹⁹ Section 32 Evaluation – Proposed Variation 1: Marine Farming – Appendix 10.

- cost (as a controlled activity), greater certainty of renewal of consents, increased investment in research and development, and recognition of consents as assets given increased certainty.
167. The evidence of Mr Clough outlined the opportunity cost of reserving space for ‘non commercial uses’, the difficulties with examining trade-offs when balancing non-market and market based benefits and costs from different use and non-uses, and the limitations of alternative economic analyses. He stated marine farming contributes 3.7% to Marlborough’s GDP and 254 full time equivalent jobs; and seafood processing contributes an additional 2% to Marlborough’s GDP and 605 full time equivalent jobs²⁰.
168. The evidence of Ms Stephanie Hopkins for MFA/AQNZ estimated the total revenue generated in New Zealand by the sector in 2020 for mussels was \$377 million (of which Marlborough represents 56% of production) and oysters \$22 million. She highlighted the importance of aquaculture as half of the seafood produced for human consumption globally and future forecasts for this to grow. She noted aquaculture currently employs 3000 people in communities around New Zealand; and the increasing partnership with Māori and iwi as business owners and growers, which will increase with the delivery of settlement assets.
169. The Panel heard evidence from individual marine farmers and companies on the importance of the marine farming industry to their economic, social and cultural wellbeing.
170. The Panel heard evidence from Mr Whipp for Aroma (N.Z.) Limited and Aroma Aquaculture *et al.*²¹, Mr Nick Hearn for Apex Limited, Ms Annie Fleming and Mr Michael Holland for Clearwater Mussels Limited (‘Clearwater’) and Talley’s Group Ltd (Talley’s), Ms Maegen Blom, Mr Simon Pooley and Ms Emma Jane Hopkinson-Young on the benefits of aquaculture industry as a sustainable industry supporting human health, local employment and business opportunities.
171. The Panel heard evidence from individuals and community groups of the importance of addressing concerns raised regarding inappropriate existing sites and ensuring the plan provisions reflect community aspirations.
172. The Panel recognises the significant economic, social and cultural benefits of the marine farming industry to Marlborough and has been cognisant of the economic and social costs and benefits of Variation 1 in making these decisions.
173. Issue 13N of Variation 1 acknowledges the uncertainty for the future of marine farming in Marlborough - for the marine farming industry in relation to the process and outcome for

²⁰ NZIER (2015) ‘The Economic contribution of Marine Farming in the Marlborough Region’

²¹ Beleve Limited, R J Davidson Family Trust and Treble Tree Holdings.

replacement consents when the current consents expire; and for the community in relation to location and potential growth of marine farming and whether the existing marine farms are having adverse effects on coastal values.

174. CBRA and KCSRA sought removal of Issue 13N on the basis that certainty for the marine farming industry cannot be addressed without compromising environmental values.
175. The MFA/AQNZ sought amendments to Issue 13N to reflect that the industry 'needs certainty' and that the community 'needs certainty' and 'expressed concerns' about adverse effects. They MFA/AQNZ also sought the wording of the commentary 'Over 300' be replaced with a more appropriate figure.
176. The Section 42A report recommended minor changes to improve the wording of Issue 13N.
177. One of the key purposes of this Variation is reflected in Objective 13.21 which seeks to provide for the existing level of marine farming in appropriate locations while protecting and maintaining the values of Marlborough's coastal environment.
178. There were a range of submissions supporting Objective 13.21 and some sought specific changes to the wording.
179. CBRA and KCSRA sought reference to providing for marine farming not only in appropriate locations but also in appropriate densities. The Section 42A report writers viewed density as an important factor within the consideration of appropriate locations and rejected the change sought for this reason.
180. MFA/AQNZ sought to amend 'provide for' to 'maintain and enhance the existing marine farming industry' and to remove reference to 'in appropriate locations'. The Section 42A report noted the provisions sought to provide a level of certainty to the marine farming industry by identifying appropriate locations and not by directing the existing industry be maintained and enhanced.
181. MFA/AQNZ requested the commentary be amended to include reference to a NZIER report and to 'the wealth of information'. The Section 42A report considered the changes requested would not improve understanding for plan users.
182. MFA/AQNZ requested the commentary be amended to include reference to the need to take into account 'the physical and operating requirements of marine farms'. The Section 42A report noted that production values had been taken into account in considering natural and human use values, but that this could be more explicit and recommended the following amendment to the commentary:

'... As important as it is to manage potential adverse effects of marine farming, it is also important to identify appropriate areas for marine farming to be located. The operational needs of marine farms must be taken into account, but this ~~This~~ must be done in a way that provides for the values of the coastal environment. The Council has done this through a comprehensive spatial allocation process for the enclosed waters of the Marlborough Sounds, and through policy which identifies and manages adverse effects on the values of the coastal environment.'

183. Policy 13.22.4 seeks to avoid new and existing marine farms being located in inappropriate areas and to prohibit aquaculture activities in locations defined as inappropriate through the provisions of the Variation.
184. The Panel agrees with the Section 42A report writers that the density of marine farms is one of a number of factors that need to be considered in determining appropriate locations and that it is not necessary to include specific reference to this.
185. The Panel considers Objective 13.21, as drafted, is the most appropriate way to give effect to Policy 8 of the NZCPS. While the intention of the Variation is to provide for the existing spatial extent of the existing marine farms, it is acknowledged that there is uncertainty regarding cumulative effects and that future reductions may be required to provide for other environmental values. The objective seeks to provide for marine farming in appropriate locations, which is different to a requirement to maintain and enhance the existing marine farming industry.
186. The Panel considers the recommended amendment to the commentary requiring the operational needs of marine farms to be taken into account elevates the operational needs above providing for other coastal values. The Panel finds this can be addressed by rewording the amendment.
187. Policy 13.21.1 provides guidance for managing marine farming using CMUs and AMAs to define appropriate locations for aquaculture.
188. There were a range of submissions in relation to Policy 13.21.1 requesting amendments to the wording to provide further clarity.
189. The Section 42A report recommended minor amendments relating to finfish AMA and the Offshore CMU, and to delete the word 'adverse' from the commentary.

190. The Panel rejects the Section 42A report recommendation to make amendments to Policy 13.21.1 given the Panel’s recommendation to withdraw Variation 1A and the uncertainty regarding the creation of finfish AMA.
191. The Panel considers amendments are required to make exceptions to clause (e) and to make reference to the guidance for new AMA in Policy 13.21.7.
192. The Panel accepts it is appropriate to delete the word ‘adverse’ from the commentary, as recommended by the Section 42A report writers. The Panel considers it is appropriate to add a paragraph outlining the uncertainty regarding the appropriateness of the existing finfish farm sites within the Enclosed Waters and the Nearshore CMUs.
193. The Panel notes Policy 13.22.4 gives effect to Objective 13.21 and not Objective 13.22 and should be reordered to be linked to Objective 13.21. The Panel considers the Policy should be simplified to avoid marine farms in inappropriate areas given other policies give guidance on determine appropriate locations.

Decision

194. The Panel accepts in part the recommendation of the s42A report and determines to make amendments to Issue 13N as follows:

Issue 13N – There is uncertainty about the future of marine farming in Marlborough. ~~For the industry, there is uncertainty~~ would like certainty about the process and outcome of any future resource consent application when existing resource consents for marine farms expire. ~~For the community there is uncertainty~~ would like certainty about the future location and potential growth of marine farming, and whether or not existing marine farms in current locations are resulting in adverse effects on uses and values of the coastal environment.

Marlborough District Council recognises the industry was established by the community and is an important economic activity in Marlborough. ~~Over 300~~Approximately one third of the coastal permits are deemed permits that are due to expire in 2024. Security of occupancy encourages development and investment in the industry, so uncertainty about the future tenure for marine farms is bad for the development of the industry.

There also continues to be concern in the community about the individual and cumulative adverse effects of marine farming. Uncertainty about the management or growth of the industry creates tension in resource consenting processes.

195. The Panel accepts in part the s42A report recommendation and determines to make amendments to the explanation below Objective 13.21 as follows:

Objective 13.21 – Provide for marine farming in appropriate locations while protecting and maintaining the values of Marlborough’s coastal environment.

As important as it is to manage potential adverse effects of marine farming, (as outlined in Issue 13O) it is also important to identify appropriate areas for marine farming to be located.

This must be done in a way that provides for the values of the coastal environment, while having regard to the operational needs of marine farms. The Council has done this through a comprehensive spatial allocation process for the enclosed waters of the Marlborough Sounds, and through policy which identifies and manages adverse effects on the values of the coastal environment.

The NZCPS recognises that one of the challenges in promoting sustainable management of the coastal environment, is that there is continuing and growing demand for coastal space and resources for commercial activities such as marine farming. While recognising the benefits of marine farming in Marlborough, it is important to make sure that this activity occurs in appropriate locations and is well managed to ensure the sustainable management purpose of the RMA is achieved.

196. The Panel determines to make the following amendments to Policy 13.21.1 and the explanation to provide further clarity as follows:

Policy 13.21.1 – For the purpose of managing marine farming:

- (a) the coastal marine area is divided into coastal management units (CMU);
- (b) areas where marine farms are appropriate are identified as AMAs in accordance with Policies 13.21.3 and 13.21.4;
- (c) marine farms may be appropriate in the offshore CMU, and will be assessed under Policy 13.21.6;
- (d) except as provided for in (b) or (c), new and existing aquaculture activities are inappropriate in the following zones:
 - (i) Coastal ~~m~~Marine ~~z~~Zone
 - (ii) Port ~~z~~Zone
 - (iii) Marina ~~z~~Zone
 - (iv) Port ~~l~~anding ~~a~~Area ~~z~~Zone

~~Except in an AMA overlay or the open water CMU;~~

- (e) where possible, existing ~~M~~marine ~~F~~farms are provided for at their existing size and within the same locations or as near as possible to the same locations within AMAs;
- (f) where it is necessary to relocate an existing marine farm, or part of an existing ~~M~~marine ~~F~~farm from its existing location to manage adverse effects on the natural and human use values of the coastal marine area, the equivalent amount of space is provided in an AMA in another location where possible.
- (g) the allocation of space within an AMA created for relocation of existing marine farms from inappropriate locations (that is not an ASA) is managed using the authorisations process set out in Part 7A of the RMA, guided by Policy 13.21.7 and implemented by rules.

The Marlborough Sounds have been divided into 45 Coastal Management Units (CMUs), which are geographical units based on catchments, key features, and values. Where appropriate within the CMUs (other than the offshore CMU) are Aquaculture Management Areas (AMA), which are areas identified as appropriate for marine farming. Not every CMU contains an AMA. These CMUs and AMAs are shown on the planning maps.

This policy sets out how the plan manages marine farms by providing for them within AMAs and prohibiting them outside AMAs in the enclosed water and Near-shore CMUs. It also acknowledges that marine farms may be appropriate in the offshore CMU, however, that requires assessment and consideration of ~~adverse~~ effects on any of the natural and human use values of the coastal marine area.

Policy 13.21.1(d) and the planning maps define areas inappropriate for new and existing aquaculture activities and together are intended to meet the requirements for identification of inappropriate area for existing aquaculture activities set out in Regulation 6 of the NESMA.

197. The Panel determines to amend Policy 13.22.4 as follows:

Policy ~~13.21.8~~13.22.4 — ~~New and existing aquaculture activities are inappropriate in the following zones:~~

~~(d) — Coastal marine zone;~~

~~(e) — Port zone;~~

~~(f) — Marina zone;~~

~~(g) — Port landing area zone;~~

~~except in an AMA overlay or the open water CMU. Avoid Mmarine farms and the associated occupation of space in inappropriate areas are prohibited.~~

Guided by values identified for ~~the sounds~~ Marlborough’s coastal environment, the Council identified AMAs within each CMU, except the Offshore CMUs, that are appropriate for marine farming. In order to protect a range of values with significance in the coastal environment Rule 16.7.910 prohibits marine farming inside an Enclosed Waters CMU or a Near-shore CMU, and not within an AMA. The NESMA allows the Council to be more stringent than the regulations in areas identified as inappropriate areas for existing aquaculture.

Policy 13.21.1 and the planning maps define areas inappropriate for ~~new and existing aquaculture activities, and together.~~ These provisions are intended to meet the requirements for identification of inappropriate area for existing aquaculture activities set out in Regulation 6 of the NESMA.

198. The Panel determines to make consequential amendments to Method 13.M.35 to implement Objective 13.21 and Policies 13.21.1 and 13.21.4 as follows:

13.M.35 Regional rules - regulation

~~Regional rules apply to the occupation of space in the coastal marine area for marine farming, and the erection and use of structures associated with marine farming. Under the RMA, No marine farming activities are able to be permitted activities.~~

The Plan cannot contain rules that duplicate or conflict with NESMA for existing aquaculture activities, except that it can contain rules:

- more lenient for replacement resource consents not in inappropriate areas, and for realignment of existing marine farms; or*
- more stringent for replacement resource consents where the marine farms are*

in inappropriate locations.

Regional rules apply to the occupation of space in the coastal marine area for marine farming, and the erection and use of structures or discharges associated with marine farming.

Marine farming ~~that is not in the enclosed waters of the Marlborough Sounds outside of an AMA or ASA, or in the offshore CMU~~ is a prohibited activity.

Other Relevant Legislation

Fisheries Act 1996

199. The purpose of the Fisheries Act 1996 is set out in Section 8 and Section 6 applies in terms of the relationship between the Fisheries Act and the RMA. Some submitters requested reference to the requirement for an 'aquaculture decision' under Part 9A of the Fisheries Act for any areas not currently consented for aquaculture activities.

Evaluation

200. The submissions of s Abby Bradford for MPI outlined the role of MPI and the interaction between the Acts through Section 114A of the RMA.

201. The Section 42A report recommended inserting an additional paragraph into the introductory text of the Variation as follows:

'If a resource consent is for an existing marine farm that is relocating, or a new marine farm, before it can occupy space in the coastal marine area it must first obtain an 'aquaculture decision' under Part 9A of the Fisheries Act, on whether a proposed aquaculture activity will have an undue adverse effect on recreational, customary or commercial fishing. The process for assessing those effects is known as the 'UAE test'.

A resource consent for an aquaculture activity cannot commence under the RMA until the outcome of the aquaculture decision is known and any amendments to the resource consent are made (s116A of the RMA).

An aquaculture decision is not required for an existing coastal permit if it is remaining in the same location.'

202. The Section 42A report also recommended insertion of an additional paragraph into the Draft Authorisation Implementation Guide, as follows:

'After an authorisation has been issued, and resource consent has been granted, there is another step in the process before a marine farm can occupy space in the coastal marine area. If an existing marine farm is relocating, or a new marine farm is established, before it can undertake aquaculture activities in accordance with its resource consent, it must first obtain an 'aquaculture decision' under Part 9A of the Fisheries Act, on whether a proposed aquaculture activity will have an undue adverse effect on recreational, customary or commercial fishing. The process for assessing those effects is known as the 'UAE test'. A resource consent for an aquaculture activity

cannot commence under the RMA until the outcome of the aquaculture decision is known and any amendments to the resource consent are made (s116A of the RMA). An aquaculture decision is not required for an existing coastal permit if it is remaining in the same location.'

203. The Panel is cognisant of the different purposes of Fisheries Act and the RMA in making its determination. The 'Undue Adverse Effects (UAE) test' under the Fisheries Act is different to the assessment of effects on the environment required under the RMA. Some existing marine farms have structure exclusion areas imposed under the Fisheries Act. The Panel has not had regard to these areas because they have been imposed for non-RMA purposes.
204. The Panel agrees that reference in the introductory text of the Variation to the Fisheries Act and the UAE test will assist in promoting integrated management and the relationship between the Fisheries Act and the RMA.
205. The Panel considers the Draft Authorisation Implementation Guide is outside of the scope of the Variation a` supporting documentation and therefore outside the scope of the Panel's delegation. The need for and content of any implementation guides in relation to the Variation are matters for the Council to consider in the future within the context of the operative provisions.

Decision

206. The Panel accepts the s42A report recommendation to insert the following paragraphs into the introductory text as follows:

If a resource consent is for an existing marine farm that is relocating, or a new marine farm, before it can occupy space in the coastal marine area it must first obtain an 'aquaculture decision' under Part 9A of the Fisheries Act, on whether a proposed aquaculture activity will have an undue adverse effect on recreational, customary or commercial fishing. The process for assessing those effects is known as the 'UAE test'.

A resource consent for an aquaculture activity cannot commence under the RMA until the outcome of the aquaculture decision is known and any amendments to the resource consent are made (s116A of the RMA).

An aquaculture decision is not required for an existing coastal permit if it is remaining in the same location.

207. The Panel rejects the Section 42A report recommendation to include additional paragraphs in the Draft Authorisation Implementation Guide.

Māori Commercial Aquaculture Claims Settlement Act 2004

208. It is acknowledged that the relocation or realignment of any existing marine farms to any space not previously occupied for the purposes of aquaculture will count as 'new space' under

Regulation 4 of the Māori Commercial Aquaculture Claims Settlement Act 2004 ('Settlement Act'), which will trigger an obligation for the Crown to provide the equivalent of 20 percent of this 'new space' to iwi.

209. Submissions from the MPI, Te Ohu Kai Moana Trust Limited and iwi authorities requested collaborative investigation into suitable marine farming space through the proposed framework and mechanisms for the Crown to settle any settlement obligations. Concerns were raised that the proposed provisions may frustrate or delay the implementation of treaty settlements, particularly given the benthic effect thresholds set out in Policy 13.21.5, as notified. Concerns were raised that Variation 1 will undermine the ability for Marlborough's iwi to obtain space-based settlement in the future under the Settlement Act.
210. The Panel heard evidence from Mr Michael Neilson and Mr Timoti Gallagher for MPI on the aquaculture settlement implication of Variation 1. In particular, Mr Neilson requested changes to the definition of Aquaculture Settlement Areas (**ASA**) to include future settlement areas gazetted under the Settlement Act as new AMAs without the need for a plan change. In response to Minute 14 (dated 11 November 2021), regarding the determination of an appropriate AMA through the Settlement Act process and the gazettal process, Mr Neilson advised that the MPI process and advice to inform Ministerial decisions for gazetting such areas includes consideration of Part 2 of the RMA and the relevant NZCPS provisions, but that there is no explicit legal requirement.
211. In evidence, Mr Gallagher identified that '*...regional agreements can deliver a mix of settlement assets including exclusive rights to apply for resource consents within ASAs, cash value of the new space or another benefit as agreed by the parties*'²². In response to questioning from the Panel Mr Gallagher conceded there is a fourth option of the Crown purchase of existing marine farm space.
212. The Panel heard evidence from Mr Craig (Laws) Lawson for Te Ohu Kai Moana Trust Ltd outlining background to the Settlement Act and Regional Aquaculture Agreements signed with the Crown; Crown policy to not establish ASAs in areas where the regional coastal plan prohibited aquaculture; the desire of Marlborough iwi for quality space for aquaculture and the request for the Minister to use Section 360 of the RMA processes to modify the plan prohibitions; the subsequent agreement²³ of Marlborough iwi to choose cash as the settlement; the effect of Variation 1 to create more space obligations on the Crown; and the

²² Evidence of Timoti Gallagher, page 2

²³ Marlborough New Space Aquaculture Agreement signed on 15 July 2015.

need for Variation 1 to enable Marlborough iwi to receive their entitlements through the Crown establishing new ASAs.

213. The Panel heard legal submissions from Mr Joshua Leckie and evidence from Ms Jacqueline Caine and Ms Tanya Stevens for Ngāi Tahu and Ngāi Tahu Seafoods on the aquaculture settlement process, aquaculture in Marlborough, and the need to anticipate and make provision for space-based settlement. Mr Leckie submitted that Variation 1, as proposed, does not meet the requirements of the Settlement Act because of the obligation to ensure that the Variation does not erode the purpose or function of the Act.
214. In the End of Hearing Report, the report writers agreed that the proposed provisions could present a challenge to the delivery of aquaculture settlement claims because a plan change would be required to establish any ASA in the Nearshore or Enclosed Waters CMUs. However, they noted that providing additional space was deliberately restrictive because the Council considers the CMUs are at, or are approaching, their ecological and social carrying capacity. They noted their recommendation to delete Policy 13.22.1 based on expert advice and removal of this requirement from Policy 13.21.5 (subclause (a)) removes any potential frustration of a private plan change to create a new ASA in Nearshore and Enclosed Waters CMUs. They also highlighted that a plan change is not necessary to establish new space in the Offshore CMUs and that new farms can be established in this CMU as discretionary activities.
215. The End of Hearing Report stated that given the gazettal process for ASA under the Settlement Act does not include a statutory requirement to consider Part 2 of the RMA, or the provisions of the NZCPS or the PMEP, it cannot be relied upon to determine ‘appropriate’ areas for aquaculture under the RMA. However, the report writers saw merit in the inclusion of a new RPS policy that directs Council to anticipate and recognise the need to create ASAs in the PMEP and to provide for ASAs gazetted through the Settlement Act. They recommended the following wording, if the Panel was of a mind to include a new policy:

‘In assessing a plan change or Variation to establish a new ASA for the purpose of implementing an aquaculture settlement area gazetted under the Māori Commercial Aquaculture Claims Settlement Act 2004 (Settlement Act), the Council must:

- a. Recognise that ASAs may be a way to achieve the directions set out in s6(e), s7(a), s8 of the RMA, and**
- b. Take into account existing information and policy assessments that informed the gazettal process under the Settlement Act.**

Under the RMA, council is required to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (s6(e)), have particular regard to kaitiakitanga (s7(a)), and take into account the principles of Te Tiriti o Waitangi (s8). This is reflected in the duty of council to

ensure that the pMEP does not hinder the Crown in the efficient and effective delivery of its aquaculture settlement obligations under the Settlement Act.

Before a resource consent can be applied for in gazetted iwi aquaculture space, an ASA must first be created in the pMEP. This requires a plan change or Variation, which is guided by Policy 13.21.4 and 13.21.5.

This policy recognises councils obligations under the Treaty of Waitangi and the RMA to plan for future aquaculture settlement areas. This policy also recognises that if the policy considerations in the pMEP have already expressly been provided for in the process of gazetting an ASA, then a further assessment under those policies during a plan change may not be necessary.'

Evaluation

216. The Panel considers that the responsibility of providing for ASAs (or any other settlement processes available) sits with the Crown under the Settlement Act. The Panel recognises the Council has a role in facilitating conversations between the Crown and Marlborough's Tangata Whenua iwi to assist with this process.
217. The Panel acknowledges there is a tension between the purpose of Variation 1 in terms of recognising that marine farming activity within the enclosed waters of the Marlborough Sounds has reached ecological and social carrying capacity and the desire to enable an option for a space-based option under the Settlement Act. However, the Panel is cognisant that the Settlement Act provides for a range of settlement options including space, monetary payment, a combination of space and monetary payment or through the Crown purchase of existing marine farms.
218. The Panel accepts the Variation 1 provisions do not prohibit new marine farms in the Offshore CMUs, which could be used for future options of a space-based settlement and the creation of ASAs.
219. The Panel notes the existing authorisations for two ASA in Squally Cove, which are not yet consented under the RMA. The Plan recognises and provides for these existing ASAs.
220. The Panel acknowledges the Minister of Aquaculture has powers under Section 360A to 360C of the RMA to meet the Crown's obligation under the Settlement Act, which can be utilised. The Panel considers there is no obligation for the Council to provide for space-based settlement through this Variation, particularly given the concerns regarding adverse cumulative effects in the Nearshore and Enclosed Waters CMUs. However, the Panel has given careful consideration to the effect of the provisions on the options available to iwi and the Crown with respect to the settlement entitlements that will flow from the provisions. The

Panel agrees that the provisions should not undermine or restrict future processes to create ASAs as one of the options available for the Crown to meet its settlement obligations.

221. The Panel considers changing the Variation policy framework to separate out a process for the creation of new ASAs would not give effect to the objectives and policies of the NZCPS, particularly those that require to avoidance of adverse effects on significant environmental values.
222. The Panel finds the Variation 1 provisions, as notified, lacked guidance to recognise the potential need to create new AMAs and to provide for ASAs gazetted through the Settlement Act by way of a future plan change process. The Panel accepts the Council recommendation to address this through the inclusion of a new RPS policy. However, the Panel considers submitter concerns are best addressed by inserting two new RPS policies and amending Policy 13.21.2. The first new RPS policy acknowledges the plan provisions create an obligation for the Crown under the Settlement Act and methods available to fulfil that obligation. This is to be supported by a new Method 13.M.41 seeking that the Council work with the Crown in respect of settlement obligations. The second new policy provides guidance to the Council in assessing a future plan change or variation to create new ASA for the purpose of implementing an ASA gazetted under the Settlement Act.
223. The Panel considers it is appropriate to amend the Policy 13.21.2, as notified, to improve the wording and clarify the term ‘in legislation’; and to include reference to the two existing ASAs in the commentary.

Decision

224. The Panel accepts in part the End of Hearing Report recommendation to insert a new RPS policy and determines to insert two new RPS policies as follows:

Policy 13.21.2A – Acknowledge that the provisions of the MEP create a settlement obligation for the Crown under the Māori Commercial Aquaculture Claims Settlement Act 2004 (Settlement Act) through the creation of new space.

Where marine farms are moving to space not currently authorised by resource consent, the occupation of coastal marine area beyond the existing consented space represents “new space” under the Settlement Act. In this way, the provisions of the MEP create a settlement obligation for the Crown.

The Crown must ensure that the Trustee is provided with settlement assets that are representative of 20% of the new space by way of one or more of the following methods:

- (a) the provision of authorisations to apply to occupy space in the coastal marine area for the purpose of aquaculture activities;
- (b) the payment of a financial equivalent of that space;

(c) a combination of (a) and (b); or

(d) the purchase of existing marine farms.

The nature of the settlement is for Crown and the Trustee to determine through a regional agreement. In respect of option (a), there may be opportunities to provide space for settlement purposes in Offshore CMU 8 or 8A. In accordance with Rule 16.6.13, an application can be made for resource consent to undertake marine farming anywhere within CMU 8 or 8A.

Policy 13.21.2B – In assessing a plan change or variation to establish a new ASA for the purpose of implementing an aquaculture settlement area gazetted under the Māori Commercial Aquaculture Claims Settlement Act 2004 (Settlement Act), the Council must:

(a) recognise that ASAs may be an option to achieve the directions set out in Sections 6(e), 7(a) and 8 of the RMA; and

(b) take into account the best available information and policy assessments that informed the gazettal process under the Settlement Act.

Under the RMA, Council is required to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (s6(e)), have particular regard to kaitiakitanga (s7(a)), and take into account the principles of Te Tiriti o Waitangi/Treaty of Waitangi (s8). This is reflected in the duty of Council to ensure that the MEP does not hinder the Crown in the efficient and effective delivery of its aquaculture settlement obligations under the Settlement Act.

Before a resource consent can be applied for in gazetted iwi aquaculture space, an ASA must first be created in the MEP. This requires a plan change or variation, which is guided by Policy 13.21.4 and 13.21.5.

Policy 13.21.2B recognises Council's obligations under Tiriti o Waitangi/Treaty of Waitangi and the RMA.

225. The Panel accepts in part the Section 42A report recommendation to make amendments to RPS Policy 13.21.2 and determines to make further minor amendments to improve clarity and reorder this policy with the two new RPS policies to become Policy 13.21.2C as follows:

Policy 13.21.2C – Areas set aside for iwi aquaculture as a Aquaculture settlement areas under Section 12 of the Māori Commercial Aquaculture Claims Settlement Act 2004 in legislation are identified as Aquaculture Settlement Areas (ASAs). and Resource consent to use that space for marine farming will only be granted to those holding an authorisation provided under Section 13 of the Māori Commercial Aquaculture Claims Settlement Act 2004.

Areas have been set aside for aquaculture for iwi uUnder s123 of the Māori Commercial Aquaculture Claims Settlement Act 2004, two aquaculture settlement areas have been established for iwi and other areas may be gazetted in the future. In these areas only the relevant iwi those holding authorisations issued under Section 13 of that Act may apply for a resource consent for a marine farm. The plan provides for these areas as ASAs and manages them through different legal requirements.

226. The Panel determines to insert a new method for achieving Objective 13.21 and Policies 13.21.2A, 13.21.2B and 13.21.3C as follows:

13.M.41 Liaison

The Council will work with the Crown to identify and assess options to meet the Crown's obligation under the Settlement Act where that might involve coastal space for marine farming.

Biosecurity Act 1993

227. The Biosecurity Act 1993 provides the legal framework for MPI and other government agencies to keep harmful organisms out of New Zealand.
228. Policy 12 of the NZCPS requires the Plan to provide for the control of activities that could have adverse effects on the coastal environment by causing harmful aquatic organisms to be released or otherwise spread, and include conditions in resource consents, where relevant, to assist with managing the risk of such effects occurring, including recognition of the establishment and relocation of equipment and stock required for or associated with aquaculture.

Evaluation

229. The evidence of Ms Lauren Fletcher for MFA/AQNZ outlined how the aquaculture industry's biosecurity regime fits into the national approach to biosecurity under the Biosecurity Act, the NES-MA and the RMA.
230. The Panel has been cognisant of the Biosecurity Act in giving effect to Policy 12 of the NZCPS.
231. Submissions raised issues of biosecurity risks and in particular the risk of genetic changes to wild species. The Minister of Conservation and MPI submissions requested the inclusion of a new matter of control for the controlled activity rules to manage biosecurity.
232. The Section 42A report recommended the inclusion of a new matter of control to the controlled activity rules to read.

'16.4.X.X Measures to control the movement of stock, structures or equipment relocated from another region to manage the risk of spreading harmful aquatic organisms.'

233. The Panel agrees it is appropriate to include a new matter of control to manage biosecurity risks in the controlled activity rules. The Panel also considers it is appropriate include the same matter of control for the restricted discretionary activity rules and as a matter for consideration under Policy 13.22.7.
234. The Panel accepts the wording recommended in the Section 42A report but consider the request from the Minister of Conservation and MPI to manage biosecurity risks can be better

met by incorporating the wording used in NES-MA ('the management of biosecurity risk') at the beginning of the new matter of control.

Decision

235. The Panel determines to insert new clause (h) to Policy 13.22.7 guiding the operation of marine farms and associated structures to give effect to Policy 12 of the NZCPS as follows:

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

236. In conjunction with this, the Panel determines to insert a new paragraph to the commentary of Policy 13.22.7 as follows:

The policy gives effect to Policy 12 of the NZCPS while also setting out matters relating to biosecurity to compliment efforts to manage regional and strategic biosecurity risks set by Council with its regional leadership role under the Biosecurity Act 1993.

237. To address the submissions relating to biosecurity risks, the Panel accepts in part the Section 42A report recommendation to insert a new matter of control in Rules 16.4.3, 16.4.4, 16.4.5, 16.5.2 and 16.5.3; and new Rules 16.4.3A, 16.4.3B and 16.4.3C (discussed further below in relation to controlled activity rules), but amends the recommended wording as follows:

Measures to control the movement of stock, structures or equipment relocated from another region to manage the risk of spreading of harmful aquatic organisms.

Key Issues

RMA Schedule 1 Engagement and Consultation with Tangata Whenua

238. Mr Hawes' Section 42A report set out the background to engagement with tangata whenua. The Council approached the iwi authorities in October 2016 to establish how iwi wished to participate in the review process and provision of a position paper used by MARWG. It also approached Te Ohu Kaimoana Trust Limited ('Te Ohu Kaimoana'). Hui were held with Ngāti Kuia, Ngāti Koāta, Ngāti Apa, Ngāti Toa, Ngāti Rārua and Te Ātiawa in early 2017. Ngāi Tahu advised the Council that it did not seek to be involved from a customary perspective. Council committed to providing iwi with updates of the outcome of the review process and to undertake further engagement at that point.

239. In May 2017, the Council provided documentation of the natural and human use values to Ngāti Kuia, Ngāti Rārua, Ngāti Toa and Te Ātiawa. The Section 32 report set out the iwi entities recorded as consultees.
240. Following receipt of the MARWG recommendations and preparation of the draft Variation, the Council invited iwi to a hui to discuss the best way for each iwi authority to respond. Ngāi Tahu advised the Council that it did not have an interest in Variation 1 and would keep a watching brief. The hui was held on 29 August 2019 and was attended by Ngāti Kuia, Ngāti Apa and Ngāti Rārua, as well as Te Ohu Kaimoana. As outcomes of the hui, Te Ohu Kaimoana committed to provide commercial advice to iwi authorities and to update those iwi authorities not at the hui. Iwi authorities present reserved the ability to present their own views on Variation 1 and committed to providing feedback on the draft provisions to the Council.
241. A separate hui was held with Te Ātiawa on 12 August 2019 and a further hui held on 18 December 2019. Written feedback on Variation 1 was provided to the Council by Te Ātiawa before and after the hui.
242. The Council wrote to Marlborough's iwi authorities²⁴ on 22 October 2019 to remind them of the opportunity to provide feedback on the draft Variation. No other feedback from Marlborough's tangata whenua iwi other than Te Ātiawa was received by the Council.
243. Submissions from Ngāi Tahu, Ngāti Apa ki te Rā Tō Charitable Trust, Koata Limited, Te Rūnanga o Toa Rangatira and Te Ātiawa Manawhenua Ki Te Rau Ihu Trust sought Variation 1 and 1A be put on hold, not proceed or be withdrawn. Concerns were expressed that the Council had not discharged its statutory consultation duties and that the requirements of Schedule 1 of the RMA had not been met.
244. Te Ohu Kaimoana submitted this list of consultees in the Section 32 report omitted Ngāti Tama (through the Ngāti Tama ki te Waipounamu Trust), Ngāi Tahu, Te Runanga o Toa Rangatira Incorporated and Ngāti Rarua Iwi Trust the as Iwi Aquaculture Organisations established under the Settlement Act.
245. The Panel issued Minute 21 (dated 14 December 2021) seeking further input from Marlborough's tangata whenua iwi on a process which would enable the statutory obligations or consultation in relation to Variation 1A (Finfish) to be fulfilled.

²⁴ [Te Rūnanga o Ngāi Tahu; Te Rūnanga a Rangitāne o Wairau; Te Runanga o Ngāti Kuia; Ngāti Koata Trust; Ngāti Tama Ki Te Waipounamu Trust; Ngāti Toa Rangatira Manawhenua Ki Te Rau Ihu Trust; Te Ātiawa o Te Waka-a-Māui Trust; Te Rūnanga o Ngāti Rārua; Ngāti Apa ki te Rā Tō Trust]

246. In response to Minute 21, Ngāi Tahu and Ngāi Tahu Seafood Limited²⁵ stated that from a pragmatic point of view, the package of amendments sought through the hearings would provide an interim solution to Variation 1 and sought the Panel proceed to a decision.
247. In response to Minute 21, Te Rūnanga o Toa Rangatira²⁶ stated Variation 1 and 1A should both be withdrawn because the Council has not performed their Mana Whenua engagement duties and Variation 1 cannot be separated. The response requested the Council restart the process to enable iwi to formulate the way they would like to be engaged by the Council to work together on the provisions. It noted the Section 32 analysis had not assessed how their kaitiaki role would be impacted by Variation 1.
248. At the hearing, we heard submissions from Ngāi Tahu that the Council did not identify the South Marlborough area which is within their takiwā as part of the consultation process for Variation 1.

Evaluation

249. The Panel considers the consultation undertaken by the Council was appropriate and engagement was with iwi authorities in accordance with Schedule 1 of the RMA. It appears some of Marlborough's tangata whenua iwi chose not to engage in consultation with the Council regarding Variation 1.
250. The Panel considers the correspondence held by Council clearly states that all Marlborough coastal areas were included in Variation 1.
251. The Panel is satisfied that the Council met its statutory obligations to engage with Marlborough's tangata whenua and undertook early consultation before Variation 1 was notified.

Decision

252. No changes are required to the Variation.

Use of CMU and AMA

253. The notified version of Variation 1 utilised ribbon shaped AMAs generally encompassing the existing marine farm boundaries and reflecting the desired shift seaward to within the 100 m to 300 m band offshore. Concerns were raised by some submitters that this approach significantly increased the width of the current ribbon pattern (currently generally located within 50-200 m offshore) and included the public open space between existing marine farms

²⁵ Memorandum of Counsel dated 13 June 2022.

²⁶ Letter dated 14 June 2022.

not currently used for aquaculture. Some submitters sought amendment of the AMAs to reflect only the currently consented space and a reduction of the band width to only that necessary to accommodate the outcomes sought by Variation 1.

254. There were a range of submissions relating to use of CMUs and AMAs for the management of aquaculture activities.
255. Ms Amelia Ching for the Minister of Conservation emphasised the key intent of the Variation is to provide for existing marine farm footprints without increasing the area of occupation. Dr Lionel Solly for the Minister of Conservation noted that a site-by site assessment was not possible within the time available to the MARWG, but that a comprehensive and fine-scale assessment is desirable where information has become available.
256. The submissions by the MFA/AQNZ and other aquaculture interests focused on the provision of 'equivalent farmable space' to accommodate the existing consented area and consented total backbone length. Legal submissions by Mr Quentin Davies and evidence for the MFA/AQNZ outlined the detailed spatial mapping undertaken. Mr Davies highlighted the benefits of this approach in providing certainty, avoiding the need for a complicated allocation method/authorisation process and demonstrating sufficient space for the existing industry. Mr Davies submitted the notified ribbon AMAs would lead to disputes over space and pressure to close the existing gaps and accessways between marine farms.
257. In response to questions from the Panel during the hearing, the Section 42A report advised that this ribbon type approach to the notified AMAs had been driven by the enormity of the mapping exercise and the relative simplicity of drawing contiguous AMAs where there were a number of existing marine farms located in close proximity. They confirmed that creating discrete AMAs based on each consented area is a practical approach and would ensure that the creation of any new space not currently used for aquaculture is minimised to achieve the outcomes of Variation 1.
258. There was a lot of support for the MFA/AQNZ spatial mapping provided in evidence at the hearing (referred to as 'HP-Draft' booklet and appended 'relocation schedule' table) from the marine farming industry and individual submitters. The Panel acknowledges the significant effort put into this mapping exercise, and willingness and helpful approach of the marine farming industry and individual submitters to look at options for accommodating the outcomes sought by Variation 1. The HP-Draft helpfully showed the AMAs as notified as a red line; the AMAs proposed by MFA/AQNZ as a dashed yellow line; and the minimum AMA areas required to accommodate the consented backbone length for most of the existing marine

farms required to move as a purple line. The HP-Draft mapping also indicated the configuration of the backbone and warps/anchors within the purple lines and included metres of consented backbone length lost or gained, with notes referencing instances of losses and where longlines would be accommodated elsewhere. The Panel found this very helpful in determining the appropriate AMA boundaries to ensure there was no loss of total consented backbone and that no additional space was included than was necessary to accommodate the existing marine farms.

259. The Panel notes the evidence of Mr Wells for MFA/AQNZ confirmed the HP-Draft mapping undertaken included reconciliation mapping for more than 95% of the marine farms that are proposed to move seaward into AMAs; and that the remaining mapping outstanding was in areas with minimal change proposed. The additional work undertaken in the relocation schedule attached to the HP-Draft maps since the adjournment identified marine sites where there is loss of backbone and records where backbone will be relocated to, where this is known. The Panel sought clarification where this was not clear and has used the HP-Draft and this further information to record the relocation of lines in Schedules 2 and 3 of the plan provisions to provide certainty where relocated longline backbones are being moved to, where this has been identified and accepted by the Panel.
260. Mr Wells confirmed the HP-Draft configurations shown were the result of extensive consultation and had used the consented structure plan and total consented longline length, as well as available multibeam sonar survey data.
261. The Panel sought comment from MFA/AQNZ regarding the implications of using the purple lines shown in the HP-Draft mapping as the AMA boundaries in Minute 20 (dated 14 December 2021). The Panel also requested any mapping completed following the adjournment of the hearing and provision of the mapping as a separate GIS shapefile in Minute 23 (dated 17 March 2022). In response, MFA/AQNZ confirmed that where line by line reconciliation work had been completed (shown as blue lines on the HP-Draft) to ensure there was no loss of backbone, the purple lines could be used to inform the shape of the AMAs. MFA/AQNZ noted the implications of using the purple lines would have the effect of making some proposed rules redundant and would require the mapping of all farms, including those not moving. It noted there are circumstance where a contiguous AMA works best in a practical sense, such as where anchors overlap adjoining blocks or farms are immediately adjacent to other farms. MFA/AQNZ highlighted the need to be able to relocate lines or change farm layouts may require space beyond the purple lines. It highlighted that ‘tweaks’ to

the new footprints may be required to accommodate lines for relocation and that some flexibility needed to be maintained.

262. The Panel sought comment from the Section 42A report writers on the implications of using the purple lines in the HP-Draft for AMA boundaries and any recommended consequential changes to the provisions which would be required in Minute 24 (dated 17 March 2021). In response, the Section 42A report writers considered use of the discrete AMA and use of the purple lines would limit the possibility for any unintended creep from establishing additional backbone where there was space within the proposed AMAs. They noted the approach would be consistent with the MARWG's conclusion that marine farming within the enclosed waters had reached capacity and would give more certainty to the community that there would be no further intensification of marine farming in the absence of information on cumulative effects. They considered the approach would be an effective way to remove the 'new space' between farms that is not required to accommodate the existing marine farms. However, they noted not all marine farm sites had been mapped and that adoption of this approach would require a thorough review of all of the provisions, particularly given some rules would not be required.

Evaluation

263. The Panel accepts the creation of CMUs and AMAs through Variation 1 assists with the effective and efficient regulation of the CMA for marine farming activities and gives effect to Policy 6 and 8 of the NZCPS.
264. The Panel accepts that the 'widening of the band' from 50-200 m to 100-300 m offshore was intended as a guide to accommodate the general seaward shift of the existing marine farms and was not intended to increase the space currently occupied by existing marine farms. The Panel accepts the shift to *within* the 100-300 m band is a fundamental principle of Variation 1 to mitigate adverse environmental effects, but consider it is of critical importance to minimise the creation of additional new space for aquaculture given concerns regarding cumulative effects and the uncertainty regarding protection of coastal values.
265. The Panel finds that AMAs should generally be created as discrete spatial areas, reflecting existing consented space, except where consented space is immediately adjacent to another consented area. The Panel considers the use of discrete AMAs to accommodate the currently consented area and total consented longline length provides greater certainty for marine farmers, the Council and the community. This approach also addressed the concerns raised regarding the proposed increase in the width of the ribbon band of marine farms (notified AMAs) and any increase in the occupation of CMA space or intensification of existing marine

farming activity. It effectively 'ring fences' the existing level of marine farming activity which addresses concerns regarding cumulative effects and need to avoid any intensification of mussel farming until cumulative effects are better understood. The significance of this approach to creating discrete AMA based on the existing consented space and total consented backbone is demonstrated below in a comparison of the CMA space occupied under the proposed notified AMAs (red line), and discrete AMAs (purple lines or consented area) in the table below:

	Approximate estimate of CMA space occupied (hectares)
Existing consented marine farm sites in the Enclosed Waters of Marlborough Sounds (excluding existing finfish farms)	3,110 ²⁷
Notified AMAs	3,425 ²⁸
Discrete AMAs	3,016 ²⁹

266. This comparison demonstrates the significant increase in new CMA space within both the notified AMAs and the MFA/AQNZ proposed AMAs, over and above the current CMA space consented to be occupied by the existing marine farms.
267. The Panel considers the creation of individual discrete AMAs also addresses the need to maintain the public open space between marine farms and existing gaps of at least 50 m. This is important to address navigation safety and to maintain the current level of public access to the foreshore and along the CMA. The Panel considers it is not desirable to see any infill of the existing space between marine farms given the current intensive pattern in many bays.
268. The Panel has undertaken a site-by-site analysis to ensure that discrete AMAs generally reflect the currently consented area and can accommodate the consented total backbone length. The Panel acknowledges that in some situations moving sites further offshore into deeper water will require longer warp lines to anchors/mooring blocks. The Panel accepts that where this occurs, and where the need for additional space has been sought in submissions and demonstrated, a small increase in the area occupied by structures is acceptable to achieve no loss of consented backbone length. At other sites, we have relied on the HP-Draft and the

²⁷ Estimate based on the Council's consent database of coastal permits held for existing marine farms within the enclosed waters of Marlborough Sounds. Excludes Offshore CMUs and South Marlborough CMU.

²⁸ Estimate based on the notified version of Variation 1 and as shown by the red dotted lines in the HP-Draft maps. Note HP-Draft maps do not include mapping for all existing marine farms in Enclosed Waters.

²⁹ Estimate based on HP-Draft maps as shown by purple lines and site by site reconciliation. Note some purple lines are the same as yellow dotted lines. Excludes marine farms where no AMA is provided for by this Variation.

longline reconciliation to indicate that consented backbone and warp/anchors lengths can be accommodation within the purple lines. The Panel is cognisant of that movement of backbone to deeper water may enable longer droppers to be used and that there may be some potential for intensification of production. However, the Panel notes that dropper length is not a matter that is currently controlled under the existing consents.

269. The Panel acknowledges that some marine farms have backbones, warps and anchors/mooring blocks located outside the consented area. The Panel considers this a matter to be addressed by the Council outside this process and no regard has been given to accommodating non-compliance with the consented area or total consented backbone length.
270. Overall, the Panel find the approach of creating individual discrete AMAs is the best method to give effect to the provisions of the NZCPS and ensure there is no significant increase in the current level of marine farming activity without better understanding cumulative effects on coastal values. Importantly, it has enabled the Panel to consider the appropriateness of each AMA on a site by site basis by taking into account available information and evidence relating to natural character, landscape values, cultural values and relationships, public access and recreation values, public open space values, navigation safety and ecological values. It also takes into account the principles of the MARWG process to achieve no loss of the currently consented space for marine farming, which has evolved through this process to include no loss of consented total backbone length.

Decision

271. The Panel’s decision on each marine farm site is recorded in the Spatial Decision Table (Appendix 3 of this decision). This summary table records the Panel’s findings on each AMA boundary (by reference to ‘As requested’, ‘See descriptions’, ‘As notified, no AMA provided’, ‘As notified’, ‘HP-Draft purple or yellow’, ‘Consented area’, ‘Remove notified AMA’ and ‘Recommendation to Council to withdraw notified AMA’) and records comments on each marine farm site where necessary or instances where the findings for a particular marine farm site is considered further in this decision³⁰.
272. The Panel determines to insert a new clause to Policy 13.21.3 for the establishment of new AMA to provide for existing marine farms to be relocated as follows:

(b) <u>To reflect a similar consented area and the consented total backbone length;</u>

³⁰ HP-Draft purple and HP-Draft yellow refer to the maps provided in evidence by Mr Ned Wells for the Marine Farming Association. A link to this evidence is retained in the Variation 1 Hearings Portal to allow people to reference the relevant maps and on the Variation 1 and 1A webpage.

273. The Panel determines to make consequential amendments to the applicable rules to ensure consistency with new clause (b) of Policy 13.21.3.

Future Technologies and Climate Change

274. Some submitters requested changes to the provisions to allow for possible changes in technology over the life of the Plan.
275. The Panel heard evidence from submitters on new technologies and developments in aquaculture. Mr Aaron Pannell and Ms Debbie Hendriks-Pannell provided evidence on the development of their 'Flipfarm' oyster growing system invented and patented by their family's business, Marlborough Oysters Limited.

Evaluation

276. The Panel considers the provisions provide for some flexibility but find there is too much uncertainty to assess the effects of future of unknown changes in technology and marine farming activity to accommodate such changes.
277. Policy 13.22.8 seeks to provide for changes to the layout of structures for existing marine farms using conventional longline backbones within an AMA where there is no increase to the total area occupied by the structures and no increase in the total consented length of backbones. The Panel considers this is reasonable. Rule 16.4.5 allows for such changes as a controlled activity.
278. The Panel notes the provisions prevent any increase in the total area occupied if it is outside of an AMA. The Panel considers any increase in the total consent length of backbone within an AMA should be assessed on a case-by case basis given the limited potential for intensification.
279. The Panel's approach to creating discrete AMAs based on current consented areas greatly reduces the need for policy direction on any changes in layout. The Panel finds consequential changes to Policy 13.22.8 are required to simplify the policy. This is because the policy direction with respect to total area occupied effectively becomes redundant, as the discrete AMAs limit the potential for increases in the occupied area.
280. Policy 13.22.9 seeks to enable a change and/or addition of species able to be farmed in a marine farm, where the species is not a finfish and it is a species listed on Appendix 11. The Panel considers this provides some flexibility for marine farmers to respond to future technology changes and climate change.

Decision

281. The Panel determines to make consequential amendments to Policy 13.22.8 as follows:

Policy 13.232.48 – Enable a change to the layout of structures for a marine farm using conventional longline structures or intertidal structures within an AMA, where there is no increase to the total consented area occupied by structures and no increase in the total consented length of backbone or intertidal structures.~~Change in layout~~

- ~~(a) Enable a change to the layout of structures for an existing marine farm using conventional longline structures within an AMA, where there is no increase to the total area occupied by structures and no increase in the total length of lines.~~
- ~~(b) A change in layout which results in the same total length of lines, but an increase in the total area occupied by structures may be appropriate if:

 - ~~(i) Where the marine farm is adjacent to an area identified as an outstanding Natural Landscape in Appendix 1, the increase in the area of the marine farm will not have an adverse effect on the characteristics and values of the identified outstanding natural landscape.~~
 - ~~(ii) The CMU or the bay within the CMU in which the marine farm is located is of a size that will accommodate an increase in the area occupied by the marine farm without having significant adverse effects on the natural and human use values of the coastal environment; or~~
 - ~~(iii) The spreading of the same number of lines over a larger area will have a positive effect on the natural and human use values of the coastal environment~~~~
- ~~(c) A change in layout which results in an increase in the total length of lines (with or without an increase in the total area occupied by structures), may be appropriate if the monitoring and assessment carried out in accordance with Policy 13.22.1 shows that additional marine farming activities can be undertaken within an AMA without having significant adverse effects on the natural and human use values of the Coastal Environment.~~

Where a marine farmer wishes to change the layout of structures for an established marine farm that uses conventional longline structures that will not occupy more area than the current structures occupy, it is considered ~~the effects of this would have only minor adverse effects.~~ Provided there is no increase in the total consented backbone length or length of intertidal structures~~number of longlines to be used~~ and the change in layout does not result in a sub-surface marine farm becoming a surface marine farm, the rules provide an enabling approach to such applications.

282. The Panel accepts the s42A report recommendation to amend Policy 13.22.9 as follows:

Policy 13.232.59 – Enable the change or addition of species able to be farmed in a marine farm, where the species to be added:

- ~~(a) is not a finfish species; and~~
- ~~(b) is one of the species listed in Appendix 11); and~~

~~Change or addition of species able to be farmed in a marine farm, other than those identified above, may be considered appropriate if the species to be added is:~~

- (c) ~~a bivalve, mollusc, sponge or algae; and~~
- (d) **there is no discharge of feed or medicinal or therapeutic compounds associated with the species, unless discharge of feed or medicinal or therapeutic compounds are already authorised at the site;**

Change or addition of species able to be farmed in a marine farm is not appropriate if:

- (e) **the species to be added is identified as a pest or an unwanted organism under the Biosecurity Act 1993, except where necessary Biosecurity Act approvals have been obtained; or**
- (f) **the marine farm is currently authorised solely for mussel spat catching purposes or for monitoring purposes. In these cases the species farmed must remain mussel spat or the purpose must remain as for monitoring purposes.**

Where a marine farmer wishes to change the species able to be farmed, it is considered that the effects of this would have minor adverse effects when the species is one that is already authorised to be farmed within Marlborough's coastal waters and is a ~~bivalve mollusc or plant~~ species. Provided there is no discharge of feed, medicinal or therapeutic compounds ~~of contaminants~~ to the coastal marine area ~~or discharge of feed involved~~, the rules provide an enabling approach to such applications.

Structure Exclusion Areas

283. Some existing marine farm consents include structure exclusion areas (**SEA**) which have been imposed either by the Council for RMA purposes or by the MPI for fisheries purposes. SEA imposed are shown on the consented marine farm plans prohibiting either all marine farming structures or production/growing structures within a particular area.
284. The Section 42A report recommended that marine farm sites that currently include SEA could be captured in a schedule to the plan. In response to the Panel's questions during the hearing regarding how existing structure exclusions could be managed under the Variation 1 provisions, the End of Hearing Report recommended an additional policy would be required to link to a schedule of marine sites with SEA imposed by consent conditions.
285. In Reply evidence in response to Minute 18 (dated 30 November 2021), the Section 42A report provided the Panel with a table of all marine farms that include a SEA to protect ecological and habitat values within the currently consented areas, including the nature of the exclusion (i.e. all structures excluded or production/growing structures excluded), reason for the exclusion and location of the exclusion in relation to the proposed AMA. The Section 42A report recommended the removal of parts of AMAs where there is an existing SEA that specifies no structures are permitted given such areas are inappropriate for marine farming activities. The Section 42A report identified four options (including a mix of options) to manage existing SEA impose on consents as follows:

- (a) Rely on the consent information and identified ESMS (and other relevant information using the Council's Smart map system) through the consent process;
- (b) Include a schedule of existing marine farm sites subject to SEA;
- (c) Removal of AMAs in SEA without existing marine farming structures and, where farms are currently established, an inability to move existing structures; and/or
- (d) Removal of AMAs in all SEA.

Evaluation

286. The Variation, as notified, did not address the existing use of SEA imposed for RMA purposes. The Panel considers SEA are an effective tool to protect benthic habitats and values. The Panel acknowledges that some existing SEA imposed by way of conditions on the consent exclude all structures, whereas other SEA exclude growing/production structures.
287. The Panel finds there is need for an additional new policy to provide guidance to future decision-making on new consents and the use of SEA as a condition of consent to protect important benthic ecological values and to give effect to Objective 1 and Policy 11 of the NZCPS. The Panel acknowledges that advances in assessment techniques and the identification of benthic values over time may result in changes to the extent of SEA within AMA to protect benthic ecological values. Marine farm sites with current SEA will be subject to the new structure exclusion area policy guidance and these sites are recorded in the AMA Spatial Decision Table (Appendix 3 attached to this decision).
288. The Panel accepts the Section 42A report recommendation to remove existing SEA which prohibit all marine farming structures from AMAs to protect identified benthic ecological values and find these areas are inappropriate for marine farming activities. The Panel has taken this approach in considering the appropriateness of each AMA and has made the necessary adjustments to remove SEA which currently prohibit all marine farming structures from AMAs. An example of this approach is site MF 8129 shown on HP-Draft map 076, where the existing SEA has been removed from the AMA and the AMA extended seaward to accommodate the existing consented areas. The Panel notes that in many cases, the seaward movement of the AMA results in removal of the existing SEA without the need for any further adjustment of the AMA as proposed. These are recorded for each affected marine farm site in the AMA Spatial Decision Table (Appendix 3 attached to this decision).

289. The Panel finds it would be helpful to include a schedule to the plan identifying all existing marine farm sites subject to SEA which prohibit production/growing structures. This will assist in the consent process and identifies sites subject to consideration of the SEA policy guidance.
290. The Panel's approach to the consideration of existing SEA acknowledges the difference in short term disturbance effects from the establishment of warps and anchors on benthic ecological values, and the long-term and potentially cumulative effects of deposition from growing/production structures on benthic habitats. The Panel consider it is appropriate to acknowledge this in the commentary of the new structure exclusion policy. The Panel agrees with the Section 42A report writers that the removal of all structures including warps and anchors in SEA from within AMA, is likely to cause more damage to benthic ecological values.

Decision

291. The Panel's decisions regarding individual AMAs for existing coastal permits where SEA are included within the consented area are identified Appendix 3 of this decision and Schedule 1 of the plan.
292. The Panel determines to insert new Policy 13.21.10 to provide guidance to future decision making on the use of SEA to protect important benthic species and habitat as follows:

Policy 13.21.10 – Utilise structure exclusion areas where necessary to protect benthic habitat.

Historically, some marine farms have been established over benthic habitat such as reef and other biogenic habitat. On re consenting these marine farms under the RMA, resource consent conditions have required that no growing lines and/or other marine farm structures be placed over the benthic habitat. In some cases, structures such as backbone, warps and mooring blocks/screw anchors, have continued where appropriate.

This policy recognises that where these resource consent conditions have been imposed, the protection provided should continue on re consenting the existing farm under the provisions of this Plan. There may also be circumstances where new structure exclusion areas are necessary. This approach assists to mitigate the adverse effect of shell drop and pseudofaeces on the benthic habitat, providing an opportunity for protection and restoration. This policy will be implemented through the imposition of resource consent conditions to prevent the use of some or all marine farm structures over the benthic habitat.

Controlled Activity Rules

293. Rule 16.4.3 and 16.4.4, as notified, provided for the re consenting of existing marine farming using conventional longline structures or intertidal structures within an AMA or an ASA as a controlled activity subject to meeting set standards and terms, and set out the matters over

which the Council has reserved control. Rule 16.4.5, as notified, provided for changes in species and changes in the layout of structures as a controlled activity.

294. There were 49 general submissions on the controlled activity rules, with 43 submissions in support and six opposed.
295. Submissions in opposition raised concerns that the controlled activity status for reconsenting existing marine farms would prevent public notification of these applications and the Council's ability to refuse consent. KCSRA and CBRA submitted that there are no grounds for controlled activity status for marine farming in the Sounds due to the rapidly changing environment and concerns about cumulative effects. Concerns were raised that some marine farms had never been considered under the RMA. In evidence, Mr Stephen Wynn-Jones for FNHTB highlighted the controlled activity would exclude the community from the application process and prevent community input on cumulative effects in perpetuity.
296. KCSRA considered reconsenting should be at least a restricted discretionary activity and Mr Neil McLennan considered reconsenting within an AMA should be a discretionary activity.
297. Submissions in support of the controlled activity rules for reconsenting existing marine farms highlighted the benefits of certainty for the industry and that the adverse effects of mussel farming using conventional longline structures are well known and understood.
298. Mr Davies for MFA/AQNZ submitted the industry sees the controlled activity status for reconsenting existing marine farms as 'in return' for forgoing expansion in inshore areas and identifying where marine farming is appropriate as a coherent package to address and enhance the Marlborough Sounds environment. He considered the controlled activity rule without notification was justified given the NES-MA alternative as a restricted discretionary activity, with no power to require notification. He submitted the controlled activity status did not make the activity 'quasi-permanent' past the life of the plan or a plan change. He highlighted the planning process provided a greater opportunity for public input than during a consent process.
299. The Section 42A report highlighted the NES-MA regulations and circumstances where the Council can be more stringent and more lenient than the regulations.³¹ The report noted it would not be lawful to be more stringent than the restricted discretionary activity status under the NES-MA regulations for reconsenting existing marine farms within identified 'appropriate' areas; and therefore there are only two options available:

³¹ RMA Section 438(3),

- i. To rely on the NES-MA regulations to re-consent existing marine farms as a Restricted Discretionary Activity; or
 - ii. To use the plan provisions to re-consent the existing marine farms as a Controlled Activity, as proposed in the Variation.
300. The Section 42A report highlighted the work undertaken by the MARWG and proposed plan provisions which have been developed to address key issues; and the need to provide certainty to the industry and the community as to how aquaculture will be managed. The report noted the controlled activity status would minimise re-consenting costs and encourage investment and research in the industry. On this basis, the Section 42A report writers recommended controlled activity Rules 16.4.3, 16.4.4 and 16.4.5 were appropriate.
301. Submitters sought a number of new matters over which the Council reserves control, including:
- (a) Effects on public access by maintaining at least 50 m wide access lanes between marine farms and a maximum backbone length of 200 m;
 - (b) Management of farm density or intensity for new species;
 - (c) Use of synthetic structures, such as plastic ties and structure rope;
 - (d) Operation times to protect amenity and to avoid noise;
 - (e) Effects on cultural values;
 - (f) Measures to prevent the release or spread of harmful aquatic organisms and biosecurity issues; and
 - (g) The genetic effect on wild population of farmed species escaping.
302. The section 42A report considered all of the requested new matters of control and recommended the insertion of additional matters of control for the management of biosecurity risks and noise to protect amenity values.
303. MFA/AQNZ, Clifford Bay Marine Farms Ltd and Wakatu Incorporated submitted Rule 16.4.5 should apply to marine farms within the Offshore CMU.
304. The section 42A report considered Rule 16.4.5 should not apply to the Offshore CMU because the existing marine farms are operating on an adaptive management basis and the Council needs to retain the ability to decline future consents on the basis of adverse environmental effects.

305. MPI submitted Rule 16.4.5 should be extended to include all species outside of Appendix 11 that are already listed on existing consents; and that Rule 16.4.5 should apply to existing permits granted under Rules 16.4.5, 16.5.3, 16.5.4 and 16.6.14.
306. The section 42A report considered Appendix 11 included all commonly consented marine species and recommended inserting a new advice note to refer plan users to the NES-MA regulations that provide for a change of species as a restricted discretionary activity. The section 42A report agreed with MPI that Rule 16.4.5 should apply to existing permits granted under Rules 16.4.5, 16.5.3, 16.5.4 and 16.6.14 and recommended amendments to reflect this.

Evaluation

307. In considering the effect of the NES-MA regulations, the Council's approach taken to identify 'appropriate' AMAs (in giving effect to Policy 8 of the NZCPS), and the benefits of certainty and efficiency of regulation, the Panel accepts the section 42A report recommendation that it is appropriate to allow for re consenting of existing marine farms within identified AMAs as a controlled activity, subject to meeting set standards and terms.
308. The Panel considers the provisions need to provide policy guidance to support the rule framework and to reflect the current level of certainty in terms of the receiving environment and the risk posed to environmental values that may be present within AMAs. The Panel finds it is appropriate to insert a new policy to achieve this.
309. The Panel finds it is appropriate to provide for re consenting of existing marine farms that can meet the controlled activity rules without public notification given the MARWG and public planning process undertaken to provide AMAs through this Variation and the consideration of identified environmental values. The Panel accepts that the localised environment effects of growing mussels using conventional longlines are relatively well studied and documented.
310. The Panel considers the key issue in terms allowing a controlled activity status for the replacement of existing consents relates to the level of certainty regarding adverse environmental effects. The Panel is cognisant that an application made for a controlled activity cannot be refused and that adverse effects must be well known and understood to support such a permissive approach.
311. The Panel agrees with the section 42A report writers that a controlled activity status for existing marine farms in the Offshore CMU is not appropriate given these consents have been granted under adaptive management conditions to address uncertainty.

312. The Panel has had the benefit of the Council's multibeam data and any available consent information to undertake a site-by-site assessment of the existing marine farms within the enclosed waters of the Marlborough Sounds.
313. The Panel acknowledges that for marine sites operating under deemed coastal permits³² there has likely never been an opportunity for community input or consideration under section 104 and Part 2 of the RMA.
314. In response to Minute 16 (dated 30 November 2021), the Council provided the Panel with information on the number and location of all marine farm sites operating under deemed coastal permits for each CMU, identification of all deemed coastal permits with multibeam sonar survey data available, and identification of proposed AMAs that may overlay hard substrate utilising the Council's multibeam sonar survey data.
315. The Panel used the best available information including, the response to Minute 16, the SEA table, individual consent information and the multibeam sonar survey data to inform their decision on the appropriateness of each AMA, in terms of the protection of ecological and habitat values. The Panel acknowledges the use of the multibeam sonar survey data on its own is not enough to draw conclusions on the benthic environment, but accept it is an appropriate tool to indicate where further visual assessment is required through the consenting process. The Panel acknowledges the multibeam sonar survey data will not indicate the presence of all significant habitats including biogenic habitat forming species in soft sediment locations such as rhodoliths, drift algae, red algae and horse mussels.
316. The Council's response to Minute 16 highlighted that in relation to the enclosed waters, there is no Council multibeam sonar survey data available for Anakoha Bay, Catherine Cove, Hikapu Reach, Kenepuru Sound, Port Gore, Squally Cove, Port Hardy, Guards Bay, Waitui Bay and Port Underwood.
317. The Panel has paid particular attention to bays where no seaward movement of marine farms is proposed and there is no multibeam sonar survey data available; and areas such as Port Underwood where there are red algae beds present that are not identified through sonar survey.
318. During the site-by-site review of proposed AMAs, the Panel found a number of sites (for example MF 8143) where the multibeam sonar survey data indicated the presence of hard substrate, but where a recent benthic assessment report provided for re-consenting had not identified any benthic values. In some cases, it was apparent that the limited number and

³² Consents granted under the Marine Farming Act 1971 before the enactment of the RMA.

location of visual assessments using drop camera images had resulted in these important areas being missed within the consented area. The Panel considers this illustrates the importance of utilising the multibeam sonar survey data in conjunction with targeted visual assessments to draw robust conclusions on habitat and species present at specific locations.

319. The Panel acknowledges the lack of best practice methodology for assessing benthic values and considers this should be a focus of future work for the Council, the marine farming industry and scientists to ensure technologies such as the use of underwater drones are used, without relying on a limited number of 'snapshot' images to characterise relatively large areas of seabed.
320. The Panel found that in many situations the seaward shift proposed removed the entire SEA from within the proposed AMA. In other situations, the Panel found existing SEA did not sufficiently reflect the presence or full extent of hard substrate indicated by the multibeam sonar survey data.
321. The Panel considers there are two categories where there is uncertainty or insufficient information to conclude benthic ecological and habitat values will be protected in relation to the proposed AMA:
- (a) Where the Council's multibeam sonar data indicates the presence of hard substrate within an AMA which is not currently protected by a SEA; and
 - (b) Where there is no multibeam sonar survey data available.
322. The Panel finds that where there is multibeam sonar survey data available to confirm the appropriateness of AMA in relation to the protection of hard substrate marine farms there is a low risk of adverse effects on benthic values. Rule 16.4.3 provides for the consenting of such existing marine farms (not included on Schedules 1, 2 and 3) within an AMA as a controlled activity subject to standards and terms. The Panel has amended the standards and terms of this rule to reflect the Panels' determination to use Schedules for the rule framework and to remove the requirement for applicants to hold an authorisation to apply for consent under the controlled activity rule.
323. The Panel finds it is appropriate to include an additional standard for Rule 16.4.3 to enable the relocation of part or all of a marine farm within three years of the date of this decision to encourage a timely transition to the AMA space provided through this Variation. This will ensure the environmental benefits of the relocations are realised within three years of this decision and provides existing consent holders with a fixed timeframe to make application

under Rule 16.4.3 to relocate part or all of a marine farm to within the provided AMA as a controlled activity.

324. The Panel has considered the matters over which the Council has reserved discretion and accept the section 42A report recommendation to delete 'droppers' given this is not a matter currently controlled by the Council. The Panel accepts the section 42A recommendation to include two new matters of control relating to biosecurity risks and noise to protect amenity values in relation to Rules 16.4.3, 16.4.4 and 16.4.5. The Panel considers that where appropriate the same matters of control should apply to all of the controlled activity rules.
325. The Panel finds that where there is insufficient information available to make a robust conclusion that an AMA protects benthic ecological values based on the available multibeam sonar survey data or the multibeam sonar survey data indicates the presence of hard substrate, which is not protected by a SEA, it is appropriate to require the provision of information to allow for the assessment of benthic values as a controlled activity under new Rule 16.4.3A. These marine farms are identified in Schedule 1.
326. The Panel finds that where an existing marine farm is required to relocate from an inappropriate area into an identified AMA provided where there is multibeam sonar survey data available, it is appropriate to enable the relocation as a controlled activity. Rule 16.4.3B provides for the relocation of existing marine farms identified on Schedule 2 to identified locations subject to standards and terms. These standards and terms include holding an authorisation to apply for a consent and surrendering the consent to be replaced within 24 months, and restrictions on total backbone length and space occupied. The Panel considers 24 months is appropriate based on the evidence provided requesting sufficient time for relocation to allow for a full growth and harvest cycle without any loss of productivity.
327. The Panel finds that where an existing marine farm is required to relocate from an inappropriate area to an AMA provided where there is no multibeam sonar survey data available it is appropriate to require the provision of information to allow for the assessment of benthic values as a controlled activity. Rule 16.4.3C provides for relocation of existing marine farms identified on Schedule 3 to identified locations subject to standards and terms. These standards and terms are consistent with Rule 16.4.3B.

Decision

328. The Panel determines to insert new Policy 13.21.9 to provide policy direction for the rule framework that allows for the consideration of new replacement consents within identified AMA and ASA as a controlled activity as follows:

Policy 13.21.9 – Provide for marine farming in AMA as a controlled activity.

In accordance with Policy 13.21.1, AMA have been established where marine farming is an appropriate activity. The status of marine farming in AMA is generally a controlled activity. This provides certainty as the outcome of the consenting process is known at the time of application.

329. The Panel determines to amend Rule 16.4.3, for the reasons set out above, to enable consenting of existing marine farms not identified in Schedules 1, 2 and 3 (where there is multibeam sonar survey data available and a low risk of adverse effects on benthic values) as a controlled activity. Standard 16.4.3.1 is deleted to remove the requirement for an authorisation. Standard 16.4.3.3 is deleted given the approach taken to creating discrete AMA. A new Standard 16.4.3.3 is inserted to provide a 3 year timeframe for relocations to within identified AMA. The Panel accepts in part the End of Hearing recommendation to include an amended wording for Matter 16.4.3.10, with changes to the wording to be consistent with the Panel’s decision on notified Policy 13.22.6 (now Policy 13.23.2). The Panel accepts the section 42A report recommendation to include two new standards to control noise effects to protect amenity values (new Standard 16.4.3.12) and measures to control biosecurity risks (new Standard 16.4.3.13).
330. The Panel determines to amend Rule 16.4.3 as follows:

16.4.3 Marine farming using conventional longline structures or intertidal structures in an AMA, other than an ASA, for which an authorisation is held to apply for a coastal permit to occupy space within the AMA, including the associated occupation of space in the coastal marine area, the erection, placement, use of structures, disturbance of the seabed and ancillary discharges to water, but excluding the discharge of feed or medicinal or therapeutic compounds.

Standards and terms:

- ~~16.4.3.1~~ The consent applicant holds an authorisation to apply for a coastal permit to occupy space within the AMA, in the location applied for, issued by the Marlborough District Council pursuant to Part 7A of the RMA and Policy 13.21.7 and the application meets all the terms in that authorisation, including that the applicant agrees to a condition that any Existing Marine Farm permit the authorisation replaces will be surrendered no later than 6 months after the commencement of the permit if the application under the authorisation is granted.
- 16.4.3.12 The application is for the same, or shorter, total length of backbone length of lines or intertidal structures as an existing marine farm or farms which the current application is replacing.
- ~~16.4.3.3~~ The application is to occupy the same or smaller, area as the existing marine farm it is replacing.
- 16.4.3.2 The marine farm is not identified on Appendix 29, Schedules 1, 2 or 3.

- 16.4.3.3 Where part or all of a marine farm is required to move into an AMA from its existing consented area, the application must be made within 3 years of 19 May 2023.
- 16.4.3.4 The activity does not include the discharge of feed or medicinal or therapeutic compounds.
- Matters over which the Council has reserved control:*
- 16.4.3.5 Layout and design of the farm, including the number and length of backbone lines ~~and droppers~~, and the arrangement of those lines including separation distances between lines.
- 16.4.3.6 The layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site, to ensure:
- (a) continued reasonable public access (including recreational access) in the vicinity of the marine farm, including separation between farms to facilitate public access to and from shore; and
 - (b) navigational safety, including the provision of navigation warning devices and signs.
- 16.4.3.7 Appropriate and efficient use of space within the AMA, including layout and arrangement of marine farms.
- 16.4.3.8 Conditions requiring the surrender of an existing coastal permit or other method to ensure the allocation of space authorised by the consent replaces existing permits and rights to occupy space in a common marine and coastal area of ~~an equivalent area~~ the same or greater areal extent.
- 16.4.3.9 Integrity and security of the structures, including the anchoring systems.
- 16.4.3.10 Maintaining the marine farm in good order to avoid the adverse effects of marine farming related debris and litter from their marine farming operation, including regular monitoring and removal of rubbish.
- 16.4.3.11 Measures to control the visual appearance of surface structures in relation to location, density, materials, lighting, and colour, ~~texture, composition and reflectivity~~ and their compatibility with the surrounding coastal environment.
- 16.4.3.12 Measures to control noise effects from the operation, maintenance and harvest of the marine farm, including operating hours.
- 16.4.3.13 Measures to control the movement of stock, structures or equipment relocated from another region to manage the risk of spreading of harmful aquatic organisms.
- ~~16.4.3.14~~ Supply of information and monitoring data to the Council.
- ~~16.4.3.15~~ The removal of derelict, unused or obsolete structures.
- ~~16.4.3.16~~ Review of the consent conditions. ~~Including review of the conditions to reduce or configure the number, density or length of lines or droppers if the monitoring information shows the trigger levels in Policy 13.22.1 are met.~~

16.4.3.17~~5~~ The duration of the consent.

Resource consent applications under this rule will be considered without public notification and without limited notification.

331. The Panel determines to insert new Rule 16.4.3A to enable consenting of existing marine farms where there is no multibeam sonar survey data available or where hard substrate has been identified using available multibeam sonar survey data that is not protected by a SEA (as identified on Schedule 1) as a controlled activity as follows:

[C]

16.4.3A Marine farming using conventional longline structures or intertidal structures in an AMA, other than an ASA, including the associated occupation of space in the coastal marine area, the erection, placement, use of structures, disturbance of the seabed and ancillary discharges to water, but excluding the discharge of feed or medicinal or therapeutic compounds.

Standards and terms:

16.4.3A.1 The marine farm is identified on Schedule 1 of Appendix 29.

16.4.3A.2 The application is for the same, or shorter, total length of backbone or intertidal structures as a marine farm or farms which the current application is replacing.

16.4.3A.3 Where part or all of a marine farm is required to move into an AMA from its existing consented area, the application must be made within 3 years of 19 May 2023.

16.4.3A.4 The activity does not include the discharge of feed or medicinal or therapeutic compounds.

Matters over which the Council has reserved control:

16.4.3A.5 Adverse effects on benthic habitat.

16.4.3A.6 Layout and design of the farm, including the number and length of backbone lines, and the arrangement of those lines including separation distances between lines.

16.4.3A.7 The layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site, to ensure:

(a) continued reasonable public access (including recreational access) in the vicinity of the marine farm, including separation between farms to facilitate public access to and from shore; and

(b) navigational safety, including the provision of navigation warning devices and signs.

16.4.3A.8 Appropriate and efficient use of space within the AMA, including layout and arrangement of marine farms.

16.4.3A.9 Conditions requiring the surrender of an existing coastal permit or other method to ensure the allocation of space authorised by the consent replaces existing permits and rights to occupy space in a common marine and coastal area of the same or greater areal

extent.

16.4.3A.10 Integrity and security of the structures, including the anchoring systems.

16.4.3A.11 Maintaining the marine farm in good order to avoid the adverse effects of marine farming related debris and litter from their marine farming operation, including regular monitoring and removal of rubbish.

16.4.3A.12 Measures to control the visual appearance of surface structures in relation to location, density, materials, lighting and colour, and their compatibility with the surrounding coastal environment.

16.4.3A.13 Measures to control noise effects from the operation, maintenance and harvest of the marine farm, including operating hours.

16.4.3A.14 Measures to control the movement of stock, structures or equipment relocated from another region to manage the risk of spreading of harmful aquatic organisms.

16.4.3A.15 Supply of information and monitoring data to the Council.

16.4.3A.16 The removal of derelict, unused or obsolete structures.

16.4.3A.17 Review of the consent conditions.

16.4.3A.18 The duration of the consent.

Resource consent applications under this rule will be considered without public notification and without limited notification.

332. The Panel determines to insert new Rule 16.4.3B for the relocation of existing marine farms from inappropriate areas to an AMA where there is multibeam sonar survey data available and a low risk of adverse effects on benthic values (as identified in Schedule 2) as a controlled activity as follows:

[C]

16.4.3B Marine farming using conventional longline structures or intertidal structures in an AMA created as replacement space for marine farms in inappropriate areas, including the associated occupation of space in the coastal marine area, the erection, placement, use of structures, disturbance of the seabed and ancillary discharges to water, but excluding the discharge of feed or medicinal or therapeutic compounds.

Standards and terms:

16.4.3B.1 The marine farm is identified on Schedule 2 of Appendix 29.

16.4.3B.2 The consent applicant holds an authorisation to apply for a coastal permit to occupy space within the AMA, in the location applied for, issued by the Marlborough District Council pursuant to Part 7A of the RMA and Policy 13.21.7 and the application meets all the terms in that authorisation, including that the applicant agrees to a condition that any marine farm permit replaced by the application will be surrendered no later than 24 months after the commencement of

the replacement permit.

16.4.3B.3 The application is for the same, or shorter, total length of backbone or intertidal structures as a marine farm or farms which the current application is replacing.

16.4.3B.4 The line length must not exceed that specified for the AMA in Schedule 2 of Appendix 29.

16.5.3B.5 The application must be made within 3 years of 19 May 2023

16.4.3B.6 The activity does not include the discharge of feed or medicinal or therapeutic compounds.

Matters over which the Council has reserved control:

16.4.3B.7 Layout and design of the farm, including the number and length of backbone lines, and the arrangement of those lines including separation distances between lines.

16.4.3B.8 The layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site, to ensure:

(a) continued reasonable public access (including recreational access) in the vicinity of the marine farm, including separation between farms to facilitate public access to and from shore; and

(b) navigational safety, including the provision of navigation warning devices and signs.

16.4.3B.9 Appropriate and efficient use of space within the AMA, including layout and arrangement of marine farms.

16.4.3B.10 Conditions requiring the surrender of an existing coastal permit or other method to ensure the allocation of space authorised by the consent replaces existing permits and rights to occupy space in a common marine and coastal area of the same or greater areal extent.

16.4.3B.11 Integrity and security of the structures, including the anchoring systems.

16.4.3B.12 Maintaining the marine farm in good order to avoid the adverse effects of marine farming related debris and litter from their marine farming operation, including regular monitoring and removal of rubbish.

16.4.3B.13 Measures to control the visual appearance of surface structures in relation to location, density, materials, lighting and colour, and their compatibility with the surrounding coastal environment.

16.4.3B.14 Measures to control noise effects from the operation, maintenance and harvest of the marine farm, including operating hours.

16.4.3B.15 Measures to control the movement of stock, structures or equipment relocated from another region to manage the risk of spreading of harmful aquatic organisms.

16.4.3B.16 Supply of information and monitoring data to the Council.

16.4.3B.17 The removal of derelict, unused or obsolete structures.

16.4.3B.18 Review of the consent conditions.

16.4.3B.19 The duration of the consent.

Resource consent applications under this rule will be considered without public notification and without limited notification.

333. The Panel determines to insert new Rule 16.4.3C for the relocation of existing marine farms from inappropriate areas to an AMA where there is no multibeam sonar survey data available (as identified in Schedule 3) as a controlled activity as follows:

[C]

16.4.3C Marine farming using conventional longline structures or intertidal structures in an AMA created as replacement space for marine farms in inappropriate areas, including the associated occupation of space in the coastal marine area, the erection, placement, use of structures, disturbance of the seabed and ancillary discharges to water, but excluding the discharge of feed or medicinal or therapeutic compounds.

Standards and terms:

- 16.4.3C.1 The marine farm is identified on Schedule 3 of Appendix 29.
- 16.4.3C.2 The consent applicant holds an authorisation to apply for a coastal permit to occupy space within the AMA, in the location applied for, issued by the Marlborough District Council pursuant to Part 7A of the RMA and Policy 13.21.7 and the application meets all the terms in that authorisation, including that the applicant agrees to a condition that any marine farm permit replaced by the application will be surrendered no later than 24 months after the commencement of the replacement permit.
- 16.4.3C.3 The application is for the same, or shorter, total length of backbone or intertidal structures as a marine farm or farms which the current application is replacing.
- 16.4.3C.4 The line length must not exceed that specified for the AMA in Schedule 3 of Appendix 29.
- 16.5.3C.5 The application must be made within 3 years of 19 May 2023
- 16.4.3C.6 The activity does not include the discharge of feed or medicinal or therapeutic compounds.

Matters over which the Council has reserved control:

- 16.4.3C.7 Adverse effects on benthic habitat.
- 16.4.3C.8 Layout and design of the farm, including the number and length of backbone lines, and the arrangement of those lines including separation distances between lines.
- 16.4.3C.9 The layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site, to ensure:
- (a) continued reasonable public access (including recreational access) in the vicinity of the marine farm, including separation between farms to facilitate public access to and from shore; and

<p><u>(b) navigational safety, including the provision of navigation warning devices and signs.</u></p>
<p><u>16.4.3C.10 Appropriate and efficient use of space within the AMA, including layout and arrangement of marine farms.</u></p>
<p><u>16.4.3C.11 Conditions requiring the surrender of an existing coastal permit or other method to ensure the allocation of space authorised by the consent replaces existing permits and rights to occupy space in a common marine and coastal area of the same or greater areal extent.</u></p>
<p><u>16.4.3C.12 Integrity and security of the structures, including the anchoring systems.</u></p>
<p><u>16.4.3C.13 Maintaining the marine farm in good order to avoid the adverse effects of marine farming related debris and litter from their marine farming operation, including regular monitoring and removal of rubbish.</u></p>
<p><u>16.4.3C.14 Measures to control the visual appearance of surface structures in relation to location, density, materials, lighting and colour, and their compatibility with the surrounding coastal environment.</u></p>
<p><u>16.4.3C.15 Measures to control noise effects from the operation, maintenance and harvest of the marine farm, including operating hours.</u></p>
<p><u>16.4.3C.16 Measures to control the movement of stock, structures or equipment relocated from another region to manage the risk of spreading of harmful aquatic organisms.</u></p>
<p><u>16.4.3C.17 Supply of information and monitoring data to the Council.</u></p>
<p><u>16.4.3C.18 The removal of derelict, unused or obsolete structures.</u></p>
<p><u>16.4.3C.19 Review of the consent conditions.</u></p>
<p><u>16.4.3C.20 The duration of the consent.</u></p>
<p><u>Resource consent applications under this rule will be considered without public notification and without limited notification.</u></p>

334. For the reasons outlined, the Panel determines to make consequential changes to Rule 16.4.4 for marine farming within an ASA to ensure consistency, as follows:

<p>16.4.4 Marine farming in an ASA using conventional longline structures or intertidal structures for which there is an existing coastal permit to occupy space for marine farming in the same location ('replacement consent'), including the associated occupation of space in the coastal marine area, the erection, placement, use of structures, disturbance of the seabed and ancillary discharges to water, but excluding the discharge of feed and medicinal or therapeutic compounds.</p> <p><i>Standards and terms:</i></p> <p>16.4.4.1 The consent application is for replacement consents for an existing marine farm in the same location.</p> <p>16.4.4.2 The application is for the same or shorter total length of backbone length of lines or intertidal structures as the existing marine farm</p>
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or farms which the current application is replacing.

~~16.4.4.3~~ The application is to occupy the same or smaller area as the existing farm.

16.4.4.34 The activity does not include the discharge of feed or medicinal or therapeutic compounds.

Matters over which the Council has reserved control:

16.4.4.45 Layout and design of the farm, including the number and length of backbone lines ~~and droppers~~, and the arrangement of those lines including separation distances between lines.

16.4.4.56 The layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site, to ensure:

(a) continued reasonable public access (including recreational access) in the vicinity of the marine farm, including separation between farms to facilitate public access to and from shore; and

(b) navigational safety, including the provision of navigation warning devices and signs.

16.4.4.67 Appropriate and efficient use of space within the ASA, including layout and arrangement of marine farms.

16.4.4.78 Conditions requiring the surrender of an existing coastal permit or other method to ensure the allocation of space authorised by the consent replaces existing permits and rights to occupy space in a common marine and coastal area of the same or greater areal extent an equivalent area.

16.4.4.89 Integrity and security of the structures, including the anchoring systems.

16.4.4.910 Maintaining the marine farm in good order to avoid the adverse effects of marine farming related debris and litter from their marine farming operation, including regular monitoring and removal of rubbish.

~~16.4.4.1011~~ Measures to control the visual appearance of surface structures in relation to location, density, materials, lighting, and colour, texture composition and reflectivity and their compatibility with the surrounding coastal environment.

~~16.4.4.1112~~ Measures to control noise effects from the operation, maintenance and harvest of the marine farm, including operating hours.

~~16.4.4.1213~~ Measures to control the movement of stock, structures or equipment relocated from another region to manage the risk of spreading of harmful aquatic organisms.

16.4.4.1314 Supply of information and monitoring data to the Council.

16.4.4.1415 The removal of derelict, unused or obsolete structures.

16.4.4.1516 Review of the consent conditions. ~~Including review of the conditions to reduce or configure the number, density or length of lines or droppers if the monitoring information shows the trigger~~

~~levels in Policy 13.22.1 are met.~~

16.4.4.1617 The duration of the consent.

Resource consent applications under this rule will be considered without public notification and without limited notification.

335. The Panel accepts the section 42A report recommendations to insert reference to consents granted under the controlled activity rules and a new 'Note' to Rule 16.4.5; and determine to make consequential changes to Rule 16.4.5 to allow for the change of or addition of species, with the insertion of an additional standard to clarify this does not apply to changes in farm structures, as follows:

16.4.5 Marine farming using conventional longline structures or intertidal structures in an AMA for which an ~~existing~~ coastal permit for a marine farm has already been granted under Rule 16.4.3, 16.4.3A, 16.4.3B, 16.4.3C and 16.5.3 and where a replacement consent is being sought or a new consent is required to allow for change of or addition of species or to change the layout of structures on the marine farm.

Standards and terms:

- 16.4.5.1 The consent applicant holds an ~~existing~~ coastal permit to occupy space within the AMA for marine farming, granted under Rule 16.4.3, 16.4.3A, 16.4.3B, 16.4.3C and 16.5.3 in the location applied for.
- 16.4.5.2 The application is for the same, or shorter, total length of backbone length or intertidal structures as the ~~existing~~ marine farm or farms which the current application is altering.
- 16.4.5.3 The application is to occupy a total areal extent no greater than the same or smaller area as the existing marine farm which it is altering.
- 16.4.5.4 The application does not involve subsurface structures becoming surface structures.
- 16.4.5.54 For an application to change or add species, the species must be a ~~bivalve or plant~~ species set out in Appendix 11, except for marine farms currently authorised solely for mussel spat catching purposes or for monitoring purposes, where the species must remain mussel spat or the purpose must remain for monitoring purposes.
- 16.4.5.65 The activity does not include the discharge of feed or medicinal or therapeutic compounds.

Matters over which the Council has reserved control:

- 16.4.5.76 Layout and design of the farm, including the number and length of lines, and the arrangement of those lines including separation distances between lines.
- 16.4.5.87 The layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site, to ensure:
- (a) continued reasonable public access (including recreational access) in the vicinity of the marine farm, including separation between

farms to facilitate public access to and from shore; and

- (b) navigational safety, including the provision of navigation warning devices and signs.

- 16.4.5.98 Appropriate and efficient use of the space within AMA, including layout and arrangement of marine farms.
- 16.4.5.109 Conditions requiring the surrender of an existing coastal permit or other method to ensure the allocation of space authorised by the consent replaces existing permits and rights to occupy space in a common marine and coastal area of the same or greater areal extent~~an equivalent area~~.
- 16.4.5.110 Integrity and security of the structures, including the anchoring systems.
- 16.4.5.121 Maintaining the marine farm in good order to avoid the adverse effects of marine farming related debris and litter from their marine farming operation, including regular monitoring and removal of rubbish.
- 16.4.5.132 Measures to control the visual appearance of surface structures in relation to location, density, materials, lighting, and colour, ~~texture composition and reflectivity~~ and their compatibility with the surrounding coastal environment.
- 16.4.5.14 Measures to control noise effects from the operation, maintenance and harvest of the marine farm, including operating hours.
- 16.4.5.15 Measures to control biosecurity risk, including measures to control the movement of stock, structures or equipment relocated from another region to manage the risk of spreading of harmful aquatic organisms.
- 16.4.5.163 Supply of information and monitoring data to the Council.
- 16.4.5.174 The removal of derelict, unused or obsolete structures.
- 16.4.5.185 Review of the consent conditions, ~~including review of the conditions to reduce or reconfigure the number, density or length of lines or droppers if monitoring information shows the trigger levels in Policy 13.22.1 for cumulative adverse effects in the CMU where the farm is located, are met.~~
- 16.4.5.196 The duration of the consent.

Resource consent applications under this rule will be considered without public notification and without limited notification.

Note:

A change of species for an existing marine farm to a species not listed in Appendix 11 may be provided for as a Restricted Discretionary Activity under the National Environmental Standards for Marine Aquaculture regulations.

Restricted Discretionary Activities, Discretionary Activities and Prohibited Activities - Rules

336. Submissions from Te Ātiawa and KCSRA sought that new applications under the restricted discretionary activity rules and discretionary activities rules must be required to be notified to enable iwi and community input.

337. MPI sought changes to exclude public and limited notification given the planning process undertaken to establish AMAs.
338. The section 42A report writers considered it was appropriate for the Council to make an assessment for notification under the RMA for new marine farms or any in layout that increases the size of an existing farm.
339. KCSRA and CBRA sought a number of new matters of discretion for the restricted discretionary activity rule to manage cumulative effects on natural character and landscape values, effects on public access, the use of synthetic structures and ropes and operation times, and require attainment of the ASC Standard. The Minister of Conservation and MPI sought an additional matter of discretion to control biosecurity risks. Te Rūnanga o Ngāti Kuia Trust sought an additional matter of discretion for effects on cultural values.
340. The section 42A report recommended it was appropriate to include two new additional matters of control for the management of biosecurity risks and noise to protect amenity values for Rule 16.5.2 and Rule 16.5.3.

Evaluation

341. The Panel agrees with the section 42A report writers that the notification assessment prescribed in the RMA is the most appropriate method to assess whether notification of an application under the restricted discretionary activity rules and discretionary activities rules.
342. The Panel has considered the additional matters of control requested in submissions and find it appropriate to include the matters set out in Policy 13.21.3 when assessing new marine farming activities within ASA and AMA established after this decision through a future plan change. Policy 13.21.3 provided guidance on the principles used to create AMAs and the spatial layout of aquaculture within the enclosed waters of the Marlborough Sounds.
343. The Panel accepts the section 42A report recommendation to include two new matters of control for managing biosecurity risks and noise to protect amenity values.
344. The Panel considers a 'catch all' discretionary activity rule for marine farming activities not provided for by the controlled activity rules, restricted discretionary rule, or limited by the prohibited activity rule is appropriate.

Decision

345. The Panel determines to make consequential changes and insert a new matter of control to include consideration of the matters set out in Policy 13.21.3; and accepts the section 42A report recommendations to make amendments to Rule 16.5.2 and Rule 16.5.3, as follows:

16.5.2 Marine farming in an ASA for which no ~~existing~~ coastal permit is held using conventional longline structures or intertidal structures, including the associated occupation of space in the coastal marine area, the erection, placement, use of structures, disturbance of the seabed and ancillary discharges to water, but excluding the discharge of feed and medicinal or therapeutic compounds.

Standards and terms:

- 16.5.2.1 The consent applicant holds an authorisation to apply for a coastal permit to occupy space within the ASA, in the location applied for and the application meets all the terms in that authorisation.
- 16.5.2.2 The activity does not include the discharge of feed or medicinal or therapeutic compounds.

Matters over which the Council has reserved discretion:

- 16.5.2.3 Layout and design of the farm, including the number and length of lines ~~and droppers~~, and the arrangement of those lines including separation distances between lines.
- 16.5.2.4 The layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site, to ensure:
- (a) continued reasonable public access (including recreational access) in the vicinity of the marine farm, including separation between farms to facilitate public access to and from shore; and
 - (b) navigational safety, including the provision of navigation warning devices and signs
- 16.5.2.5 Appropriate and efficient use of space within the ASA.
- 16.5.2.6 Integrity and security of the structures, including the anchoring systems.
- 16.5.2.7 Maintaining the marine farm in good order to avoid the adverse effects of marine farming related debris and litter from their marine farming operation, including regular monitoring and removal of rubbish.
- 16.5.2.8 Measures to control the visual appearance of surface structures in relation to location, density, materials, lighting, and colour, ~~texture, compositions and reflectivity~~ and their compatibility with the surrounding coastal environment.
- 16.5.2.9 Measures to control noise effects from the operation, maintenance and harvest of the marine farm, including operating hours.
- 16.5.2.10 Measures to control the movement of stock, structures or equipment relocated from another region to manage the risk of spreading harmful aquatic organisms.
- 16.5.2.11 The matters included in Policy 13.21.3.
- 16.5.2.~~129~~ Supply of information and monitoring data to the Council.
- 16.5.2.~~130~~ The removal of derelict, unused or obsolete structures.
- 16.5.2.~~141~~ Review of the consent conditions. ~~Including review of the conditions to reduce or configure the number, density or length of lines or~~

~~droppers if the monitoring information shows the trigger levels in Policy 13.22.1 are met.~~

16.5.2.152 The duration of the consent.

16.5.3. Marine farming in an AMA established after 19 May 2023 using conventional longline structures, where a consent is being sought that does not meet Standard 16.4.3.2 of Rule 16.4.3 (it is a new marine farm and not replacing an existing marine farm) including the associated occupation of space in the coastal marine area, the erection, placement, use of structures, disturbance of the seabed and ancillary discharges to water, but excluding the discharge of feed and medicinal or therapeutic compounds.

Standards and terms:

~~16.5.3.1 The consent applicant holds an authorisation to apply for a coastal permit to occupy space within the AMA, in the location applied for and the application meet all the terms in that authorisation.~~

16.5.3.12 The species to be farmed must be a bivalve or plant species set out in Appendix 11.

16.5.3.23 The activity does not include the discharge of feed or medicinal or therapeutic compounds.

Matters over which the Council has reserved discretion:

16.5.3.34 Layout and design of the farm, including the number and length of lines and droppers, and the arrangement of those lines including separation distances between lines.

16.5.3.45 The layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site, to ensure:

- (a) continued reasonable public access (including recreational access) in the vicinity of the marine farm, including separation between farms to facilitate public access to and from shore; and
- (b) navigational safety, including the provision of navigation warning devices and signs.

16.5.3.56 Appropriate and efficient use of space within the AMA, including layout and arrangement of marine farms.

16.5.3.67 Integrity and security of the structures, including the anchoring systems.

16.5.3.78 Maintaining the marine farm in good order to avoid the adverse effects of marine farming related debris and litter from their marine farming operation, including regular monitoring and removal of rubbish.

16.5.3.89 Measures to control the visual appearance of surface structures in relation to location, density, materials, lighting and colour, ~~texture, composition and reflectivity~~ and their compatibility with the surrounding coastal environment.

16.5.3.9 Measures to control noise effects from the operation, maintenance

and harvest of the marine farm, including operating hours.

16.5.3.10 Measures to control the movement of stock, structures or equipment relocated from another region to manage the risk of spreading harmful aquatic organisms.

16.5.3.11 The matters included in Policy 13.21.3.

16.5.3.12 Supply of information and monitoring data to the Council.

16.5.3.13 The removal of derelict, unused or obsolete structures.

16.5.3.14 Review of the consent conditions. ~~Including review of the conditions to reduce or configure the number, density or length of lines or droppers if the monitoring information shows the trigger levels in Policy 13.22.1 are met.~~

16.5.3.15 The duration of the consent.

346. The Panel determines to delete Rule 16.5.4 and Rule 16.6.14 as consequential changes to the controlled activity rules and the approach taken to create individual AMA based on consented areas.

347. The Panel accepts the section 42A report recommendation to insert a new 'Note' under Rule 16.6.13 to direct plan users to the NES-MA regulations, as follows:

16.6.13 Marine farming in an Offshore CMU, including the associated occupation of space in the coastal marine area, the erection, placement, use of structures, disturbance of the seabed and ancillary discharges to water.

Note:

Rule 16.6.13 does not apply to replacement consents for existing marine farms in the Offshore CMU that are managed under the National Environmental Standards for Marine Aquaculture.

348. The Panel determines to delete the last part of the sentence in Rule 16.6.15 to remove reference to the discharge of feed associated with the use of conventional longline structures, as follows:

16.6.15 The discharge of feed or medicinal or therapeutic compounds associated with any type of marine farming or the discharge of feed ~~associated with marine farming using conventional longline structures.~~

349. The Panel determines that no changes are required to the Prohibited Activities Rule 16.7.9, as notified.

Loss of Existing Spat Catching Sites

350. Concerns have been raised regarding the loss of existing marine farms in identified 'inappropriate' areas that are important spat catching sites, particularly sites located in Squally Cove, Blowhole Point and Guards Bay. MFA/AQNZ and individual marine farmers emphasised

the importance of spat catching sites to the entire Marlborough Sounds mussel farming industry.

Evaluation

351. No evidence was provided at the hearing on the ability of other existing marine farm sites to provide spat to the mussel farming industry or information identifying farms which have been provided AMA that are spat catching sites. The section 42A report highlighted that of the nearly 600 marine farms only 23 had not had an AMA provided through the notified Variation.
352. The Panel heard evidence from Dr Andrew Jeffs for MFA/AQNZ on the importance of nursery sites for the holding and on-growing of mussel spat and the consequences of losing a substantial proportion of those site through Variation 1. He explained the nursery phase of production is the 'major bottleneck' in production with the loss typically exceeding 90% from fish predation, natural mortality, competition with biofouling, poor feeding conditions, handling and transport stress. He noted natural migration can be triggered by environmental triggers such as water flow, temperature, water quality, and food type and availability. He highlighted marine farms show markedly different levels of spat retention, with typically less than 10% sites being suitable for nursery culture and less than 5% providing a high degree of consistency in good spat performance. He considered the loss of high performing nursery sites will have a disproportionate impact on the industry. He highlighted the importance of the outer Croisilles, outer Admiralty Bay, West Entry Point, Guards Bay, Anakoha Bay and Port Gore compared to sites within the mid to inner reaches of the enclosed waters of Marlborough Sounds.
353. The Panel heard evidence from Mr Holland and Ms Fleming for Clearwater and Talley's on the importance of the sites in the outer Sounds, including its sites at Port Hardy (D'Urville Island), Hapuku Rock (Admiralty Bay) and West Entry (Pelorus Sound) and the need to provide equivalent space as good spat holding sites for the loss of these sites.
354. In response to Minute 19 (dated 14 December 2021) regarding the frequency and use of site MF 8553 in Clova Bay, the Panel received a statement of evidence from Mr Jonathan Large, South Island Marine Farm Manager for Cedenco Aquaculture Limited and Farm Manager for the MFA's 12 spat sites (dated 8 July 2022). Mr Large provided information regarding importance of spat catching sites throughout the Marlborough Sounds generally and emphasised the crucial importance of the need to have access to a variety of locations with different characteristics to safeguard against natural variability. He explained 'the art' of spat

catching and noted that every spat site is variable over time with a general decline in success rates at all sites experienced over recent years.

355. The Panel has taken this evidence regarding the importance of some of the marine sites into account in its consideration of the section 42A report recommendations on a site-by-site basis. The Panel acknowledges the importance of good spat catching/growing sites to the marine farming industry but considers the value of such sites to the industry cannot be balanced against the protection of significant environmental values including ecological, natural character and landscape. The Panel accepts that Policy 11, and Policies 13 and 15 of the NZCPS provide clear direction where adverse effects and significant adverse effects must be avoided.

356. The Panel notes the evidence presented indicates marine farm sites with good spat catching/growing site occur throughout the sounds and are not limited to the outer sounds. The Panel is mindful that only very small number of existing marine farms are required to be relocated and that a large number of marine farms remained within close proximity of those sites. The Panel acknowledges the importance of access to spat to the marine farming industry and considers that provision of AMAs for majority of existing sites will ensure the industry can work together to ensure all marine farmers can continue to obtain mussel spat.

Decision

357. Decisions on individual marine farm sites are recorded in Appendix 3 of this decision.

Pacific Oysters

358. Minister of Conservation raised concern about the inclusion of Pacific oysters in Appendix 11 and the change of species as a controlled activity in areas where Pacific oysters are not established. The evidence of Mr Andrew Baxter noted there are areas where they are not consented to be farmed and there is an absence of Pacific oysters or low numbers in the wild. Mr Baxter considered allowing Pacific oysters to be farmed, where they are currently absent or in low number, would risk substantially increasing the amount of brood stock and larval production, and their establishment in greater number at more locations.

359. Mr Aaron Pannell provided evidence regarding the use of triploid/sterile spat, which would be widely available by 2023. He suggested controlling the biosecurity risk of the spread of Pacific oysters through resource consent conditions that required the use of triploid/sterile spat.

360. Mr Jono Underwood, Biosecurity Manager for the Council, confirmed that use of triploid/sterile spat would remove any biosecurity risk.

361. The End of Hearing Report provided information on the spatial distribution of existing resource consents held for farming Pacific oysters. The report highlighted the submissions from MPI and the Minister of Conservation seeking the inclusion of a new matter of control for controlled activities (Rules 16.4.3, 16.4.4 and 16.4.5) regarding measures to control movement of stock, structures or equipment relocated from another region to manage the risk of spreading harmful aquatic organisms. On this basis, they recommended amending the matters of control for Rule 16.4.5 (for the change of species as a controlled activity) to include:
- '16.4.x.x Measures to control biosecurity risks'.*

Evaluation

362. Pacific oysters have been established in the Marlborough Sounds since 1977 and have been commercially farmed since 1980.
363. Pacific Oysters were included in Appendix 11 because the species is commonly consented for farming throughout the Marlborough Sounds. The further mapping information from the Council indicates that Pacific oysters are already consented to be farmed in many CMUs. While some CMUs do not include consents to farm Pacific oysters, the Panel acknowledges the potential for natural spread of the species across CMU boundaries given the widespread distribution of consents held to farm them.
364. The Panel considers removal of Pacific oysters from Appendix 11 does not recognise the species is commonly consented or its current distribution throughout the Marlborough Sounds.
365. The Panel acknowledges there are areas where the species is consented to be farmed but is not farmed and where they are not currently consented, and Pacific oysters are absent or occur in very low numbers. The Panel accepts the evidence of Mr Baxter that allowing farming of Pacific oysters in such areas could increase the risk of their spread. The Panel considers the assessment of any biosecurity risk from the spread on Pacific oysters should be undertaken on a case-by-case basis within the context of the receiving environment; and information on the presence/distribution of the species and mitigation measures proposed such as the use of triploid/sterile spat.
366. The Panel accepts the section 42A report recommendation to include a new matter of control to Rule 16.4.5 for a change of species, which would enable consideration of the biosecurity risk of allowing the farming of Pacific oysters within the context of the receiving environment.

Decision

367. The Panel accepts in part the End of Hearing Report recommendation to include a new matter of control for Rule 16.4.5, subject to amending the wording to be consistent with the Panel's determination in relation to the Biosecurity Act 1993 above, as follows:

<p><u>16.4.x.x Measures to control the movement of stock, structures and equipment relocated from another region to manage the risk of spreading harmful aquatic organisms.</u></p>

Management of Marine Farm Related Non-biodegradable Debris and Rubbish

368. A number of submitters sought the use of plastic and marine farming related rubbish is better managed through the provisions of the plan. Some sought the use of plastic be prohibited and/or that is mandatory to keep sites tidy and to require regular clean ups of the foreshore.
369. Ms Shelley King for KCSRA and CBRA highlighted the scale of the problem based on type and amount of rubbish collected and recorded during clean ups, and confirmation the source is both new and historical. She considered the problem is so vast that beach clean ups cannot address the issue given current industry practises are not up to standard. She considered education was not enough and requested regulation and enforcement to address the significant contribution of rubbish related to the marine farming industry.
370. Mr Adrian Harvey for KCSRA and CBRA presented photographs and evidence of plastic and rope debris collected during community clean-ups. He estimated three quarters of the material collected related to the marine farming industry and noted concern regarding lack of Council response to complaints lodged.
371. Mr Dawson sought the discharge of nonorganic rubbish from marine farms be prohibited to be consistent with Regulation 13 of the Resource Management (Marine Pollution) Regulation 1998.

Evaluation

372. The Panel agrees with the section 42A report writers that Regulation 13 of the Resource Management (Marine Pollution) Regulation 1998 do not apply to marine farms. However, the Panel agrees with submitters and the section 42A report writers that it is appropriate for marine farms to be operated to avoid, remedy and mitigate the effects of marine farming related rubbish and debris and that this is consistent with the NZCPS Policy 23(5) and Regulation 18 of the NES-MA. The Panel agrees with submitters that the loss of non-organic waste is preventable.

373. The Panel considers it is appropriate to specifically refer to non-biodegradable debris and litter in the policy in recognition that the deposition of organic material shell drop, other marine species (e.g., seaweed) during harvest and pseudofaeces beneath the marine farm is authorised by the consent.
374. The marine farming industry acknowledges that marine farm related debris and waste has not always been well managed and that recent efforts have been implemented across the industry to address this. The Panel agrees that it is appropriate for consent holders/operators to undertake regular inspections and clean ups of the adjacent foreshore to remove any marine farming related debris and litter such as plastic ties, ropes, mussel sacks, warp lines and buoys which may be lost and can accumulate over time on the foreshore. This is consistent with the approach taken by the marine farming industry and its ongoing development of industry best standards.
375. The Panel is encouraged by the evidence of Mr Wells and Ms Hopkins for the MFA/AQNZ outlining the environmental performance initiatives of the A+ programme and the 2016 ‘Top of the South Environment Strategy’ to minimise the impact of marine farming on the environment and the community; and on new methods and initiatives being developed and implemented to ensure marine farmers meet industry best practice. The Panel considers this should be referred to in the commentary of Policy 13.22.6.
376. The evidence suggests there is a significant amount of non-organic debris from the marine farming industry which has accumulated in parts of the CMA of the Marlborough Sounds. The Panel acknowledges that the ongoing adverse effects of this is not well understood. The Panel considers this should continue to be monitored by consent holders and reported to the Council over time. This issue may need to be addressed by the Council in the future if the marine farming industry’s initiatives are not effective.
377. In considering this matter, the Panel identified that Issue 130 and related Objective 13.22 deals with two important issues which would be better separated into two new objectives addressing the cumulative effects of marine farming and the management of adverse effects from the operation of individual marine farms separately.

Decision

378. The Panel determines to amend Objective 13.22 as follows:

Objective 13.232 - Marine Farms are operated sustainably, kept in good order, and ~~individual and cumulative~~ adverse effects of the farm operations are addressed avoided, remedied or mitigated.

Once marine farms have been established, it is important that they are operated sustainably and kept in good order so that the adverse effects on other users or values of the coastal environment are avoided, remedied or mitigated—~~minimised~~. The achievement of this objective will be reliant on how well marine farmers operate on a daily basis.

379. In line with this approach, the Panel accepts in part the section 42A report recommendation and determines to amend the wording of Policy 13.22.6 and renumber the policy as follows:

Policy 13.232.26 – For the duration of any coastal permit issued for a marine farm, consent holders and/or operators of the marine farm shall: ~~Marine farm owners/occupiers shall monitor for and collect marine farming related debris and litter from their marine farming operation. Marine farm owners/occupiers will also be encouraged to monitor and collect marine farming debris and litter from the adjoining shoreline and surrounding coastal marine area and dispose of it at an appropriate facility for the duration of any coastal permit issued for a marine farm.~~

- (a) avoid the loss of marine farming related non-biodegradable debris and litter, and any associated adverse effects, from their marine farming operation;**
- (b) regularly monitor and collect marine farming related non-biodegradable debris and litter from the adjacent shoreline and surrounding coastal marine area; and**
- (c) dispose of marine farming related non-biodegradable debris and litter at an appropriate facility.**

Buoys, culture ropes, warp lines, mussel sacks, cable ties and maintenance equipment can become dislodged from marine farm structures through continued or strong wave action, or lost during harvesting activities. Depending on the particular location of bays and the intensity of marine farming in the area, the level of litter will vary. The amount of this litter and other rubbish washing up on shores and accumulating on beaches has been a concern to communities within the Marlborough Sounds. Non-biodegradable ~~litter~~ and marine farm debris also poses a threat to seabirds, marine mammals and other marine life.

This policy recognises that marine farming involves the release of organic matter such as shell, seaweed and pseudofaeces. As a result, the policy applies to non-biodegradable marine farm debris and litter.

Maintenance and management of marine farm structures is required through consent conditions to ensure that no non-biodegradable matter is deposited from the farm into the coastal marine area. However, in conjunction with consent conditions, the policy encourages requires marine farmers to monitor and collect non-biodegradable marine farming debris and litter from the shoreline in the vicinity of their farm for marine farm debris and other litter, and dispose of the collected debris and litter at an appropriate facility.

The marine farming industry has developed industry standards to address marine farming debris and litter. The Council supports the industry in the ongoing implementation of these standards.

380. The Panel accepts the section 42A report recommendation to include similar wording which is consistent with this policy as a matter over which the Council has reserved control for the relevant controlled activity and restricted activity rules, as follows:

Maintaining the marine farm in good order to avoid the adverse effects of marine farming

related debris and litter their marine farming operation, including regular monitoring and removal of rubbish.

381. The Panel determines to insert a new Method 13.M.42 related to industry standards to address non-biodegradable debris and litter from marine farming operations as follows:

13.M.42 Industry standards

Support the ongoing development, implementation and review of industry standards that address non-biodegradable debris and litter from marine farming operations.

Cumulative Effects

382. Concerns have been raised regarding the cumulative effects of marine farming activities in the enclosed waters of the Marlborough Sounds. Some submissions consider the current level of marine farming activity is ecologically and socially unsustainable.
383. Some submitters, including the CBRA, the KCSRA, the Guardians of the Sounds and FNHTB raised specific concerns regarding the cumulative effects of the existing level of marine farming and the pattern of development in Beatrix Bay, Clova Bay and Crail Bay. Concerns were expressed that the carrying capacity of the environment has already been exceeded in some of these areas.
384. In evidence, Ms Bev Doole for the Marlborough Environment Centre questioned whether the current level of marine farming and bays ringed by marine farms were acceptable. She considered more than merely a pause on more marine farming was needed given some areas were already over carrying capacity. Ms Doole strongly supported investigation of land-based aquaculture to address cumulative effects.
385. In evidence, Mr Wynne-Jones for FNHTB noted there is a presumption that cumulative effects have been taken into account in consenting the existing marine farms when in fact there is a lack of knowledge and significant uncertainty in this regard. He highlighted the lack of cumulative effect assessment on landscape and natural character values and the incorrect assumption in the assessment undertaken for Variation 1 that the existing farms are permanent part of the existing environment. He considered the appropriateness of the existing farms within landscape settings requires integrated public input. He highlighted the public plays a fundamental role in the sustainable management of the CMA and that some of the existing marine farm sites have never been open to public scrutiny or accountability.

386. In evidence, Mr Wynne-Jones highlighted the DOC's Guideline for Ecological Investigations of Proposed Marine Farm Areas³³ suggests the responsibility to address cumulative effects is with the industry as a whole and not necessarily with individual applicants. He noted this collective responsibility has never come to fruition and a case by case (*ad hoc*) application process has been maintained ever since. He highlighted the accelerated growth of aquaculture since 2004 and the static yields in the total production of mussels nationwide despite significant increases in the area marine farmed (2,600 ha in 2006 – 5,500 ha in 2019). He considered the *ad hoc* approach had created a significant degree of uncertainty about the cumulative effect of aquaculture and that Variation 1 did not acknowledge this uncertainty.
387. In evidence, Mr Neil McLennan sought a reduction of marine farming by 40% and highlighted studies on cumulative effects and the need to take a precautionary approach.
388. Mr Offen provided evidence for the CBRA, KCSRA and Guardians of the Sounds on the potential cumulative adverse effects of marine farming in the "Beatrix Complex" (Beatrix Bay, Clova Bay, Crail Bay and Kauauroa Bay). Mr Offen presented the Aquaculture Stewardship Council Bivalve Standard version 1.1 March 2019 ('ASC standard') for pelagic effects and highlighted each of the model inputs, these being harvest mussel filtration rate, mussels per hectare, water depth and tidal movement. Those inputs were used to model the cumulative effect of the AMAs as notified in the variation and then the cumulative effect of alternative spatial layouts proposed by CBRA, KCSRA and Guardians of the Sounds. The results of applying the model were presented as heat maps, including a criticality rating for each bay. In his opinion, the results of applying the ASC standard demonstrated that there were unsustainable levels of marine farming proposed by the variation, which were significantly reduced by applying the principles promoted in his evidence.
389. The Panel heard evidence from Dr Shaw Mead for the CBRA and the KCSRA regarding the lack of water quality monitoring and adverse cumulative effects in Clova Bay from the existing marine farms.
390. Dr Michael Steven for the CBRA and the KCSRA provided a natural character assessment for Clova Bay and concluded the adverse cumulative effects on natural character, landscape and amenity are significant and unacceptable. He considered the existing spat farms were inappropriate and all marine farms should be located within the 100-300 m ribbon band to reduce adverse effects.

³³ Davidson R.J (1992) 'Guidelines for ecological investigations of proposed marine farm areas.' Department of Conservation. Occasional Publication No. 25

391. The joint evidence of Dr Brown and Dr Teresa Konlechner for MFA/AQNZ *et al.*³⁴ summarised the ecological features of Clova Bay, information available on environmental effects and assessed the effects of marine farms relative to the effects of other human activities³⁵. They highlighted the considerable changes in the terrestrial and aquatic environment in Clova Bay from human activities and land use, including sedimentation from forestry and roading, and seabed effects from trawling and dredging. They concluded the magnitude and extent of ecological effects from marine farming are substantially less than the ecological effects of other activities.
392. The marine farming industry considers the ecological effects of aquaculture are documented³⁶ and the ecological impacts of individual mussel farms reasonably well understood.³⁷ However, it is acknowledged marine farming may have cumulative effects on ecological values including on phytoplankton and zooplankton, benthic flora and fauna, marine mammals, fish, seabirds, biosecurity and hydrodynamics (water flows); and cumulative effects on cultural, recreational, landscape, natural character and amenity values.
393. The evidence of Dr Simon Childerhouse and Dr Deanna Clement for MFA/AQNZ outlined the known effects of marine farming on marine mammals and considered there is sufficient information to conclude the existing aquaculture industry in Marlborough is having little effect on marine mammals.
394. Dr Mike Bell outlined the king shag research undertaken in relation to breeding and non-breeding population counts, diet, foraging and interactions with marine farming activity. He noted the need for generational studies over 12-20 years to understand population trends given the small number of young juveniles coming through and being relatively late to commence breeding (4-5 years old). He considered climate change was the biggest threat given they are a cold water species at the edge of their range. He also noted concern regarding disturbance of breeding colonies and the need to ensure sufficient separation distances are maintained and education is carried out to avoid disturbance.
395. It is acknowledged that cumulative effects on the seabed (benthic) and water column may be expressed spatially at a bay or reach location or at a larger scale; and that the degree of change at a larger scale is difficult to determine given the lack of baseline information pre-mussel farming. Cumulative effects at a bay-wide scale can be assessed and monitored over

³⁴ Wākatu Incorporation and Kono NZ LP, Clearwater mussels Limited, Talley's Group Limited and David Hogg.

³⁵ Wildlands Consultants (2021) 'Assessment of Ecological Effects of Human Activities on the Marine Environment in Clova Bay'. Contract Report No. 6059.

³⁶ Ministry of Primary Industries (2013) 'Overview of Ecological Effects of Aquaculture'

³⁷ Keeley N., Forrest B., Hopkins G., Gillespie P., Knight B., Webb S., Clement D., Gardner J. (2009) 'Sustainable Aquaculture in New Zealand: Review of the Ecological Effects of Farming Shellfish and other Non-fish Species' Cawthron Report No. 1476

time, and increased marine farming from the status quo can conceivably be assessed and monitored.

396. Further advice from Cawthron³⁸ provided with the Council's Reply Evidence considered cumulative environmental effects of multiple farms (spatial cumulative effects), increases over time (temporal cumulative effects), effects from other activities (including those contributing to climate change) and mitigation of the effects of other activities. It noted that mussel farming can cause localised enrichment (caused by mussel faeces and pseudofaeces) under mussel farms but that wider cumulative seabed effects were unlikely to occur. It highlighted mussel farming is extractive and results in the removal of organic matter from the marine system after harvest. It advised that if spatial cumulative effects were to occur, this could be monitored by the careful placement of sampling stations between mussel farm blocks and repeat sampling at five yearly intervals at the monitoring site and reference (control) stations to capture long-term changes. It noted the long-term change may take some time to be identified given natural Variation, but that given most marine farms have been established for many years conditions were expected to be relatively stable. It noted the importance of considering the effect of other stressors such as fisheries activity, sediment input from land and finfish farming and the need to consider such stressors in the establishment of reference sites.
397. The evidence of Dr Stephen Brown for MFA/AQNZ outlined relevant studies and noted that the benthic effects of mussel farms are well known and are localised. He considered cumulative far field effects are likely to be of a very low magnitude and virtually undetectable beyond 40 m from the site. The evidence of Dr David Taylor for MFA/AQNZ concurred with Dr Brown's conclusions and noted the importance of considering the temporal context of the benthic changes with the wider environment and the role of other significant environmental stressors.
398. The seabed effects of some existing mussel farms have been monitored over time by undertaking periodic visual assessments of seabed health for consent purposes. Such visual assessments may indicate disturbance and deposition effects associated with shell drop and changes to epifaunal communities but are unlikely to detect subtle enrichment changes. For these reasons, Cawthron recommend visual assessments and enrichment indicators should be used together.

³⁸ Letter to MDC dated 25 January 2022 from Emma Newcombe and David Taylor, Cawthron Institute.

399. The proposed plan provisions included use of Enrichment Stages (**ES**) as a metric for the degree of enrichment and a number of chemical and biological indicators with associated limits and triggers. This was on the advice of the MARWG relying on the recommendations of the TAG.
400. Some submitters suggested use of sulphides as a coarse indicator of enrichment.
401. Cawthron highlighted the difficulties and limitations of the ES methodology and indicators, and the need for flexibility to adopt emerging indicators and technologies. It noted the following key points:
- (a) There have been few assessments of enrichment under mussel farms in the Marlborough Sounds, which is distinct from available studies on shell drop and epifaunal changes;
 - (b) Future studies focused on measures of enrichment in sediments within and between farms would provide a more robust basis for setting parameter trigger levels and that this would be consistent with approach of ANZECC guidance³⁹;
 - (c) Cumulative effects of mussel farms on the water column were considered in Newcombe and Broekhuizen (2020)⁴⁰ based on available water quality data and no evidence was found for a large-scale effect on phytoplankton communities (principally measured using chlorophyll-*a* as a proxy);
 - (d) There is insufficient zooplankton information available to understanding mussel farming effects;
 - (e) An integrated field and modelling programme would be required to address cumulative effects, but that there would be a high degree of uncertainty due to multiple pathways of potential effects and potential mid-field changes in phytoplankton;
 - (f) There are limitations to using chlorophyll-*a* as a proxy for zooplankton and there is currently no feasible cost-effective method to monitor zooplankton on a scale larger than a single farm; and
 - (g) The Council's current State of the Environment water column monitoring is of limited value in understanding cumulative effects and the recommended best option is to improve data collection (including consideration of appropriate monitoring sites) to improve depletion monitoring.

³⁹ Australian and New Zealand guidelines for freshwater and marine water quality

⁴⁰ Newcombe E. and Broekhuizen N. (2020). 'Measuring mussel farming effects on plankton in the Marlborough Sounds'. Prepared for Marlborough District Council. Cawthron Report No. 3550.

402. Drawing on the advice received from the TAG, Cawthron provided comment on use of the ASC standard as a tool for understanding cumulative water column effects of marine farming. Cawthron highlighted the TAG concluded that a robust application of the Pelagic Effects Criterion (the relationship between clearance and retention times) is a useful indicator for use as a trigger for further investigation. Cawthron noted the TAG acknowledged that the pelagic effects calculation is dependent on input parameters, with the model's results being sensitive to key parameters including mussel filtration rates, mussel numbers and clearance rates; and that use of the most appropriate parameters could be fine-tuned with further work. Cawthron considered that while mussel farming intensity at some sites may exceed thresholds for pelagic effects (dependent on the parameters used), this effect has not been apparent in available field data; and studies had found no relationship between yield and farming activity (seeding rates) or the extent of mussel farming and chlorophyll-*a* concentrations.
403. The evidence of Dr Neil Hartstein for MFA/AQNZ highlighted a small decrease in phytoplankton concentrations over the last 40 years but noted here was no evidence linking this decrease to marine farming. He concurred with the conclusions of Newcombe and Broekhuizen (2020) and the difficulties in assessing cumulative effects given the likely scale of effects from marine farming. He noted Giles (2021) acknowledged the significantly altered state of phytoplankton abundance from pre-agriculture times and the significance of other human impacts and stressors. He cited other water column carrying capacity modelling exercises which indicate localised adverse effects from mussel farming and that there is not significant uncertainty regarding inshore mussel farming effects. In response to questions, he considered it was appropriate to undertake bay wide phytoplankton monitoring using chlorophyll-*a* concentrations and highlighted this can now be undertaken using satellite images. He agreed there was sufficient information to design and implement water quality monitoring.
404. Mr Ironside for KCSRA highlighted the importance of monitoring cumulative effects and the need to implement water quality monitoring through the plan provisions. In the absence of a bespoke tool, he considered the ASC standard provided a good starting point for monitoring cumulative water quality effects and could be implemented in conjunction with benthic monitoring.

Evaluation

405. The intention of Variation 1 is to restrict any increase in the coastal space occupied or the intensification of the current level of marine farming in the enclosed waters of the Marlborough Sounds until sufficient information is available to understand the cumulative

adverse environmental effects and demonstrate that the current level of marine farming activity is environmentally sustainable. This is achieved by Rule 16.7.9 which prohibits marine farming within the Enclosed Waters CMUs or the Near-shore CMU outside of AMAs.

406. The Panel has considered the submissions and further submissions supporting and opposing Rule 16.7.9 and finds the prohibited activity rule, as notified, achieves the intention of the Variation.
407. The Panel is cognisant of the complexities and difficulties faced in monitoring cumulative effects and determining cause-effect links in the face of multiple stressors, natural variability and climate change.
408. The Panel accepts the evidence of Dr Childerhouse and Dr Clement regarding the known effects of marine farming on marine mammals and his view that there is sufficient evidence to suggest there is little effect on marine mammals. The Panel notes the absence of any evidence or information to the contrary.
409. The Panel acknowledges the current research being undertaken into the effects of marine farming on king shag feeding and to understand population trends. The Panel acknowledges the uncertainty in this regard and the requirement to avoid adverse cumulative effects on this important species and its habitat.
410. The Panel considers there is too much uncertainty to imbed the proposed ES methodology and limits into the plan provisions at this time. The Panel is mindful that the development of the ES methodology and use of adaptive management in the Marlborough Sounds has primarily been focused on monitoring the enrichment effects of finfish farming and site-specific information gathered for this purpose. This is supported by the evidence of Dr Brown and Dr Peter Wilson for MFA/AQNZ and the findings of the TAG. The Panel considers this methodology is not well suited to monitoring the effects of mussel farming.
411. The Panel acknowledges the recent development of the draft 'Best Practice guidelines for benthic and water quality monitoring of open ocean finfish culture in New Zealand' (MPI 2021). Cawthron highlighted some limitations regarding the behaviour of different parameters under mussel farms and the likely development of superior indicators over the next few years. The Panel acknowledges that scientific knowledge and monitoring best practise is rapidly and constantly evolving, and consider the plan framework must allow for the adoption of emerging methods and technologies.

412. The Panel acknowledges the difficulty in establishing baseline information given mussel farming has been occurring for many years and accept that in many areas the baseline information would be a record of conditions at the point Variation 1 came into effect. However, the limited opportunities for relocated marine farms to be established in new locations provides an opportunity for pre-mussel farming baseline information on sediment enrichment. This may provide an important opportunity to inform the marine farming industry and the community on the potential cumulative benthic effects of mussel farming on a bay wide basis. The Panel considers the need for benthic monitoring of mussel farming effects should be considered as part of the consent process for any new AMA or marine farm sites.
413. The Panel accepts the ASC standard is a useful tool to understand cumulative water column effects and as a starting point for indicating the need for further assessment. Further work on appropriate input parameters for various mussel farming scenarios would improve confidence in modelling results and use of the pelagic effects threshold as a trigger for further bay wide investigations. The Panel consider future cumulative water column effects monitoring will be undertaken over time and should focus on bays or CMUs with the most intensive marine farming activity and where community concerns have been raised including Port Underwood, Tawhitinui Reach, Squally Cove, Beatrix Bay, Admiralty Bay, Forsyth Bay Anakoha Bay, Crail Bay and Clova Bay. The Panel finds there is insufficient long-term data relating to water column effects to identify appropriate thresholds that will trigger management responses. The Panel anticipates adaptive management responses such as bay wide section 128 reviews of consents can be undertaken to address adverse water quality effects as information becomes available.
414. The Panel acknowledges the studies and research undertaken into the effects of mussel farming activity in Pelorus Sound on king shag and the ongoing collaborative work to better understand long-term population trends. The Panel acknowledges the importance of understanding water column effects in understanding the consequential cumulative effects on benthic fauna, fish, seabirds and marine mammals. The Panel considers current level of uncertainty and lack of information on cumulative effects supports the adoption of a precautionary approach of avoiding further intensification of marine farming within the enclosed waters of the Marlborough Sounds. This is consistent with the direction of Policy 3 of the NZCPS.
415. The Panel is satisfied that the provisions of Variation 1 will avoid any significant increase in the cumulative effects of marine farming within the enclosed water and until such time as these

effects are better understood. The Panel accepts there is currently no evidence to support the view that the current level of marine farming is having a significant adverse cumulative effect on the environment. The Panel finds this specifically addresses the Council’s obligation under Policy 7(2) of the NZCPS to identify values that are under threat or at significant risk from cumulative effects.

- 416. On the basis of the evidence and the best available information the Panel finds it is appropriate to add a new objective, and two new policies and associated methods relating to monitoring and assessing cumulative effects focussed on the water column and the relationship of Marlborough’s tangata whenua iwi with the moana sites of significance and their cultural values. It is intended that this information will inform a future policy approach.
- 417. The Panel finds the Council should focus on developing an integrated monitoring programme to understand the water column effects, including investigating methods to monitor zooplankton as well as phytoplankton to understanding the effects of mussel farming; and secondly, to implement an appropriate management response based on the results of water column monitoring.
- 418. The Panel considers the Council should work in partnership with Marlborough’s tangata whenua iwi to investigate and assess the cumulative effects of marine farming on their relationship with the coastal environment, significant sites and cultural values.

Decision

- 419. As outlined in our decision above in relation to marine farming related rubbish, the Panel determines it is appropriate to have a new separate objective to address the key issue of cumulative effects. The Panel determines to insert new Objective 13.22 as follows:

[RPS, C]

Objective 13.22 – To understand and address the cumulative effects of marine farming in the enclosed waters of the Marlborough Sounds.

Most marine farming activity is located and undertaken within the enclosed waters of the Marlborough Sounds. There is a level of community concern regarding the cumulative effects of marine farming on Marlborough’s marine ecosystem, especially within the enclosed waters of the Marlborough Sounds. There are two gaps in knowledge. Firstly, there is limited science and monitoring information on the water column effects of marine farming. Secondly, there is limited information on the effects of marine farming on the relationship of Marlborough’s tangata whenua iwi with the moana, sites of significance and their cultural values. This objective seeks to address both of these information gaps in order that informed decisions can be made in the future.

- 420. The Panel determines to insert new Policy 13.22.1 to direct the Council to monitor and assess the cumulative effects of marine farming on the water column as follows:

Policy 13.22.1 – Develop a state of the environment programme to monitor and assess the cumulative water column effects of marine farming in the enclosed waters of the Marlborough Sounds.

Filter feeding shellfish consume phytoplankton and zooplankton present in the water column and release dissolved nitrogen back into the water column. The extent to which this occurs and the ecological consequences on the marine ecosystem are not well understood. In part, this is because the dynamic nature of the marine environment makes it inherently difficult to quantify cumulative effects. The policy seeks to improve the community’s understanding of the cumulative water column effects of marine farming through the development and implementation of a specific environmental monitoring programme. The provision of data and information through the programme will, allow for an assessment of the cumulative ecological effects to be made in the future.

421. The Panel determines to insert new Policy 13.22.2 to direct the Council to identify and assess the cumulative effects of marine farming on the relationship of Marlborough’s tangata whenua iwi with the moana, sites of significance and their cultural values as follows:

Policy 13.22.2 – To develop a cultural monitoring programme in partnership with Marlborough’s tangata whenua iwi, to identify and assess the cumulative effects of marine farming on the relationship of Marlborough’s tangata whenua iwi with the moana, sites of significance and their cultural values.

The Council recognises the cultural significance of the moana to Marlborough’s tangata whenua iwi. A cultural monitoring program enables Marlborough’s tangata whenua iwi and the Council to understand the potential cumulative effects of marine farming on the mauri of the moana and the impact of this on the cultural values and special relationship Marlborough’s tangata whenua iwi have with the marine environment. The outcomes of this process may also contribute to or supplement other methods that explore the cumulative effects of marine farming on the marine ecosystem.

422. The Panel’s decision regarding cumulative effects and the provisions that sit under Issue 130 also require consequential additions to the explanation of Issue 130, inserted at the end of the explanation, to highlight cumulative effects as follows:

In the enclosed waters of the Marlborough Sounds there are multiple marine farms, which creates the potential for cumulative effects on the processes, values, and uses of Marlborough’s coastal environment. Individual marine farms may not have adverse effects on those matters but in combination with other farms may have an adverse effect.

423. The Panel’s decision regarding cumulative effects requires a consequential amendment to Policy 13.21.5 to delete clause (a) as follows:

~~(a) the monitoring and, if required, assessment required by Policy 13.22.1 demonstrates that the current area, type and intensity of marine farming in the CMU is appropriate and that additional marine farms can be provided for within the particular CMU, without more than minor adverse effects on the natural and human use values of the CMU or wider coastal environment;~~

424. The Panel's decision regarding cumulative effects requires a consequential amendment to Policy 13.21.5 to amend the commentary as follows:

To create a new additional AMA, a plan change or variation is required. This policy provides additional guidance on when a new AMA may be considered appropriate. This includes key considerations of the natural and human use values of the Marlborough Sounds and the potential for the new AMA (and the subsequent marine farming the AMA would enable) to adversely affect those values, and consideration of monitoring of cumulative adverse effects. ~~Many of these values are identified in the Values Report prepared in 2018 as part of the development of these provisions.~~

425. The Panel's decision regarding cumulative effects and rejection of an adaptive management response requires a consequential amendment to delete associated Policies 13.22.3 and 13.22.5.
426. The Panel determines to make consequential changes to the methods to achieve the objectives and policies of plan to address uncertainty regarding adverse cumulative effects of marine farming in the enclosed waters of the Marlborough Sounds as follows:

13.M.37 Monitoring programme

In collaboration with Marlborough's tangata whenua iwi, science providers and the community, the Council will develop and implement a state of the environment programme to monitor and assess the cumulative water column effects of marine farming in the enclosed waters of the Marlborough Sounds.

~~*The Council intends to continue and enhance current monitoring of the effects of marine farming and respond to developments in science and technology. The monitoring framework will include the measurement of total free sulfides as factors set out in Policy 13.22.1 to monitor benthic effects. Chlorophyll-a, particulate carbon, and particulate nitrogen will be measured in order to understand water column effects and the cumulative adverse effects of marine farming.*~~

In collaboration with Marlborough's tangata whenua iwi, the Council will develop and implement a monitoring programme to identify and assess the cumulative effects of marine farming on the relationship of Marlborough's tangata whenua iwi with the moana, sites of significance and their cultural values.

~~*The Council intends to develop a monitoring and adaptive management regime for water column effects, similar to that for benthic effects, once sufficient long term data is available to do so.*~~

~~*The Council intends to engage an independent review panel to assist the Council to identify appropriate monitoring sites and to review the results of monitoring.*~~

The Council will regularly report, at least every 5 years, to the public on the results of the monitoring programmes and any management changes that are required in response to that monitoring information.

[C]

13.M.38 Plan Review

~~*The Council will review the results of monitoring regularly. If monitoring undertaken in*~~

accordance with Method 13.M.37 shows that the cumulative effects of marine farming in any area are inappropriate or unsustainable, and these effects cannot be appropriately managed by reviewing the relevant resource consents or other methods provided for in this plan, the Council will review this plan to change the way in which marine farming is managed. ~~This may mean changing the management of marine farms or reducing or changing the layout of space allocated for marine farming and identified as aquaculture management areas.~~

Allocation of Space in the Coastal Marine Area

427. Policy 13.21.7 set out how authorisations would be used to allocate space within AMAs using a method referred to as ‘modified grand parented’ allocation.
428. MFA/AQ and others in the marine farming industry sought an alternative allocation framework.
429. Te Ātiawa, KSCRA and CBRA sought rejection of the ‘modified grand parented’ allocation and requested second term consents be allocated using a public tender process. A number of submissions outlined a range of amendments to Policy 13.21.7.
430. The section 42A report discussed matters relating to scope and natural justice issues, the legal requirements for considering allocation regimes, timing for the issue of authorisations, the need for an orderly transition and certainty. The s42A report recommended a number of amendments in response to submissions seeking amendments.
431. The evidence of Mr Richard Turner and Dr Philip Mitchell for MFA/AQ set out an alternative schedules based approach to support the final planning maps, and to provide marine farmers and other stakeholders with greater certainty as to how the allocation and authorisation of space in AMAs will be managed.
432. The End of Hearing Report responded to the evidence of Mr Turner and provided a comparative analysis of the authorisations method and the proposed alternative schedules method, as required by section 165H of the RMA. They noted the Panel must weigh up each method and select the most appropriate option for the circumstances of the region; and that the chosen option did not need to be ‘optimal’ but simply better than the other in the circumstances.
433. The section 42A report set out the key benefits of each method and set out their key conclusions in a summary table (Table 1). The report highlighted the need to provide certainty to marine farmers as to who can go where, to consider the risk of ‘gazumping’⁴¹ and the need to ensure a timely transition of existing marine farms from inappropriate areas. They outlined

⁴¹ In this context, the term ‘gazumping’ is used to refer to a situation where there is a risk that another party could apply for consent to occupy the new AMA space created for the relocation of existing marine farms from inappropriate areas.

a number of changes that would be needed to the provisions to adopt the proposed schedules method. The report concluded that a hybrid allocation method using schedules could maximise the benefits of the Variation 1 authorisation method; and set out the advantages and changes to the provisions required to implement a hybrid allocation method.

Evaluation

434. The Panel's approach to the creating discrete AMAs based on the existing consented area and total consented backbone length has greatly simplified the need for the allocation of space in the CMA by significantly reducing the creation of new AMA space. Those marine farms moving seaward and those not moving will not require any authorisation and only the consent holder currently occupying all or part of the AMAs will be able to apply for replacement consents. This can be achieved by using schedules to record the total loss of consented backbone length lost from inappropriate areas and where the consented backbone length will be relocated to, where this is known.
435. The Panel determines to take a hybrid allocation method of using schedules to the plan and a simplified authorisation process for those marine farms with no identified new AMAs for relocation. The schedules list marine farms where the relocation of backbone lines from one site to another has been identified through the hearing process and where they will be relocated to (Schedules 2 and 3).
436. The Panel considers the hybrid schedule and authorisation allocation method gives:
- (a) Certainty that marine farms that remain *in situ* can seek new replacement consents within the AMA created to accommodate the existing marine farm without needing to seek authorisation for the allocation of space;
 - (b) Certainty that marine farms that need to partially move backbone longlines seaward can seek new replacement consents within the AMA created to accommodate the existing marine farm without needing to seek authorisation for the allocation of space;
 - (c) Certainty that marine farms that need to relocate part or all of the marine farm from inappropriate areas can seek new replacement consents within the identified AMA created through the hearing process to accommodate the relocated marine farm without needing to seek authorisation for the allocation of space;
 - (d) Certainty that allocation of AMA space will be in accordance with the schedules which restricts allocation of the AMA space to identified existing marine farms and prevents gazumping;

- (e) Certainty for the Council as the regulatory authority as to where relocations will be from and to where; and
 - (f) Certainty to the community that no new CMA space will be allocated over the consented area and total length of backbone of existing marine farms within the enclosed waters of the Marlborough Sounds.
437. The Panel has had regard to the Council’s comparative analysis of the proposed and alternative methods suggested, which is required under section 165H(b)(ii) of the RMA and was attached to the End of Hearing Report.
438. The Panel has assessed the hybrid allocation method of using schedules and an authorisation process against the requirements of section 165H of the RMA and is satisfied it is the most appropriate allocation of space in the circumstances of the enclosed waters of the Marlborough Sounds. The Panel has had regard to its effectiveness compared to the other methods proposed by considering how it achieves the objections of Variation 1, fairness (avoiding gazumping) and the need for a timely and orderly transition to the new AMAs. The Panel has had regard to the method’s efficiency by having regard to the cost of administration, costs to consent holders, and the benefits of certainty.
439. There are consequential changes required to the Rules in 16.8 to reflect the hybrid approach to authorisations.
440. The Panel’s decision also addresses the relocation of existing marine farms where the Panel has not been able to fully assess the appropriateness of the proposed AMA. See paras 839 to 853 for further commentary. The farms in this category are identified in Appendix 4 of this decision. However, it is anticipated that authorisations would also be used in any future relocation process for the reasons set out above.

Decision

441. For the reasons outlined, the Panel determines to make amendments to Policy 13.21.7 as follows:

Policy 13.21.7 – Authorisation allocation methodology – for relocation of existing marine farms (or parts of marine farms) from inappropriate locations the Council will:~~AMAs~~

- ~~(a) the Council will allocate space for marine farming within the enclosed Waters CMUs and the Near shore CMUs (excluding the area within an ASA) by issuing authorisations for occupation of space only in AMAs.~~
- (a~~b~~) for space in AMAs identified in Schedule 2 or Schedule 3 of Appendix 29, created for relocation of existing marine farms from inappropriate locations as part of the notified vVariation 1 to the plan, other than FAMAs, authorisations**

for marine farming will be allocated using the methodology set out below. The Council will:

- (i) ~~Allocate authorisations to consent holders of Existing Marine Farms for the equivalent space within an AMAs to accommodate the for a similar consented area to accommodate the same, or less, same area and consented total backbone length or, in the case of intertidal oyster racks, the same area and length of racks, as that authorised in the existing consents; and,~~
 - (ii) ~~Allocate authorisations to Existing Marine Farms that are currently in locations within or partially within or adjacent to an AMA for the same or adjacent space in that AMA;~~
 - (iii) ~~Allocate authorisations for space within an AMA to Existing Marine Farms that are not within or partially within or adjacent to an AMA, within the same CMU, where that is available after providing for (i) and (ii) above; or~~
 - (iiiiv) ~~Allocate authorisations for space within an AMA to Existing Marine Farms that are not within or partially within or adjacent to an AMA, in a different CMU, where there is no space available in the same CMU as the existing marine farm;~~
- (be) ~~In the circumstances set out in (ab) (ii) to (iv) above, authorisations will be issued with conditions requiring the expiry or surrender of the Existing Marine Farm consents before any new marine farm consents can be exercised within 24 months of the new resource consents under the authorisations being exercised.~~
- (d) ~~the Council may allocate authorisations for marine farming in AMAs other than FAMAs, for new marine farms or the extension of Existing Marine Farms in AMAs only when:~~
- (i) ~~space previously used or allocated for an Existing Marine Farm becomes available because an authorisation for the space is not applied for, or granted or the authorisation expires before resource consent is applied for or the resource consent for an Existing Marine Farm lapses or expires and no new application for the existing space is made by the holders of Existing Marine Farm permits; or~~
 - (ii) ~~monitoring in accordance with Policy 13.22.1 shows that the current scale of marine farming in the CMU is not having a significant effect on the natural and human use values of the CMU and that additional marine farming activities can be undertaken within without creating a significant adverse effects on the natural and human use values of the CMU.~~
- (e) ~~In the circumstances set out in (d), the Council may allocate authorisations by:~~
- (i) ~~offering authorisations to holders of Existing Marine Farm permits for space adjacent to their Existing Marine Farm, or~~
 - (ii) ~~public tender.~~
- (f) ~~For space in AMAs created as part of a private plan change, the Council will allocate space for marine farming by authorisations to the applicant for the private plan change, if the plan change is approved. If that authorisation is not taken up or lapses, the Council will allocate space using a public tender method.~~

Authorisations are used to allocate space in the circumstance of providing replacement space for existing marine farms located in inappropriate locations. Only those holding an

authorisation can apply for a coastal permit in the AMA. The authorisations therefore restrict the ability of other marine farmers to make applications for resource consent, so that the existing marine farmer does not have to compete with other marine farmers for that replacement space.

There are two circumstances under which authorisations will be allocated:

- Relocation of lines from existing marine farms to AMA in same CMU
- Relocation of lines from existing marine farms to AMA in different CMU

This is a simplified model of authorisations than that notified in Variation 1.

Replacement space has been predetermined through Schedules 2 and 3 of Appendix 29 and the associated rules. In these circumstances, there is certainty where the existing lines will move to.

The marine farming industry was proactive in providing options for replacement and, where appropriate, the outcomes are recorded in Schedules 2 and Schedule 3 of Appendix 29.

Replacement space should only be available to those marine farmers having to relocate from inappropriate locations. If no authorisation is sought or no resource consent is applied for or granted, then that space should not be available for any other marine farmer given the uncertainty regarding the cumulative effects of marine farming.

The relocation process is expected to take a number of years as marine farmers transition from the current inappropriate location to the replacement AMA space.

If, after the implementation of the above direction, there remains AMAs that have not been allocated, Council will work with the Crown to assess whether the AMA can assist the Crown to meet its obligation under the Māori Commercial Aquaculture Claims Settlement Act 2004. The allocation methodology set out in this policy does not apply to the Settlement Act.

Policy 13.21.7 outlines how space will be allocated in the common marine and coastal area using a method referred to as 'modified grand parented' allocation. This policy sets out that authorisations will be offered first to existing marine farmers operating within AMAs, and the space allocated will reflect the existing use of space in the common marine and coastal area. Giving priority to existing marine farmers means they can apply for resource consent to continue to operate in the Sounds, without having to compete with new marine farmers for limited space.

By allocating space with a 'modified grand parented' method:

- Applications for new marine farms in AMAs can be avoided (because it is not possible for a marine farmer to apply for a resource consent without an authorisation), and
- Space in AMAs can be allocated in an orderly way, particularly where partial or full relocation of an existing farm is required.

442. The Panel has set out the changes to the controlled activity rules above in this decision. The relevant amendments made that relate to the Panel's determination on authorisations are to delete standard 16.4.3.1 from Rule 16.4.3; and to insert standard 16.4.3B.2 and standard 16.4.3C.2 to Rules 16.4.3B and Rule 16.4.3C, respectively.

443. The Panel determines to insert a sentence as the second to last sentence to Policy 13.20.2:

For example, authorisations are used as an alternative means of allocating space in the coastal marine area as part of the process of relocating marine farms from inappropriate locations. The use of authorisations means the existing marine farmer does not have to compete with

other marine farmers for the replacement space.

444. The Panel determines to amend Method 13.M.39 for authorisations for the relocation of existing marine farms from inappropriate areas as follows:

13.M.39 Implementation Plan to guide allocation and issuing of aAuthorisations for relocation

The Council will prepare an implementation guide that sets out the processes that will be used when offering authorisations, making decisions about the allocation of authorisations, and any conditions that authorisations will be subject to. The Council will prepare the implementation guide in consultation with iwi and industry and community stakeholders. Authorisations are required in order to make an application for resource consent to relocate a marine farm, or marine farm structures, from inappropriate locations. AMA have been created for the purposes of enabling relocation from inappropriate locations and the authorisation is specific to those identified AMA. The processing of applications for authorisations is guided by Policy 13.21.7 and is only applicable to those marine farms identified in Schedules 2 and 3 of Appendix 29. This method does not apply to ASA.

Offshore CMUs

445. FNHTB requested the creation of AMAs in the Offshore CMUs and prohibition of marine farming outside these areas. It considered the discretionary activity status is an inefficient method for such a large CMU and to give effect to Policies 7, 8, 11, 13 and 15 of the NZCPS, or allow for the management of cumulative effects.

Evaluation

446. The Panel considers it is appropriate to enable new marine farms to be established in the Offshore CMUs 38 and 38A as a discretionary activity and for each resource consent application to be considered on its merits. Any application made for resource consent as a discretionary activity allows for the potential for adverse effects on the matters raised in submissions to be considered. The Panel notes that there is also policy included within the Variation to guide this consideration, as well as other policies within the PMEP. The Panel is satisfied these objectives and policies give effect to the provisions of the NZCPS.

Decision

447. No changes are required.

Definitions

Definition of ‘Existing Marine Farm’

448. The End of Hearing Report highlighted a potential issue with the notified definition of ‘Existing Marine Farm’ due to a reference to those existing marine farms at the time of notification. The report recommended an amended definition based on the date of the release of this decision and inclusion of marine farms authorised under other sections of the RMA.

Evaluation

449. The Panel accepts that intention was to include all lawfully established existing marine farms at the date of this decision within the definition of ‘existing marine farm’. The Panel considers that no party is prejudiced by changing the definition to include those consented since the Variation was notified.

Decision

450. The Panel accepts the End of Hearing Report recommendation, with a minor wording change to clause (c), to amend the definition of ‘Existing Marine Farm’ to read as follows:

Existing Marine Farm	<p>means a marine farm existing at the time of notification of Variation 1 and 1A on 2 December 2020</p> <p><u>means a marine farm that as of 19 May 2023:</u></p> <p>(a) <u>Has a deemed coastal permit under section 10, 20, 20A, or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004;</u></p> <p>(b) <u>Has a coastal permit to occupy space in the common marine and coastal area for aquaculture activities, granted after the commencement of Part 7A of the RMA; or</u></p> <p>(c) <u>Is authorised under s165ZH of the RMA.</u></p>
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Definition of ‘Marine Farm’

451. Submissions sought to amend the definition to remove the words ‘single contiguous’ and ‘single contiguous spatial area’ and to add text in regarding exceptions.

452. The section 42A report recommended retaining the definition as notified.

Evaluation

453. The Panel accepts in part the Council’s recommendation to retain the definition for ‘Marine Farm’ but consider the use of the words ‘single contiguous’ are unnecessary and that deletion of these words will improve clarity.

454. Changes are also made to the definition of marine farm to exclude finfish farming.

Decision

455. The Panel determines to amend the definition of 'marine farm' as follows:

Marine Farm	means a single contiguous spatial area used for aquaculture activities (as defined in section 2 RMA), <u>excluding rearing or ongrowing of finfish</u> , that has or requires a coastal permit for the occupation of the coastal marine area and which may also have or require coastal permits that authorise one or more of the following activities: the erection, placement, and use of any structures for aquaculture; and any associated disturbance of the foreshore and seabed, and ancillary deposition or discharges in the coastal marine area. Marine farming has the related meaning.
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Definition of 'Equivalent Space'

456. A number of submissions sought clarification of the term 'equivalent space' and requested a definition be included in the plan. The Panel heard evidence that the definition should include reference to a range of factors including rainfall, water depth, productivity, utility (spat catching/holding), speed of mussel growth, condition of mussels and the efficacy of farming that space.

457. The section 42A report considered including reference to sufficient size to accommodate the same length of backbone and to accommodate adequate spacing between backbone had some merit given the intention of the relocations, but not concepts such as productivity and 'farmability'. The section 42A recommended adding a new definition of 'equivalent space' as follows:

'Equivalent space means an area able to accommodate the same area and total longline length or in the case of intertidal oyster racks be able to accommodate the same area and length of racks, as that authorised in the existing consents that new consents are replacing.'

Evaluation

458. The Panel considers the intention of the use of 'equivalent space' in terms of the purpose of Variation 1 is similar space to the total area currently consented to be occupied to accommodate the total consented length of backbone. The Panel has undertaken an analysis of the Variation 1 provisions and has considered the context of each use of the term 'equivalent space' in the decision version to ensure the intention is clear. Where the term

'equivalent space' was used in the notified Variation, the Panel has reworded the provisions to make it clear that it is the intention the new AMA space is for a similar consented total area occupied to accommodate the total consented length of backbones (see Policy 13.21.1(f), Policy 13.21.7(b)(i) and matters over which the Council has reserved discretion 16.4.3A.5 and 16.4.5.3). This acknowledges that in some cases, where the water depths are greater, a small increase in consented area may be required to accommodate the consented total length of backbone. The Panel considers this is consistent with the principles applied by the MARWG and the aspirations of the community to avoid any significant increases in the amount of common marine and coastal area space occupied by existing marine farms. The Panel considers including further consideration of other factors suggested by submitters such as mussel condition, productivity and utility would add unnecessary complexity and would be extremely difficult to measure given seasonal and climatic variations.

Decision

459. For the reasons outlined, the Panel rejects the section 42A report recommendation to add a new definition for 'equivalent space'. No changes are required.

New definition for 'Backbone' and 'Length of backbone'

460. Submitters requested inclusion of a definition for 'backbone' and 'length of backbone'.

461. The Council considered that inclusion of a definition for these terms would be useful and would improve clarity for plan users.

462. The Council recommended inserting the following definitions to Chapter 25, as requested by submitters:

'Backbone means either a single or double line supported by floats which runs at the surface of water or sub-surfaced and from which growing structures are suspended. Typically the ends of the backbone are marked by orange floats.'

Length of Backbone means the distance between the furthest floats measured in metres. In the case of intertidal oyster racks, length of backbone means the length of the racks.'

Evaluation

463. The Panel considers that including a definition for 'backbone' and 'length of backbone' will assist plan users. The Panel does not consider it is necessary to include that the ends of backbones are typically marked by orange floats. The Panel considers it is clearer to state that

the backbone does not include warp ropes and anchors. The Panel considers it is not appropriate to include reference to oyster racks in the definition of 'length of backbone' given oyster racks are not included in the definition of 'backbone'.

Decision

464. The Panel determines to insert the following new definitions as follows:

Backbone	<u>means either a single or double line supported by floats which runs at the surface of water or sub-surface and from which growing structures are suspended. The backbone does not include warps and anchors.</u>
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Length of backbone	<u>means the distance between the furthest floats measured in metres.</u>
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465. The Panel determines to make consequential changes to the standard 16.4.3.2 and standard 16.4.5.2 to insert 'length of' before backbone to be consistent with the new definition.

Clause 16 changes for application of Variation 1 provisions

466. When the PMEP was publicly notified on 9 June 2022 it did not contain provisions managing marine farming. To make this clear to Plan users, notes to this effect were included in the PMEP, as follows:

In Volume 1, Chapter 1

At this time, the PMEP does not include the provisions relating to marine farming, which are still subject to review.

At the start of Volume 1, Chapter 13:

This chapter does not contain provisions managing marine farming.

At the start of Volume 2, Chapter 16:

This chapter does not contain provisions controlling marine farming. Marine farming remains controlled by rules in the Marlborough Sounds Resource Management Plan and Wairau/Awatere Resource Management Plan.

Evaluation

467. With the notification of the decision on Variation 1, the Variation reaches the same procedural stage as the other PMEP provisions and the Variation provisions therefore merge with the PMEP in accordance with Clause 16B of the First Schedule. As such, the notes currently included in the PMEP are no longer accurate or necessary, and should be removed using Clause 16 of the First Schedule.

468. The Panel has recommended to the Council that it withdraw Variation 1A (see separate document). Should the Council withdraw Variation 1A, the now merged marine farming provisions would not manage finfish farming. This needs to be abundantly clear to Plan users. This can be achieved through the insertion of an appropriate note and a change to the definition of “Marine Farm” contained in this decision through the use of Clause 16.

Recommendation

469. That Council use Clause 16 to remove notes from the existing provisions of the PMEP, as follows:

Volume 1, Chapter 1

~~At this time, the PMEP does not include the provisions relating to marine farming, which are still subject to review.~~

At the start of Volume 1, Chapter 13:

~~This chapter does not contain provisions managing marine farming.~~

At the start of Volume 2, Chapter 16:

~~This chapter does not contain provisions controlling marine farming. Marine farming remains controlled by rules in the Marlborough Sounds Resource Management Plan and Wairau/Awatere Resource Management Plan.~~

470. Should the Council determine to withdraw Variation 1A, the Panel recommends that the Council use Clause 16 to include the following notes:

At the end of the Marine Farming for Volume 1, Chapter 13

Note that the following provisions for marine farming do not contain provisions managing the rearing or ongrowing of finfish. Finfish rearing and ongrowing remains regulated by rules in the Marlborough Sounds Resource Management Plan and Wairau/Awatere Resource Management Plan and/or the Resource Management (National Environmental Standards for Marine Aquaculture) Regulations 2020.

471. A change has also been made to the definition of marine farming to exclude finfish farming. See Para 455 for further details.
472. For the avoidance of doubt, the insertions detailed above are included in the appended provisions.

Decisions on Specific AMAs

MF 8040 Admiralty Bay

473. No AMA was provided for existing marine farm MF 8040 located to the north of Karaka/Hamilton Island in Admiralty Bay on the basis it was located in an inappropriate area due to adverse effects on the natural character and landscape values of Karaka/Hamilton Island scenic reserve.
474. Mr Vincent Smith submitted requesting provision of an AMA for this existing marine site and gave evidence at the hearing questioning whether there was any 'real evidence' to support the relocation of his marine farm. He noted there were no studies into the effects or benefits of the proposed relocation of his farm or MF 8041, where it is proposed to be relocated to. He considered the relocated farm would be 'double parked' beside MF 8041 and was in a location where a proposed marine farm was previously refused.
475. The section 42A report relied on the expert evidence of Mr Bentley⁴² that the island, which is a scenic reserve, holds very high levels of natural character due to its lack of human based modification and its shoreline. Mr Bentley considered MF 8040 dominated the island due to its size in comparison to the island, its location immediately north of the island and its geometric (unnatural) pattern. He considered the proposed relocation of this marine farm to adjacent MF 8041 would physically and visually connect the marine farms and be consistent with the existing ribbon pattern, which would improve natural character and landscape effects.
476. Following the adjournment of the hearing, Mr Bentley undertook a site visit to consider the evidence of Mr Smith. In his reply evidence, he confirmed his view remained unchanged and that site MF 8040 was inappropriate from a landscape and natural character perspective.
477. The section 42A report considered the navigation safety effects and provided evidence from Mr Grogan⁴³ that considered no additional navigation safety risk would arise if MF8040 is relocated to the seaward side of MF 8041.
478. In the End of Hearing Report recommended no AMA be provided for MF 8040, as notified.

Evaluation

479. The Panel accepts the evidence of Mr Bentley that the size, location and orientation of the existing marine farm is adversely affecting the natural character and landscape values of

⁴² Memorandum dated 6 October 2021, attached to the Section 42A Report Vol 4 Spatial.

⁴³ Memorandum dated 7 October 2021, attached to the Section 42A Report Vol 4 Spatial.

Karaka/Hamilton Island scenic reserve. The Panel finds the location of MF 8040 is inappropriate to give effect to Policies 13 and 15 of the NZCPS, which require the avoidance of adverse effects on significant natural character and landscape values. The Panel agrees that MF 8040 intrudes into the bay and is outside the existing ribbon pattern of development; and that adverse effects on the high natural character landscape and scenic values of the only island in Admiralty Bay, must be avoided.

480. The Panel acknowledges Admiralty Bay is subject to a Marine Mammal Distribution overlay due to its significance as a Dusky dolphin habitat and that the MARWG considered that the effect of mass shifting of marine farms was unknown. The Minister of Conservation submitted opposing any increase in potential cumulative effects on the habitat of the Dusky dolphin. For these reasons, the Panel agree that there should not be any intensification or new marine farms located in Admiralty Bay.
481. The Panel notes the large number of historic applications in the bay for extensions to existing marine farms and for new sites located in the middle of the bay that have been refused or closed. The Panel acknowledges the reasons for not granting are varied, but include concerns regarding cumulative effects, inconsistency with the existing ribbon pattern and landscape effects.
482. The Panel considers the relocation of MF 8040 to the east, adjoining MF 8041, is consistent with the ribbon pattern of existing marine farms and is in alignment with the seaward boundary of existing site MF 8042. An extension to the AMA for MF 8041 is provided only to accommodate the relocation of MF 8040 and therefore there is no intensification of marine farming within Admiralty Bay. This is achieved by use of the plan's schedules and rules, where only the consent holder for MF 8040 will be able to be issued authorisation to apply for resource consent for marine farming within the new AMA space identified. The Panel anticipates that this new AMA space would be removed by a plan change if after the three year timeframe for relocations under the rule has passed and no authorisation to make an application has been sought.
483. The Panel notes the concerns of Mr Smith regarding 'double parking' of farms and that this site had been refused consent before but considers this is likely to have been primarily due to concerns regarding expansions and cumulative effects given the evidence of Mr Bentley and Mr Grogan and general localised pattern of the existing farms.

Decision

484. The Panel rejects the submission and accepts the section 42A Report recommendation to not provide an AMA for MF 8040.
485. The Panel accepts the section 42A Report recommendation to provide an AMA adjoining MF 8041 for the relocation of MF 8040.

MF 8161 Anakoha Bay

486. No AMA was provided for existing marine farm MF 8161, which is located close to shore with longlines oriented outside of the pattern of the existing farms.
487. KPF Investments Limited submitted requesting provision of an AMA for MF 8161 to reflect the consented area as the preferred option and outlined a number of options to incorporate the site into the existing marine farms MF 8162 and MF 8163 to the north of the site.
488. The section 42A Report noted that a seaward shift was not feasible due to other existing marine farms but agreed that incorporation of the longline backbones to the adjacent marine farms to the north was a good solution.
489. The Panel heard evidence from Mr Robert Nicolle for KPF Investments Limited et al.⁴⁴ regarding the importance of this site as a key spat holding and nursery site. Mr Nicolle relied on the evidence of Dr Andrew Jeffs that not all water space was equal in terms of spat holding and growing potential. He noted this site was one of only two dedicated spat holding sites operated by United Fisheries and that it was essential to the marine farming operation. He proposed an alternative new AMA on the inside of MF 8162 (Sanford site) as shown in his Appendix RBN3 and noted this was supported in the section 42A Report.
490. The End of Hearing Report responded to Mr Nicolle's evidence raising concern that there may be issues with providing space for the relocation over an existing consented area and that the configuration did not maintain the existing 50 m gap between marine farms. The Report writer recommended consideration of an AMA for the existing site with a seaward shift and reorientation of the longlines but acknowledged there may be a scope issue with this option. The Report recommended accepting the configuration for MF 8162 shown in HP-Draft-097 purple lines which incorporates MF 8161 to inside of MF 8162.

Evaluation

491. The Panel acknowledges the evidence of Mr Nicolle and Dr Jeffs in relation to the importance of this site for spat catching and growing. However, this benefit to the industry does not

⁴⁴ United Fisheries Limited, and AJ King Family Trust and SA King Family Trust

outweigh the environmental benefits of moving this site offshore and reconfiguration to be more consistent with the existing pattern of marine farms.

492. The alternative option put forward by Mr Nicolle in his Appendix RBN3 is consistent with the configuration which incorporates MF 8161 to inside of MF 8162 shown on in HP-Draft 097, except that it has purple lines indicating the individual marine farms. The Panel considers individual AMA for the marine farms (as shown by the purple lines) is appropriate given an extension to the AMA is only to accommodation MF 8161. This approach also maintains some of the gap between marine farms MF 8162 and MF 8163.
493. The Panel finds the proposed new AMA inside the AMA provided for MF 8162, as shown on map HP-Draft-097 purple lines is appropriate for the relocation of MF 8161. This extension to AMA MF 8161 is provided only to accommodate the relocation of MF 8161 and therefore there is no intensification of marine farming in Anakoha Bay. This is achieved by the Variation's schedules and rules, where only the consent holder for MF 8161 will be able to be issued authorisation for the new AMA space identified. The Panel anticipates that this new AMA space would be removed by a plan change if after the three year timeframe for relocations has passed and no authorisation to make an application has been issued.

Decision

494. The Panel rejects the submission and accepts the section 42A Report recommendation to not provide an AMA for MF 8161.

MF 8258 and MF 8259 Beatrix Bay

495. No AMAs were provided for existing marine farms MF 8258 and MF 8259 due to adverse effects on significant benthic values located close to shore including a reef structure and an identified area colonised by Chaetopteridae tubeworms and other important benthic species.
496. Sanford Limited's submission requested provision of AMAs for these marine farms, as shown in map HP-Draft 077 yellow.
497. The s42A report stated the recommendation to not provide an AMA for these sites was based on the recommendation of the MARWG and application of the principles, including being located over tubeworm habitat and not within the 100-300 m ribbon development pattern. The report highlighted the close proximity of ESMS 3.24 which protects a large reef structure and a large inshore area of tubeworms that provides biogenic habitat for other important benthic species. It also noted that MF 8258 was 'double parked', which prevented a seaward

movement. On this basis, the section 42A report writers recommended no AMAs be provided for marine farms MF 8258 and MF 8259.

498. Evidence from Mr Mandeno for Sanford Limited requested provision of AMAs for both of the existing marine farms on the basis that tubeworms are an exotic species that do not require specific protection. He noted the MARWG recommendation was based on the presence of tubeworms and that this evidence was disputed by Sanford. He highlighted the section 42A report recommendation did not appear to be based on ecological concerns or other concerns that make it inappropriate, but rather practical issues related to double parking of marine farms. He requested provision of AMAs based on map HP-Draft 077 yellow lines, which positioned the sites further offshore, with the longline backbones realigned.
499. The End of Hearing Report confirmed the section 42A report recommendation to not provide an AMA for either site based on not meeting the MARWG guidelines.

Evaluation

500. It appears the existing marine farm structures for site MF 8258 are currently located outside of the consented area and are over hard substrate. The movement of the existing marine farm to within the proposed AMA and the realignment the backbone longlines as shown on HP-Draft 077 will assist with meeting the 100-300 m ribbon pattern and avoids inshore benthic habitat. The Panel finds not providing an AMA for MF 8258 based on it being 'double parked' is not of significant concern to navigation safety in this particular location.
501. The Panel accepts the MARWG recommendation that existing marine farm MF 8259 is located in an inappropriate area which is zoned CMZ1 under the MSRMP to protect environmental values. A seaward movement of this marine farm to within the 100-300 m ribbon band may assist in avoiding hard substrate shown by the multibeam sonar survey data but moves the site into the middle of the embayment and closer to the ONFL boundary.

Decision

502. The Panel accepts the section 42A report recommendation to not provide an AMA for existing marine farm MF 8259 and rejects the section 42A report recommendation for MF 8258. The Panel accepts the submission to provide an AMA for MF 8258 as shown in HP-Draft 077 yellow.

MF 8002 Catherine Cove

503. No AMA was provided for existing marine farm MF 8002 located in Cherry Tree Bay, Catherine Cove, primarily due to adverse effects on significant ecological, natural character and landscape values.
504. The notified Variation included a new AMA located in the eastern part of Catherine Cove for the relocation of MF 8002.
505. A submission received from Mr Carl Elkington requested provision of an AMA for the current location of MF 8002.
506. A submission received from T.R. Elkington and S.G.T. McCarthy requested provision of an AMA for MF 8002 sited further offshore (shown on a map appended to the submission) as the first preference; an AMA provided for the existing marine farm as a second preference; and relocation of MF 8002 to an equivalent space with the Marlborough Sounds as a third preference.
507. Aroma (N.Z) Limited ('Aroma') opposed the new AMA on the eastern side of the bay, as notified, on the basis it would impede tidal flows.
508. A further submission received from Hori (George) Elkington supported the submission of Carl Elkington. It stated that relocation of the existing marine farm seaward would do more harm than good and would narrow the navigation channel.
509. The section 42A report recommended rejection of the submissions requesting provision of an AMA for the existing location marine farm MF 8002 and for the two options proposed to relocate the farm seaward within Cherry Tree Bay. It recommended relocation of MF 8002 to the new AMA provided in the eastern part of the bay in recognition of the consent holder's cultural connection with Catherine Cove.
510. The section 42A report included comment from Mr Wade that there was no benthic information available for Catherine Cove. Mr Wade noted the Davidson Report 1104 in respect of Option A used 9 drop camera images to describe 6 ha, which he considered was insufficient information to describe the benthic environment in the absence of multibeam sonar survey data.
511. The section 42A report included comment from Mr Grogan that existing site MF 8002 was not ideal from a navigation safety perspective due to its isolation and close proximity to the mooring and wharf amenities in the bay. He considered proposed adjustments to this site magnified navigation safety issues by further impeding rational navigation routes into the bay.

512. Mr Bentley highlighted the assessment in the Boffa Miskell Report 2018 and the ONFL overlay over Catherine Cove. He considered the presence of aquaculture within Catherine Cove degraded the naturalness of the ONFL, but could be 'contained' by clustering the existing marine farms in the eastern part of the cove to reduce adverse effects. He considered the scale of site MF 8002, at 6 ha, dominated the local embayment of Cherry Tree Bay and represented sprawl from the other marine farms. He concluded this was a significant adverse effect.
513. Mr Bentley considered Catherine Cove east could absorb some additional aquaculture given the scale and enclosing nature of the bay, the form and simplicity of the D'Urville Peninsula and its current degraded state. He acknowledged the cumulative effects of the existing marine farms and adverse visual effects that reduce the overall natural character but supported the relocation of MF 8002 to the eastern side to join the other existing marine farms.
514. The Panel heard evidence from Mr Carl Elkington representing his mother Ms Tui Elkington, who is a landowner in Cherry Tree Bay and 50% owner of marine farm MF 8002. He considered an AMA must be provided within Cherry Tree Bay for his whānau's marine farm and that moving it to the other side of the bay would remove their cultural connection. He noted Cherry Tree Bay is wāhi tapu and holds great spiritual significance. He outlined his family's whakapapa and strong historical connections to the land and sea. He explained why the site is so special and considered it enhanced the bay for future generations of mahinga kai gathers, protected the reef and provided capital to enhance the bay. He highlighted the importance of the Ngāti Koata No Rangitoto Trust Iwi Management Plan and the preference for open water farms over ribbon development for recreation reasons. He considers a Cultural Impact Assessment should have been undertaken to ensure iwi were consulted and their views heard and documented. He considers it was not acceptable to have to justify his culture and traditions. He explained the site was isolated because of its cultural significance to the adjacent landowners and maintained Ahi Kaa to Mana Whenua. He considered navigation safety concerns could be addressed by installation of a light and that all but one mooring were owned by the landowners.
515. The Panel heard evidence from Mr Lindsay Elkington as a landowner and kaitiaki for Ngāti Koata. He outlined the unanimous support of the Cherry Bay landowners for the marine farm staying in Cherry Tree Bay. He supported moving the farm seaward to protect the rhodolith beds but did not support moving to the other side of Catherine Cove given it was already full of other marine farms.

516. Ms Alice Woodward, the Kaiwhakakaere Taioa (Environment Manager) for Ngāti Koata Trust, gave evidence in support of the submitters outlining the importance of Rangitoto/D'Urville Island as a taonga, historic treaty breaches by the Crown, and the continued occupation of land at Cherry Tree Bay and Catherine Cove. She highlighted a large part of the outstanding landscape's associative values result from their Māori cultural use and that the marine farms were part of this value. She considered the inability for the whānau to farm directly adjacent to their ancestral lands would have a disproportionately negative effect on the whānau and cultural traditions when considering any landscape gains.
517. The Panel heard planning evidence from Mr Sutherland for Carl Elkington, S.G.T. McCarthy and T.R. Elkington highlighting the cultural importance of the existing site to the Elkingtons. He considered the existing site was located in an appropriate location if it was moved approximately 50 m offshore. He provided a map (titled 'Site Amended 15 November 2021') showing MF 8002 moved offshore to avoid the rhodolith beds. Attached to his evidence was Appendix RDS1 showing two options for relocation of the marine farm seaward.
518. Mr Davidson provided evidence for S.G.T. McCarthy and T.R. Elkington on the benthic effects of existing site MF 8002 and two relocation options within Catherine Cove based on the biological report by Davidson Environmental Ltd.⁴⁵ He noted the existing site was positioned between two significant ESMS that support biologically important rhodoliths and that marine farming activity was adversely affecting these rhodolith beds. He noted the identified two alternative sites offshore of the existing marine farm were predominantly comprised of two community types - deep mud with low cover of shell and mud with high cover of natural shell (shown in his Figure 3). He considered the deep mud with low cover of shell was suitable for marine farming; and the mud with high cover of natural shell areas were not suitable for production/growing structures and recommended a longline exclusion area over this habitat.
519. Mr Hudson provided a landscape character and natural character assessment and evidence in support of the submission by S.G.T. McCarthy and T.R. Elkington. He agreed with Mr Bentley that Catherine Cove had the capacity to accommodate MF 8002 in an alternative location. He considered Option B (of his Appendix 4) provided the best alternative outcome within Cherry Tree Bay in terms of landscape and natural character and would have the least level of effect on the ONFL. He concluded the effects of Option B would be no more than minor.

⁴⁵ Davidson Environmental Limited (2021) 'Biological report for the consenting of marine farm 8002 in Cherry Tree Bay, Catherine Cove, D'Urville Island'. Report number 1104

520. The Panel heard from Mr George Elkington that he has dived the area around the mooring area and that he disputed the identified location of the rhodolith beds in Figure 2 of the Davidson Report. He considered moving the site seaward would decrease navigation safety.
521. Mr Whipp presented evidence at the hearing for Aroma and Aroma Aquaculture *et al.*⁴⁶ He submitted that siting a farm seaward of MF 8631 would affect tidal flows slowing crop cycles and reducing the condition of the crop. He noted over the past 18 months mussels in the bay generally had not conditioned for harvest.
522. Further comment from Mr Grogan noted that two proposed options for a seaward shift of the farm did not alleviate navigation safety concerns and would further reduce navigation safety given the length of the proposed AMAs would obstruct a wider range of navigational routes. He highlighted the mid bay placement was also inconsistent with the ribbon or strip pattern of marine farms, which was an effective control for reducing navigation effects. He had no concerns with the proposed new AMA on the eastern side of Catherine Cove given the already complicated marine farm layout created by MF 8631 and MF 8008; and considered relocation of MF 8002 would improve navigation in Cherry Tree Bay.
523. In reply, Mr Bentley confirmed his assessment remained unchanged and recommended the new proposed eastern AMA be removed if it was utilised for the relocation of MF 8002.
524. In Reply, the section 42A report writer highlighted the general agreement between ecological experts that the existing site MF 8002 was inappropriate given the ESMS it intersects. The section 42A Report writer considered the two alternative AMA options seaward of the existing site, as proposed in evidence at the hearing, were outside the scope of the original submission and had not been subject to public comment.
525. The section 42A report highlighted evidence given by submitters in the hearing that the concerns raised regarding cultural interests and retaining connections with their ancestral lands could be addressed if an alternative AMA was closely located to Cherry Tree Bay.
526. The section 42A report concluded the proposed AMA for in the eastern part of Catherine Cove, as amended by MFA/AQNZ in the HP-Draft map 010 yellow should be provided for the relocation of MF 8002 only, subject to further benthic survey, but acknowledged this may require a future plan variation.
527. In reply evidence, Mr Bentley confirmed his support for provision of a new AMA in the eastern part of the bay (as amended by MFA/AQ) for relocating MF 8002 from a ONFL perspective.

⁴⁶ Beleve Limited, R J Davidson Family Trust and Treble Tree Holdings.

528. In supplementary legal submissions (dated 3 December 2021) on behalf of both submitters, Mr Davies submitted that the alternative AMAs proposed (Preferred Site - Options B and Preferred Site – Option C) were within the scope of the original alternative proposed in submissions, which was approximately 50 m seaward of the existing site.

Evaluation

529. The Panel accepts Ngāti Koata and the Elkington whānau have a strong cultural connection to Cherry Tree Bay and Catherine Cove. The Panel recognises this ongoing and enduring relationship must be protected and provided for in order to give effect to Objective 3 and Policy 2 of the NZCPS.
530. The existing marine farm encroaches on two ESMS mapped in the PMEP to protect rhodolith beds present on two sides of the farm site. The whole of the area, both terrestrial and marine, is identified as part of an ONFL area.
531. The expert ecological evidence agrees that the existing marine farm MF 8002 is having adverse effects on significant benthic values and the identified ESMS mapped to protect these important values. The Panel accepts this adverse effect must be avoided to give effect to Objective 1 and Policy 11 of the NZCPS. The Panel acknowledges that this requirement to protect significant ecological values cannot be balanced with achieving other objectives and policies of the NZCPS.
532. The evidence of Mr Davidson supports the view that removal of the existing farm from between the identified rhodolith beds will provide an opportunity for these adverse effects to be remedied over time and allow the natural benthic habitat to recover and be restored. This is consistent with the direction of Policy 14 of the NZCPS.
533. The Panel accepts the expert evidence of Mr Bentley that existing marine farm MF 8002 is having a significant adverse effect on outstanding landscape values. The Panel accepts this adverse effect must be avoided to give effect to Objective 2 and Policy 15 of the NZCPS. The Panel acknowledges that this requirement to protect outstanding natural landscapes cannot be balanced with achieving other objectives and policies of the NZCPS.
534. Mr Bentley and Mr Hudson agree that Catherine Cove has some capacity to accommodate the relocation of MF 8002 within the bay but disagree on the best alternative from a landscape perspective. Mr Hudson appears to have limited his consideration of alternatives to within Cherry Tree Bay, in accepting the view that relocation to the eastern part of the bay would result in a loss of culture connection and adverse cultural effects. The Panel considers both options within Cherry Tree Bay identified by Mr Hudson do not sufficiently avoid adverse

effects on outstanding landscape values due to the size of the marine farm in comparison to the size of Cherry Tree Bay and the isolated nature of the marine farm from other marine farms within Catherine Cove.

535. The Panel accepts the evidence of Mr Bentley that relocation of MF 8002 to the new AMA in the eastern part of the bay (as amended by MFA/AQ shown on map HP-Draft 010) reduces the adverse effects on landscape values to an acceptable level by clustering it with the existing aquaculture development in the eastern part of Catherine Cove.
536. The Panel accepts the evidence of Mr Grogan that existing marine farm MF 8002 adversely effects navigation safety and that the alternative seaward options proposed within Cherry Tree Bay do not alleviate these issues. The Panel agrees with Mr Grogan that the new AMA in the eastern part of the bay is consistent with the existing pattern of aquaculture development and therefore does not raise any additional navigation safety issues.
537. The Panel acknowledges the concerns raised by Mr Whipp in relation to water flows to site MF 8631 but consider any effects on hydrodynamics is unlikely to be significant given the new proposed AMA is not located seaward of this farm and the variation in growth rates due to climatic changes.
538. On the basis of the evidence presented, the Panel finds existing marine farm MF 8002 is located in an inappropriate area due to adverse effects on significant ecological values, outstanding landscape values and navigation safety. The Panel accepts the need to recognise and provide for Ngāti Koata and the Elkington whānau's ongoing and enduring cultural connection to the area and consider this is maintained by providing for the relocation of the marine farm within Catherine Cove in close proximity to the existing site. The Panel acknowledges the convenience of the existing location (directly in front of their land) but consider this factor cannot outweigh the directive policies of the NZCPS to avoid the adverse effects of aquaculture development on significant environmental values.

Decision

539. The Panel accepts the section 42A report recommendation to not provide an AMA for MF 8002 in Cherry Tree Bay.
540. The Panel accepts the section 42A report recommendation to provide a new AMA for the relocation of MF 8002 only to the eastern part of Catherine Cove, as shown on map HP-Draft 010 yellow.

MF 8553 Clova Bay

541. KCSRA and CBRA sought the removal of the notified AMA for existing marine farm MF 8553 due to significant adverse environmental effects. The submissions stated the farm is only intermittently used for spat catching and was consented in 2016-2017 due to 'an unfortunate anomaly' in the MSRMP provision which deemed it a controlled activity.
542. KCSRA submitted MF 8553 is within the CMZ1 zone of the MSRMP and denies the publicly held values that undermine the zoning as an inappropriate area for aquaculture. It noted these values have not diminished and in fact public use has grown since the MSRMP was promulgated. Concerns were raised regarding adverse effects on the nearby ESMS, recreational access, navigation safety and impedance, visual amenity and the dominance of natural character and landscape values. KCSRA concluded the proposed AMA for MF 8553 was located in an inappropriate area due to significant environmental issues and requested removal of the proposed AMA.
543. A number of further submissions opposed the submissions of KCSRA and CBRA but no reasons or evidence to support the further submissions were provided.
544. The section 42A report outlined the intermittent use of the site for spat catching and the assessment of Mr Bentley based on this limited use (15 January – 31 July each year). No recommendation was made in relation to the submissions received.
545. Mr Ironside for KCSRA and CBRA submitted the two existing spat sites (MF 8553 and MF 8559) were inappropriate and should be relocated to provide for recreational uses, navigation safety and values present in the head of Clova Bay. He highlighted other significant areas had opened up across the Sounds since these sites were established and that the marine farming industry needed to work together to provide access to spat sites.
546. Dr Steven, for CBRA, commented on the appropriateness of marine farm MF 8553 based on his natural character and landscape assessment (Report dated February 2018). Dr Steven considered the natural character rating of the head of Clova Bay was 'moderate to high' without site MF 8553. He considered the seaward expansion of the existing marine farms and the inclusion of site MF 8553 would reduce the natural character of the marine environment of Clova Bay from 'moderate' to 'moderate to low'; and would have significant landscape/seascape implications for Clova Bay.

547. Mr Hudson, for MFA/AQNZ, considered the lack of isolation, the modified and texture steep backdrop of the land and the absence of ONFLs and areas of ONC contributed to the appropriateness of this AMA.
548. In response to Minute 19, Mr Large outlined the use and importance of site MF 8553 as a reliable source of spat supply for the Marlborough Sounds marine farming industry. He noted that it had not been used for spat catching in the last two years but that this was not a good guide to future use. He highlighted the significant advantage of the site was that it is located close to an area where spat is on grown. He noted the farm was only lifted when spat counts in the area were good given the cost to farmers who lease the space; and that this was variable from year to year with some poor years followed by very good years, subject to seasonal variation and climatic conditions. He stated the site was subject to sediment from forestry harvesting and storm activity which reduced spat survival rates.
549. In reply evidence for the Council, Mr Grogan considered the existing marine farm created navigational concerns because it was located in the middle of the bay and was inconsistent with the existing ribbon pattern of development; and may significantly alter the experience of navigation for activities using vessels operating more than 5 knots and complicate access to the Manaroa jetty, particularly in the hours of darkness. He noted the temporal nature of the use of the farm both alleviated and created navigational concerns, but on balance, considered the periodic sinking of the farm did not overcome the navigational concerns without consistency with the existing ribbon pattern of development.
550. In reply evidence for the Council, Mr Bentley noted general agreement with Dr Steven in relation his descriptions and overall ratings of landscape and natural character. Based on his recent site visit, he considered that MF 8553 and MF 8559 did not necessarily detract from the landscape and natural character values and qualities to a significant degree given the context was reasonably modified. While he acknowledged MF 8553 was located in the central waters of the head of the bay and contributed to the cumulative landscape and natural character environment, he concluded its seasonal use did not cross the threshold of acceptable levels of cumulative effects.
551. The End of Hearing Report noted it was possible that the consent holders could seek to re-consent the marine farm to be in use on the surface of the water all of the time and that the relevant matters of control for the applicable rule had not been written with such as situation in mind. However, it acknowledged that the existing consent was only for spat catching

purposes and use through the winter months, and that a new consent could be applied for on this basis again. The report made no recommendation.

Evaluation

552. The marine farm structures for spat catching on site MF 8553 were submerged when the Panel conducted its site visit following the adjournment of the hearing. The Panel has had to undertake its assessment of environmental effects based on the details provided in the consent documentation. Regardless of the farms infrequent and/or intermittent use over recent years, the Panel must consider the potential environmental effects of full utilisation of the existing consent for the period of 15 January to 31 July each year.
553. The Panel accepts the evidence of Mr Grogan that the marine farms mid bay placement, proximity to public access points and inconsistency with the general 100-300 m ribbon pattern give rise to navigation safety issues. The Panel agrees these concerns are not alleviated by submerging the farm for part of the year.
554. The Panel accepts the evidence of Mr Bentley that the marine farm may not detract from the landscape and natural character values and qualities to a 'significant' degree within the context of Clova Bay. However, the Panel accepts the evidence of Dr Brown that the marine farm located mid bay at the head of the bay in combination the other marine farms in Clova Bay results in significant adverse cumulative effects on natural character at a localised scale. The Panel agrees with Dr Brown that the marine environment at the head of the harbour is relatively unmodified and that the potential for restoration of natural character is significant without the presence of a marine farm in the middle of the head of the bay for half the year. The Panel considers the CMZ1 zone of the MSRMP recognised this difference in environmental value at the head of the bay in comparison to the wider bay area.
555. The Panel acknowledges the importance of the site for spat catching to the industry but consider this does not outweigh the adverse environmental effects of the marine farm in this location.
556. The Panel agrees with submitters that the head of Clova Bay is an inappropriate area for aquaculture development, regardless of the frequency of use, due to adverse effects on public open space values, recreational use, public access, navigation safety, natural character and amenity values. The farms mid bay placement and size within the context of the head of the bay result in the farming dominating the marine environment when it is in use. The Panel finds this combination of adverse environmental effects tip the overall degree of effect to an unacceptable level.

Decision

557. The Panel accepts the submissions received requesting removal of the notified AMA for existing marine farm MF 8553 and determines to remove AMA 1 in Clova Bay CMU 6.

MF 8572 Forsyth Bay

558. No AMA was provided for MF 8572 due to adverse effects on natural character and landscape, and navigation safety because it was located offshore outside the existing ribbon pattern of development.

559. The Red Sky Trust's submission requested provision of an AMA for existing marine farm MF 8572.

560. The section 42A report included comment on navigation safety issues from the Harbourmaster, Mr Grogan. He noted that ensuring a consistent ribbon or strip approach to marine farm layouts was an important risk control for navigation safety in the Marlborough Sounds and that double parking of marine farms should generally be avoided wherever possible through the relocation of farms.

561. The section 42A report also included an assessment of natural character and landscape effects by Mr Bentley. He noted the linear pattern of the other marine farms in the area and that MF 8572 was located further offshore than other marine farms. He considered this layout did not respond to the local topographic nuances or the sensitivity of the location within the outer sounds and proximity to the ONFL and Kaitira headland, including ecologically sensitive Bird Island. On this basis, he recommended no AMA be provided for MF 8572.

562. Mr Davies provided legal submissions for the Red Sky Trust highlighting there was no MARWG policy or MSRMP policy regarding 'double parking' of marine farms. He noted Policy 13.21.7(b)(v) provided for such existing situations.

563. The Panel heard evidence from Mr Kevin Oldham and Ms Lynette Oldham, trustees of Red Sky Trust, outlining background to the site, navigation in Forsyth Bay, acceptance of the site by the community and alternatives considered.

564. The late Captain David Walker provided a statement of evidence for the Red Sky Trust commenting on navigation safety. He concluded the marine farm was consistent with the existing coastal ribbon pattern and would pose no more risk to navigation than exists generally in the area.

565. Mr Hudson provided a statement of evidence for the Red Sky Trust assessing natural character and landscape effects. He concluded the marine farm site was appropriate in its current location from a landscape and natural character perspective.
566. Mr Bentley visited this site after the hearing adjournment. In reply evidence, he acknowledged the size of Forsyth Bay, and height and containment provided by the backdrop topography which assisted to anchor the development to the coastline. He noted the indentations provided by two small unnamed bays assisted to contain the marine farm and concluded that 'double stacking' of marine farms in this location did not create natural character and landscape effects that made it inappropriate. Mr Bentley confirmed he agreed with Mr Hudson that the existing site is appropriate from a natural character and landscape perspective.
567. On the basis of the submitter's evidence and the further assessment by Mr Bentley, the End of Hearing Report recommended provision of an AMA for MF 8572 based on map HP-Draft 100 yellow lines.

Evaluation

568. Based on the Panel's site visit, it is accepted that there are more visually obtrusive marine farms in the area; and that the existing marine farm sits within the bay and aligns with the seaward extent of the adjacent marine farms. The Panel considers the existing marine farm is consistent with surrounding pattern of development and will not result in a 'step' or jut out which may adversely impact navigation safety. The Panel agrees with Mr Hudson and Mr Bentley that the existing farm is appropriate from a landscape and natural character perspective.

Decision

569. The Panel accepts Red Sky submission and accepts the section 42A report recommendation to provide an AMA for MF8572 based on map HP-Draft 100 yellow.

MF 8164 Guards Bay

570. No AMA was provided for MF 8164 on the basis the existing marine farm is located in an inappropriate area due to adverse effects on outstanding landscape values.
571. Two submissions by PH Redwood & Co Limited and PHR Processing Limited requested provision of an AMA for the existing marine farm. Four options were outlined including: an AMA to accommodate a doubling of the size of the marine farm; an AMA for the existing

marine farm; relocation to an AMA with similar characteristics such as Waitui Bay; and relocation to an AMA in an alternative bay.

572. The section 42A report noted that a doubling of the size of the existing marine farms did not adhere to the intention of Variation 1; and would not be consistent with Policy 13.21.3(d) of the Variation or Policy 15 of the NZCPS. The report highlighted the expert assessment of Mr Bentley and his conclusion that the ongoing occupation of the marine farm within Guards Bay was incongruous and inappropriate from a landscape perspective. The report recommended no AMA be provided because the site was inappropriate based on adverse effects on outstanding landscape values.
573. The Panel heard evidence from Ms Patricia Redwood for PH Redwood & Co Limited and PHR Processing Limited outlining their connection to the Sounds, their work, and their ongoing connection to the area through mussel farming and contracting. She explained their desire to retain the existing marine farm and that the reason for the proposed expansion was to offset the costs of submerging the marine farming structures. She emphasised the visual, economic, and social benefits of enabling this to occur.
574. The Panel heard evidence from Mr Brad Coombs for PH Redwood & Co Limited providing an assessment of the effects of the existing marine farm on the natural character and landscape character, and visual amenity. He concluded the overall effects on natural character and landscape values were 'low (neutral)' and visual amenity effects very 'low (neutral)'. He considered the site was consistent with the values and level of modification and development currently present in Guards Bay; and that submerging and expanding the farm would not alter the landscape to the extent it is compromised.
575. The Panel heard evidence from Mr Rob Davidson for PH Redwood & Co Limited and PHR Processing Limited providing an assessment of the effects of the existing marine farm on benthic ecology and the proposed AMA expansion area. If the proposed AMA was provided for, he recommended removal of the inshore 50 m of the existing site from the shore slope to achieve ecological improvements and locate the entire AMA over mud benthos.
576. Following adjournment of the hearing, the Panel received a Memorandum of Counsel (dated 16 December 2021) and a map to illustrate the proposed extended AMA, the existing structure exclusion area, the proposed growing structure exclusion area, the proposed area for subsurface lines and the proposed area with surface structures.
577. Mr Bentley spoke to his assessment at the hearing and confirmed his view the site was inappropriate for aquaculture development given the outstanding landscape values. He noted

the marine farm was isolated from other aquaculture development and was very similar to the Environment Court's Port Gore decision⁴⁷.

578. In reply evidence, Mr Bentley confirmed his view that marine farming in the outer sounds was inappropriate due to adverse effects on naturalness. He highlighted that submerging the marine farming structures would not avoid adverse effects on the natural character values of the seabed and that servicing of the farm with vessels would still be required.

579. The End of Hearing Report confirmed the section 42A report recommendation.

Evaluation

580. Guards Bay is included in the ONFL overlay of the PMEP and the coastal marine area is largely unmodified except for the existing marine farm and two moorings. The marine farm is relatively large for the size of the embayment and is isolated from other aquaculture development.

581. The Panel notes the polarised views of Mr Coombs and Mr Bentley, with the former concluding the existing marine farm is having a 'low (neutral)' adverse effect on landscape values and the latter concluding a 'high' degree of adverse effect. Mr Coombs disagrees with Mr Bentley's assessment including that:

- (a) there is a lack of containment of the marine farm at the site;
- (b) the coast (seascape) is unmodified;
- (c) the land cover of the adjoining hills is affected by the presence of the marine farm; and
- (d) the marine farm detracts from the adjoining land form and values to any material degree.

582. The Panel agrees with Mr Bentley that the existing marine farm detracts from the biophysical, sensory and associative values, including the high level of perceived naturalness and the rugged and remote seascape values. The Panel also agrees with Mr Bentley that there is a lack of containment in this part of Guards Bay.

583. The Panel considers Mr Coombs has put too much emphasis on 'the existing working rural character of the landscape and the waters of the area' in concluding the seascape can accommodate the existing marine farm or an expanded marine farm.

⁴⁷ Environment Court [2012] *Port Gore Marine Farms v Marlborough District Council*

584. Overall, the Panel prefers the evidence of Mr Bentley that the existing marine farm is having a high degree of effect on landscape values within Guards Bay, which is contrary to Policy 15 of the NZCPS.
585. The Panel has considered the request to double the size of the existing marine farm to enable the marine farming structures to be submerged. The Panel agrees with the section 42A report that this would increase the existing level of marine farming which is contrary to the intention of the Variation. The Panel also agrees with Mr Bentley that this only mitigates visual effects and will not avoid adverse effects on outstanding landscape values, as required by Policy 15 of the NZCPS.

Decision

586. For the reasons outlined, the Panel rejects the submission and accepts the section 42A report recommendation to not provide an AMA for existing MF 8164 or an expanded submerged marine farm due to adverse effects on outstanding landscape values.

MF 8325, MF 8326, MF 8327 Inner Pelorus (Fairy Bay)

587. No AMAs were provided for sites MF 8325, MF 8326 and MF 8337 located in Fairy Bay on the basis the existing marine farms are located in an inappropriate area due to adverse effects on outstanding natural character and landscape values.
588. Four submissions received from Pankhurst Enterprises Limited, KPF Investments Limited and United Fisheries Limited, Aroma (N.Z) Limited and Aroma Aquaculture Limited, and Canantor Mussels Limited sought provision of AMAs for the three existing marine farms.
589. The section 42A report highlighted the conclusions of the Boffa Miskell Report 2018 and recommended no AMAs be provided due to adverse effects on outstanding natural character and amenity values.
590. Boffa Miskell 2018 report noted the marine environment was mostly unmodified and retained high natural values associated with the overwhelming sense of naturalness (from shoreline to ridge) and limited access. It highlighted the area included rare examples of sheltered inland inlets with limited modification; and intact coastal forest extending to the water's edge, including nationally significant altitudinal sequences of primary forest from ridge top to seafloor. The report concluded the very high terrestrial and coastal values made the bay unsuited to aquaculture development; and that the existing mussel farms were having significant adverse effects on the ONC and ONFL values of the bay.

591. The Panel heard from evidence from Mr Robert Nicolle for KPF Investments Limited et al.⁴⁸ (MF 8325) addressing the proposed Richmond Bay alternative, the implications in loss of production and the inability to retain a critical mass for the entire operation to function as a small company. If no AMA was provided, he requested certainty that a suitable replacement marine farm can operate in Richmond Bay.
592. The Panel heard from evidence from Ms Nanette Buchanan-Brown and Mr Gary Brown for Canantor Mussels Limited (MF 8326) outlining their work in the marine farming industry, community involvement and their purchase of the license of the marine site in Fairy Bay in 2003. They emphasised the hard work and financial investment put into it as a source of income and the risk that if the site was lost that their family would be pushed out of the mussel industry.
593. The Panel heard from evidence from Mr Jim Jessop for Pankhurst Enterprises General Partner Limited (MF 8327) outlining his work in the marine farming industry, community involvement and their purchase of the license of the marine site in Fairy Bay in 1981. He emphasised the hard work and financial investment that had gone into the site and the devastation to him and his family if they cannot continue to farm there.
594. In reply, Mr Bentley maintained his view that sites MF 8325, MF 8326 and MF 8327 were located in an inappropriate area due to significant adverse effects on outstanding natural character and landscape values.
595. The End of Hearing Report confirmed the section 42A report recommendations to not provide any AMAs at Fairy Bay.

Evaluation

596. The Panel acknowledges the existing marine farms at Fairy Bay were established under some of the earliest marine farming licences granted under the Marine Farming Act 1971. The sites are all located within the ONC and ONFL overlays of the PMEP, which extends over the terrestrial and marine components of Fairy Bay.
597. The Panel accepts the Boffa Miskell 2018 assessment that the existing marine farms are located in an inappropriate area due to significant adverse effects on outstanding natural character and outstanding landscape values.
598. The Panel acknowledges the consent holders' requests to be able to relocate to an alternative site such as Richmond Bay. The Panel has addressed this above in relation to Richmond Bay.

⁴⁸ United Fisheries Limited, and AJ King Family Trust and SA King Family Trust

However, the consent holders will have the same opportunities as other affected marine farmers to relocate to new AMAs established for the relocation of existing marine farms from inappropriate areas through the ability to seek an authorisation from the Council to apply for consent to marine farm within new AMAs.

599. The Panel agrees with the section 42A report writers' that the economic and functional value of the sites to the marine farming industry cannot override Policy 13 and Policy 15 of the NZCPS which requires adverse effects on ONC and ONFL values to be avoided.
600. On the basis of the Panel's site visit and the conclusions of the Boffa Miskell Report 2018, the Panel finds marine farm MF 8325, MF 8326 and MF 8327 are located in an inappropriate area for aquaculture due to adverse effects on ONC and ONFL values.

Decision

601. For the reasons outlined, the Panel accepts the section 42A report recommendation to reject the submissions and to not provide AMAs for existing marine farms MF 8325, MF 8326 and MF 8327, as notified. No changes to the provisions are required.

MF 8492 Keneperu Sound (Waitaria Bay)

602. No AMA was provided for site MF 8492 on the basis the existing marine farm is located in an inappropriate area due to adverse effects on ONFL values.
603. KPF Investments Limited's submission outlined three options in order of preference – to relocate to an alternative bay; relocate backbone longlines to other KPF Investment Limited marine farms; or provision of AMA for the existing marine farm.
604. The section 42A report noted an AMA had not been provided due to the farm being 'double parked' and the inability to move seaward. The report noted the MARWG considered the existing marine farm was outside the existing ribbon pattern of development, restricted access to the foreshore and was over positioned over the photic zone. For these reasons, the report recommended that no AMA be provided.
605. The Panel heard from evidence from Mr Robert Nicolle for KPF Investments Limited et al.⁴⁹ proving details on the alternative proposed to relocate longlines from MF 8493 (16 longlines, total 2,500 m longline length loss) to other KPF sites.

Evaluation

606. The Panel agrees the existing marine farm is located in an inappropriate area due to adverse effects on public access, navigation safety and inshore benthic values.

⁴⁹ United Fisheries Limited, and AJ King Family Trust and SA King Family Trust

607. The Panel considers the proposal to relocate a total backbone length of 2,500 m lost from MF 8492 to other KPF Investment Limited marine farms is the best option proposed and gives the consent holder the most certainty.
608. The Panel notes the HP-Draft maps (purple lines) and annotations show expanded AMAs at the following locations to accommodate the relocation of MF 8492:
- (a) MF 8351 - addition of one longline, 110 m;
 - (b) MF 8332 - addition of three longlines, 360 m;
 - (c) MF 8336 - addition of one longline, 215 m;
 - (d) MF 8541 - addition two longlines, 120 m;
 - (e) MF 8080 - addition of eight longlines, 1,282 m;
 - (f) MF 8210 - addition of two longlines, 220 m;
 - (g) MF 8225 - addition of two longlines, 68 m; and
 - (h) MF 8316 - addition of two longlines, 235 m.

Total of addition - 2610 m

609. In Minute 28 (dated 14 February 2023), the Panel sought the view of KPF Investments Limited as to its preference for the removal of the extra 110 m length of backbone sought and a revised map of the AMA for the affected site.
610. A response to Minute 28 (dated 23 February 2023) confirmed the error in the mapping HP-Draft 048 and the attached 'relocation schedule', and outlined two solutions to remove the additional 110 m of longline that were acceptable to the consent holder.
611. The Panel considers Solution 2 best meets the section 42A recommendation and accept this is the most appropriate option.

Decision

612. The Panel accepts the section 42A report recommendation not to provide an AMA for MF 8492 because it is located in an inappropriate area; and agree to the relocation of backbone longlines to the KPF sites, as outlined in Appendix 3 attached to this decision, which reflects Solution 2 outlined in KPF Investments Limited's response to Minute 28.

MF 8201 Maud Island

613. K. Bonnington submitted in support of the proposed amended AMA shown in HP-Draft 093 for existing marine farm MF 8201 based on avoiding rock habitat identified by side scan sonar.

614. The section 42A report noted this was consistent with the report held by the Council for the site and requested provision of the side scan sonar data. However, this was not provided by the submitter at the hearing.
615. In reply evidence, Mr Wade commented it was appropriate to avoid the reef on the north-western side. He highlighted the Davidson Report 1097 held by Council showed there were only four drop camera images for the new offshore area included in the survey and he considered this was unlikely to be enough data to characterise the benthic species, especially the scoured area around the identified reef structure.
616. The End of Hearing Report recommended more technical evidence on the benthic environment should be provided for consideration through a future process before the AMA boundaries are assigned for this site.

Evaluation

617. The Panel notes the evidence of Mr Wade that there is uncertainty regarding extent of hard substrate and benthic values in the proposed seaward extension of the AMA given the methodology used for previous assessments (four drop camera images) and the submitter has not provided the side scan sonar data.
618. The Panel notes the Council has multibeam sonar survey data to help inform its decision regarding the appropriateness of the area in terms of the protection of important benthic values.
619. The Panel considers it is appropriate to take a precautionary approach by adding this site to Schedule 1 which will require a benthic assessment for future consenting.
620. The Panel disagrees with the section 42A report that there is insufficient evidence to support the provision of an AMA at this time.

Decision

621. For the reasons outlined, the Panel rejects the section 42A report recommendation to not provide an AMA for existing MF 8201. The Panel determines to provide an AMA for MF 8201 based on map HP-Draft 093 yellow.

MF 8181 Maud Island

622. The submission from Wormersley Mussels Limited requested provision of an AMA as shown in Schedule 2 of the submission and map HP-Draft 053, which included the addition of the north-east corner of the site.

623. The section 42A report noted that no evidence had been provided by the submitter to support this inclusion and recommended rejection of the inclusion of this area within the AMA.
624. In the reply evidence, Mr Wade commented there was insufficient information in the Robertson Environmental Report 8181 held by the Council to conclude the north-east corner was appropriate. He noted there was only one direct observation; and that the habitat map (Figure 3.3 of the Robertson Report) was indicative only given the methodology to produce the map was unknown.
625. The End of Hearing Report, agreed with the recommendation in the Robertson report (section 6.3) that 'no boundary adjustments are suggested' and recommended that the north-east area not be included in the AMA.

Evaluation

626. The Panel agrees with the section 42A report that there is no technical evidence to support the submitter's requested inclusion and the benthic effects are therefore unknown.
627. The Panel notes there are existing marine farming structures within the requested inclusion area that are not located within the existing consented area. This is a non-compliance matter for the Council to address outside this process. The inclusion of this area within the AMA would increase the size of the existing consented area, which is not the intention of Variation 1.

Decision

628. For the reasons outlined, the Panel accepts the section 42A report recommendation that the north-east area shown on map HP-Draft 053 yellow is not included within the AMA. The Panel determines the AMA boundaries as shown in HP-Draft 053 purple, with red lines for the north-east corner, as shown in the relevant map in Appendix 3.

MF 8057 Te Hoiere/Outer Pelorus

629. No AMA was provided for site MF 8057 on the basis the existing marine farm is located in an inappropriate area due to adverse effects on ONFL values.
630. Clearwater's submission requested an AMA be provided for existing marine farm MF 8057.
631. The section 42A report relied on the conclusions of the Boffa Miskell Report 2018 and considered that AMAs should not be located within this CMU to be consistent with the direction of the NZCPS. The report acknowledged the submitters' concerns regarding the importance of the site for spat catching/growing but considered this and economic factors did

not override the requirement to avoid adverse effects on outstanding natural values and outstanding natural landscapes.

632. The Boffa Miskell Report 2018 considered the existing marine farm has a 'large' magnitude of effect on local landscape values due to the open nature of the coastline and the 'sporadic' development away from aquaculture activity. It noted the mussel farm detracts from the biophysical, sensory and associative values, notably the legibility of the rugged and remote seascape values. It concluded marine farming in this location was contrary to Policy 15 of the NZCPS and the relevant objectives and policies of the operative and proposed district plans.
633. Mr Hunt provided an assessment of landscape, natural character and visual amenity effects and a statement of evidence supporting the existing marine farm and the two new proposed AMA sites located either side of the site. He concluded the values identified by the ONFL were not compromised by the marine farm due to the modified terrestrial backdrop, containment by the landform and the expansive nature of Admiralty Bay. He considered the magnitude of effect on landscape and natural character was 'low' and the effect on visual amenity 'very low'.
634. Mr Sutherland provided planning evidence for both Clearwater and Talley's and concluded the existing marine farm MF 8057 and the two new proposed AMA sites were appropriate from a planning perspective.⁵⁰
635. Mr Holland and Ms Fleming provided evidence on the importance of this outer Pelorus Sound site for spat holding and growing.
636. The End of Hearing Report confirmed the recommendation to not provide an AMA for MF 8057 on the basis of Mr Bentley's assessment of the adverse effects on outstanding landscape values.

Evaluation

637. The Panel disagrees with Mr Hunt's view that the magnitude of effect of the existing marine farm is low due to the modified terrestrial backdrop, containment by the surrounding landform and the expansive nature of Admiralty Bay. The Panel acknowledges the area meets the ONFL threshold despite the existence of the marine farm within the overlay, but do not accept the evidence of Mr Hunt that this demonstrates any adverse effect is low or minor. The Panel considers this reflects the very high level of outstanding values that remain despite the marine farm's existence.

⁵⁰ Appended to his evidence were 'A Recreation and Tourism Effects Assessment' (November 2021) by Mr Rob Greenaway, 'Assessment of Potential Environmental Effects on Marine Mammals' (July 2015) by Dr Deana Clement and a 'Cultural Impact Assessment' (31 August 2015) by Mr Frank Hippolite.

638. The Panel agrees with Mr Bentley that marine farm MF 8057 is having 'large' adverse effects on ONFL values.
639. The Panel agrees with the section 42A report writers' that the economic and functional value of the site to the marine farming industry cannot override Policy 15 of the NZCPS which requires adverse effects on ONFL values to be avoided.
640. On the basis of the Panel's site visit and the conclusions of the Boffa Miskell Report 2018, the Panel finds marine farm MF 8057 is located in an inappropriate area for aquaculture due to adverse effects on ONFL values.

Decision

641. For the reasons outlined, the Panel accepts the section 42A report recommendation to reject the submission and to not provide an AMA for existing marine farm MF 8057, as notified. No changes to the provisions are required.

MF 8058 and MF 8060 Te Hoiere Outer/Pelorus (West Entry)

642. No AMA was provided for MF 8058 and MF 8060 on the basis the existing marine farms are located in an inappropriate area due to adverse effects on ONFL values.
643. Sanford Limited's submission requested provision of AMAs for existing marine farm sites MF 8058 and MF 8060.
644. The section 42A report relied on the conclusions of the Boffa Miskell Report 2018 and considered that AMAs should not be located within this CMU to be consistent with the direction of the NZCPS. The report acknowledged the submitters' concerns regarding the importance of the site for spat catching/growing and considered this and economic factors did not override the requirement to avoid adverse effects on ONFL values.
645. The Boffa Miskell Report 2018 considered the three existing marine farms (MF 8058, MF 8059 and MF 8060) have a 'large' magnitude of effect on local landscape values due to domination of the water body in the relatively small and open embayment. It noted mussel farms detract from the biophysical, sensory and associative values, notably the associations with the entry/exit points to Pelorus Sound and the legibility of the rugged and remote seascape values, due in part to the lack of containment. It concluded marine farming in this location was contrary to Policy 15 of the NZCPS.
646. The Panel heard evidence from Mr Mandeno, on behalf of Sanford Limited, requesting provision of AMAs for the 'functionally irreplaceable' sites due to their specific importance as spat holding and seed growing areas.

647. In reply, Mr Bentley maintained his view that site MF 8058 and MF 8060 are located in an inappropriate area due to adverse effects on ONFL values. He considered that despite the land use modifications and partially curving bays, especially in Blow Hole Point north, the landscape value is 'very high'. He considered all the of existing marine farms located within this part of the outer sounds adversely affected naturalness, wildness, remoteness, aesthetic and cultural aspects that underpin the ONFL.

Evaluation

648. The Panel agrees with Mr Bentley that existing marine farms are having significant adverse effects on the ONFL values.

649. The Panel agrees with the section 42A report writers' that the economic and functional value of the site to the marine farming industry cannot override Policy 15 of the NZCPS which requires adverse effects on outstanding natural character and outstanding landscape values to be avoided.

650. On the basis of the Panel's site visit and the conclusions of the Boffa Miskell Report 2018, the Panel finds marine farms MF 8058 and MF 8060 are located in an inappropriate area for aquaculture due to adverse effects on ONFL values.

Decision

651. For the reasons outlined, the Panel accepts the section 42A report recommendation to reject the submission and to not provide AMAs for existing marine farms MF 8058 and MF 8060, as notified. No changes to the provisions are required.

MF 8059 Te Hoiere/Outer Pelorus (West Entry)

652. No AMA was provided for existing marine farm MF 8059 on the basis the existing marine farm is located in an inappropriate area due to adverse effects on ONFL values.

653. Talley's submission requested provision of an AMA for marine farm MF 8059.

654. The section 42A report relied on the conclusions of the Boffa Miskell Report 2018 and considered that AMAs should not be located within this CMU to be consistent with the direction of the NZCPS. The report acknowledged the submitters' concerns regarding the importance of the site for spat catching/growing and considered this and economic factors did not override the requirement to avoid adverse effects on ONFL values.

655. The Boffa Miskell Report 2018 considered the three existing marine farms (MF 8058, MF 8059 and MF 8060) have a 'large' magnitude of effect on local landscape values due to domination of the waterbody in the relatively small and open embayment. It noted mussel farms detract

from the biophysical, sensory and associative values, notably the associations with the entry/exit points to Pelorus Sound and the legibility of the rugged and remote seascape values, due in part to the lack of containment. It concluded marine farming in this location was contrary to Policy 15 of the NZCPS.

656. Mr Hudson provided a landscape and natural character assessment (dated November 2021) and a statement of evidence for Marlborough Aquaculture Limited and Talley's relating to MF 8059 and MF 8630. He concluded the proposed AMAs would not compromise the outstanding landscape character due to their discrete locations, physical and perceptual accommodation in the ONFL, the absence of nearby outstanding natural character, and consistency with the working character of the land. He considered the openness of the site reduced potential effects and enabled the aquaculture activity to be contained by the landforms.
657. Mr Holland presented evidence for Clearwater and Talley's highlighting the importance of this marine farm for the continued survival and retention, and growth of spat.
658. Mr Sutherland provided planning evidence for both Clearwater and Talley's and concluded the existing marine farm were appropriate from a planning perspective.⁵¹
659. In reply evidence, Mr Bentley highlighted the conclusions of the Boffa Miskell Report 2018 and stated his support for the relocation of this marine farm to an appropriate area.
660. The End of Hearing Report confirmed the recommendation to not provide an AMA for MF 8059 on the basis of Mr Bentley's assessment of the adverse effects on ONFL values, which must be avoided to give effect to Policy 15 of the NZCPS.

Evaluation

661. The Panel disagrees with Mr Hudson's view that the openness of the site reduces the adverse effects or that the site is contained by the surrounding landform.
662. The Panel agrees with Mr Bentley that MF 8059 and the two other existing marine farms in this embayment are having a significant adverse effect on the ONFL values in this CMU.
663. The Panel agrees with the section 42A report writers' that the economic and functional value of the site to the marine farming industry cannot override Policy 15 of the NZCPS which requires adverse effects on ONFL values to be avoided.

⁵¹ Appended to his evidence were 'A Recreation and Tourism Effects Assessment' (November 2021) by Mr Rob Greenaway, 'Assessment of Potential Environmental Effects on Marine Mammals' (July 2015) by Dr Deana Clement and a 'Cultural Impact Assessment' (31 August 2015) by Mr Frank Hippolite.

664. On the basis of the Panel's site visit and the conclusions of the Boffa Miskell Report 2018, the Panel finds marine farm MF 8059 is located in an inappropriate area for aquaculture due to adverse effects on ONFL values.

Decision

665. For the reasons outlined, the Panel rejects the submission and accepts the section 42A report recommendation to not provide an AMA for existing marine farm MF 8059, as notified. No changes to the provisions are required.

MF 8630 Te Hoiere/Outer Pelorus (West Entry)

666. No AMA was provided for MF 8630 on the basis the existing marine farm is located in an inappropriate area due to adverse effects on ONFL values.
667. Marlborough Aquaculture Limited's submission sought provision of an AMA for marine farm MF 8630 and to accommodate an extension to the farm which is currently in process with the Council.
668. The section 42A report relied on the expert assessment in Boffa Miskell Report 2018 and recommended that no AMA be provided for MF 8630, as notified, to avoid adverse effects on ONFL values.
669. Legal submissions by Mr Clark, for Marlborough Aquaculture Limited, considered the ONFL status was not adversely affected by this existing marine farm due to it being 'tucked away' and the incongruous forestry plantation forming a backdrop to the site. At the hearing, Mr Clark and Mr Scott Mason urged the Panel to 'ring fence' the site on the basis it had been deemed appropriate through the consent process and it would be unfair to rule it inappropriate without a case-by-case hearing. Mr Clark requested provision of an AMA with the requirement for re consenting as a discretionary activity.
670. Mr Hudson provided a landscape and natural character assessment (dated November 2021) and a statement of evidence for Marlborough Aquaculture Limited and Talley's relating to MF 8059 and MF 8630. He concluded the proposed AMAs would not compromise the outstanding landscape character due to their discrete locations, physical and perceptual accommodation in the ONFL, the absence of nearby outstanding natural character, and consistency with the working character of the land. He considered the lengthways orientation of the marine farm enabled it to be 'tucked away' against the coastline in a contained manner, which was sympathetic to the adjacent landform.

671. At the end of the hearing, Mr Bentley advised he maintained the view that MF 8630 was located in an inappropriate area and its continued occupation would be contrary to the direction of the policies of the NZCPS.

Evaluation

672. The Panel disagrees with Mr Hudson's view that the marine farm is 'tucked away' and contained by the surrounding landform. The marine farm dominates the small open embayment and introduces unnatural geometric lines to the landscape.

673. The Panel agrees with Mr Bentley that MF 8630 is having a significant adverse effect on the ONFL values in this CMU. The Panel acknowledges the area meets the ONFL threshold despite the existence of the marine farms within the overlay, but do not accept the evidence of Mr Hunt that this demonstrates any adverse effect is low or minor.

674. The Panel agrees with the section 42A report writers' that the economic and functional value of the site to the marine farming industry cannot override Policy 15 of the NZCPS which requires adverse effects on outstanding natural character and outstanding landscape values to be avoided.

675. On the basis of the Panel's site visit, the conclusions of the Boffa Miskell Report 2018 and the evidence of Mr Bentley, the Panel finds marine farm MF 8059 is located in an inappropriate area for aquaculture due to adverse effects on ONFL values, which must be avoided.

Decision

676. For the reasons outlined, the Panel accepts the section 42A report recommendation to reject the submission and not provide an AMA for existing marine farm MF 8630, as notified. No changes to the provisions are required.

MF 8167 Port Gore (Pig Bay)

677. No AMA was provided for MF 8167 on the basis the existing marine farm is located in an inappropriate area due to adverse effects on outstanding natural character and landscape values.

678. PB Partnership Limited submitted requesting provision of an AMA for the existing marine farm.

679. The section 42A report noted the resource consent for this site expired in January 2019 and that the farm was continuing to operate under section 165ZH while the lodged resource consent application was 'on hold' awaiting the outcome of another. The report noted that the

MARWG had made provision for this farm to be relocated to Otanerau Bay (site currently consented for finfish farming).

680. Ms Rebecca Clarkson provided evidence for PB Partnership Limited and requested the ability to be able to relocate the existing marine farm to Otanerau Bay and questioned why the section 42A report stated Otanerau Bay was not part of the MARWG process. She also requested an alternative option to relocate into Richmond Bay.

Evaluation

681. The Panel accepts that the conclusions of the Boffa Miskell 2018 report that this site is located in an inappropriate area due to adverse effects on outstanding landscape values.
682. The Panel acknowledges that since the adjournment of the hearing, PB Partnership Limited has been granted a short-term resource consent (U180586) for a two-year period to enable completion of a harvest cycle and decommissioning of the marine farm.
683. The Panel acknowledges the consent holders alternative suggestion to relocate to the proposed general AMA at Otanerau Bay that is currently consented for finfish farming. The existing finfish sites were not considered by the MARWG. The Panel has recommended to Council that this proposed general AMA is withdrawn from Variation 1 in recognition of its recommendation to Council to withdraw Variation 1A: Finfish.
684. The consent holder will have the same opportunities as other affected marine farmers to relocate to new AMAs established for the relocation of existing marine farms from inappropriate areas under the Variation provisions.

Decision

685. The Panel rejects the submission and accepts the section 42A report recommendation not to provide an AMA for existing marine farm MF 8167, as notified. No changes to the provisions are required.

MF 8013 Port Hardy

686. No AMA was provided for MF 8013 on the basis the existing marine farm is located in an inappropriate area due to adverse effects on significant natural character and landscape values.
687. Talley's submission requested provision of an AMA for existing marine farm MF 8013.
688. The section 42A report noted that a large section of D'Urville Island and the entire CMU is subject to an ONC and an ONFL overlay; and that this marine farm is the only one located within the CMU. It highlighted the conclusions in the Boffa Miskell 2018 report that the site

inappropriate due to adverse effects on outstanding natural character and outstanding landscape values at both a local and broader scale.

689. The Boffa Miskell Report 2018 considered the bay was unsuitable for aquaculture given the high coastal terrestrial values and 'very high' outstanding coastal marine values. It noted the existing marine farm introduced a level of modification which was incongruent with the low modification levels exhibited elsewhere in Port Hardy and had a 'high' degree of adverse effect on the biotic and experiential values of the ONC and the values of the ONFL. The report concluded the marine farm was located in an inappropriate area due to adverse effects on the outstanding values and condition of the area; and was contrary to the direction of the policies of the NZCPS.
690. Dr Teresa Konlechner (terrestrial ecology) and Mr Michael Moore (natural and landscape character) provided joint evidence for Talley's assessing the ecological values within Waiua Bay and Port Hardy and ecological effects of the mussel farm on these values; and the natural landscape values and effects of the mussel farm on landscape values based on a report by Wildland Consultants.⁵² They considered the terrestrial and marine environments together given the interconnectedness of the physical and biological systems. They concluded there were no significant ecological values within Waiua Bay and that the adverse effects of the mussel farm on marine ecological values were 'low/minor' (with some localised positive effects). They concluded there were no adverse effects on terrestrial ecosystems and noted the threatened and at-risk plant species present were broadly distributed throughout Port Hardy and the Marlborough Sounds. They considered the mussel farm was located in an area that had been significantly modified and that within this context the adverse effects on natural character were 'no more than low', with areas that were very high in natural character largely unaffected. They noted the ONFL status of the inner Port Hardy landscape was confirmed with the presence of the marine farm, which demonstrated the effects of the marine farm on landscape values in the context of the more modified part of the harbour were 'adverse/low'.
691. In reply evidence, Mr Bentley reiterated the conclusions of the Boffa Miskell Report 2018 and remained of the view that existing marine farm MF 8013 was located in an inappropriate area from a natural character and landscape perspective.

⁵² Wildland Consultants (2021) 'Evaluation of Mussel Farm Appropriateness in an Outstanding Natural Landscape, Port Hardy, D'Urville Island. Contract Report 5958

692. The End of Hearing Report confirmed the section 42A report recommendation that no AMA be provided for due to adverse effects on outstanding natural character and outstanding landscape values.

Evaluation

693. The Panel consider the joint evidence of Dr Konlechner and Mr Moore minimises the degree of adverse effects on natural character and landscape values due to the conclusion that the terrestrial component of the landscape has been 'significantly' modified by farming practices. This is evident in the Wildlands 2021 report where in relation to the experimental attribute of natural character it states that the marine farm '*...modifies natural character, but not significantly, given its context*' (page 29). And again, repeatedly, in relation to effects on landscape values, where it states the marine farm introduces a 'built' element to the waters of Port Hardy but that the significance of this is minimised by the '*...significantly modified character of the land surrounding Waiau Bay*' (page 35).
694. The Panel accepts the conclusions of the Boffa Miskell 2018 report that MF 8630 is resulting more than minor adverse effects on outstanding natural character and outstanding landscape values at a local and broad scale, which are contrary to Policy 13 and Policy 15 of the NZCPS.
695. The Panel must give effect to Policy 13(a) and Policy 15(a) of the NZCPS which requires the preservation of areas of outstanding natural character and the protection of areas of outstanding landscape value by avoiding adverse effects on these values. The threshold for acceptable adverse effects on these outstanding values is not avoiding significant adverse effects but rather avoiding adverse effects on these outstanding values.
696. The Panel acknowledges the marine environment meets the ONC and ONFL thresholds despite the existence of the marine farms within the overlays, but do not accept the evidence of Dr Konlechner and Mr Moore that this demonstrates any adverse effect is low or minor. The Panel agrees with the Boffa Miskell 2018 report that the magnitude of impact is only small on the ONFL classification because of the very high level of outstanding values without the erosion of these values from the presence of the marine farm.

Decision

697. The Panel rejects the submission and accepts the section 42A report recommendation to not provide an AMA for existing marine farm MF 8013, as notified. No changes to the provisions are required.

MF 8445 Port Underwood (Kaikoura Bay)

698. The MDC submission requested removal of notified AMA 13 in CMU 37 to reflect the ‘closed’ resource consents U160067.
699. Marlborough Aquaculture Limited made a further submission opposing the removal of AMA 13 on the basis U160067 was still a ‘live’ application.
700. The section 42A report noted correspondence with the consent holder’s agent on 27 October 2020, confirming closure of the application, after all other previous attempts to progress the application had not been responded to. It noted that prior to this, the application had been set down for a hearing but was postponed by the applicant when it was apparent additional evidence would be required to respond to ecological concerns raised by the Council’s Environmental Scientist. The report noted that without proper consideration of the receiving environment it was not possible to determine the appropriateness of the site.
701. Legal submissions presented by Mr Clark for Marlborough Aquaculture Limited requested provision of an AMA for the application for a slightly smaller site that was still in process. Mr Clark considered the lodged application was not a ‘closed’ application as it had not been either withdrawn or decided.
702. The End of Hearing Report stated that despite any legal challenge to the ‘closed’ status of the application lodged, there is insufficient evidence to determine the environmental effects of marine farming at the site and the AMA should be removed.

Evaluation

703. The Council has processes to ensure consent applications cannot be lodged and not progressed. Regardless of whether application U16007 was ‘closed’ or declined by the Council, the Council considers there is insufficient information to assess the environmental effects of the activity.
704. The Panel accepts there is insufficient evidence on the receiving environment and potential benthic effects to provide an AMA through the Variation.

Decision

705. The Panel accepts the submission by MDC and rejects the further submission by Marlborough Aquaculture Limited; and determines to remove AMA 13 in Port Underwood CMU 37.

MF 8628 Port Underwood (Whangatoetoe Bay)

706. Marine farm MF 8628 has a coastal permit to establish and operate two separate marine farm blocks under adaptive management conditions due to uncertainty regarding environmental

effects at the time of consenting. Only one half of the site (one block of the two consented blocks) has been developed under the conditions of consent and development of stage 2 (the second marine farm block) including the installation of marine farming structures depends on further assessment of environmental effects.

Evaluation

707. The Panel considers the developed stage 1 block of marine the farm should be provided an AMA given it is existing and operating.
708. The Panel considers there is insufficient information to provide an AMA for the second stage of the development under adaptive management conditions as it is yet to be determined whether stage 2 of appropriate. There is insufficient information to give effect to the objectives and policies of the NZCPS, including Policy 11.

Decision

709. The Panel determines to only provide an AMA for stage one of the aquaculture development. The Panel recommends the notified AMA for stage 2 is removed.

MF 8645, MF 8299 and MF 8300 Squally Cove

710. No AMAs were provided for MF 8645, MF 8299 and MF 8300 on the basis the existing marine farms are located in an inappropriate area due to adverse effects on outstanding landscape and natural feature values.
711. Submissions from Sanford Limited, Mr Jonathan Tester and Mr Ciaran Hughes requested provision of AMAs for the existing marine farm MF 8645. The submissions considered significant benefits of the site (as a well performing and integral spat rearing site) and investment in the site had been disregarded. They noted the ONFL overlay was applied with the marine farm *in situ* which demonstrated it did not detract from the intent of the overlay.
712. Sanford Limited's submission requested provision of AMAs for existing marine farms MF 8299 and MF 8300. The submission noted the sites were not identified as part of the MARWG process and that the importance of the sites for spat holding and seed growing could not be replicated elsewhere.
713. KCSRA, Guardians of the Sounds and CBRA made further submissions opposing AMAs at the sites because they did not support or encourage sustainable management of the environment.
714. The section 42A report highlighted the conclusions of the Boffa Miskell 2018 report that the three marine farms located offshore of Symonds Hill were having adverse effects on outstanding landscape values. The report considered the importance of this site for spat

holding and seed growing did not mitigate adverse effect on landscape values and that these adverse effects must be avoided to give effect to Policy 15 of the NZCPS. For these reasons, the report recommended no AMA be provided due to adverse effects on outstanding landscape values.

715. Legal submissions from Ms Jo Appleyard, and evidence from Mr Ted Culley and Mr Mandeno for Sanford requested provision of AMAs for the existing marine farms. Ms Appleyard and Mr Mandeno noted that these marine sites were not identified as being in an inappropriate location by the MARWG and submitted their existence remained consistent with the ONFL status of the area.
716. Mr Mandeno emphasised their importance as spat holding and seed growing areas and considered such sites were 'functionally irreplaceable'.
717. Evidence from Mr Tester and Mr Hughes requested provision of an AMA for MF 8645 given it was granted consent in 2018 with a detailed landscape assessment. They noted the importance of this site to their business as their only nurse site for rearing spat and its good performance. They noted the growing potential in Richmond Bay was unknown and was located much further away adding considerable servicing costs. They disagreed the site was having adverse effects on landscape values given it was often not visible due to rough seas and was not visible from any road or dwelling.
718. Mr Hudson gave evidence on the effects on landscape values and concluded marine farm MF 8645 had 'very limited effects' on the landscape values listed for the Croisilles/Squally Cove ONFL. He provided a PowerPoint presentation of photographs of the site and Symonds Hill from various aspects and distances. He considered the shape and form of the farm did not protrude into the bay. He noted the unusual shape at one end was to accommodate the outstanding landscape overlay in the MSRMP. He considered the three existing marine farms were part of Squally Cove and did not sprawl into Croisilles Harbour as suggested in the section 42A report.
719. In reply evidence, Mr Bentley remained of the view that MF 8645, in combination with MF 8299 and MF 8300, was having adverse effects on ONFL values; and represented sprawl from the more contained and modified part of Squally Cove in Croisilles Harbour.
720. The End of Hearing Report reiterated the operational benefits of the existing marine farm did not take precedent over the requirements of Policy 15 of the NZCPS and confirmed the section 42A report recommendation to not provide an AMA at this site.

Evaluation

721. The Panel has considered Mr Hudson's guiding principles on how marine farming and outstanding natural values can coexist; and his evidence and photographs relating to MF 8645. The Panel notes that much of Mr Hudson's evidence is focused on the visibility of the farms, the boundaries of the Symonds Hill ONFL, and recommendations and appeals made through the plan hearing process relating to the boundary.
722. Regardless of the boundary of the ONFL and whether the three existing marine farms are within or adjacent to the ONFL area, the Panel must give effect to Policy 15 of the NZCPS in considering the appropriateness of providing AMAs. This is different to having regard to the provisions of the NZCPS when considering a resource consent application.
723. The Panel considers the three existing marine farms extend the pattern of existing aquaculture from being contained within Squally Cove into the waters of Croisilles Harbour and around the headland between Squally Cove and Okiwi Bay. The Panel agrees with Mr Bentley that the location of the three existing marine farms within the wider context of Croisilles Harbour adversely affects the values of the Symonds Hill ONFL. The Panel considers lack of visibility of the marine farms at certain times from weather conditions does not mitigate adverse effects on landscape values.
724. The Panel finds the cumulative effect of the three existing marine farms on the ONFL values is more than minor and must be avoided to give effect to Policy 15 of the NZCPS.
725. The Panel agrees with the section 42A report writers' that the economic and functional value of the sites to the marine farming industry cannot override Policy 15 of the NZCPS which requires adverse effects on ONFL values to be avoided.

Decision

726. The Panel accepts the section 42A report recommendation to reject the submissions and not provide AMAs for existing marine farms MF 8645, MF 8299 and MF 8300, as notified. No changes to the provisions are required.

MF 8217 Maud - Tawhitinui Bay

727. Kuku Holdings Limited's submission requested an extension to the proposed AMA to accommodate a proposed extension to the existing marine farm site, which was refused by the Council⁵³ and is currently under appeal.

⁵³ Decision of Marlborough District Council for resource consent application U200493 by Kuku Holdings Limited dated 10 September 2021.

728. The section 42A report referred to the Council's 2021 decision refusing the expansion of this marine farm based on significant adverse effects on natural character and landscape value and more than minor potential adverse effects on the nearby Tawhitinui king shag breeding colony. The report concluded an extension would be highly inappropriate and recommended no change to the notified AMA.
729. Legal submissions (5 November 2021) by Mr Hardy-Jones were provided in line with the submission lodged and included copies of evidence supporting the recent consent application for the extension.⁵⁴
730. Further legal submissions (18 November 2021) by Mr Hardy-Jones sought to amend the proposed AMA to include the area currently occupied by the marine farm within the 50-100 m from mean low water (the current inshore consent boundary) and the outer boundary of the notified AMA. He noted the rationale was that the need for a seaward move was based on a generic assessment and that the recently consented site was appropriately located to avoid rock substratum and was outside any areas identified as having high natural character or ONFL; and the seaward extent satisfies Policy 13.21.3.
731. Mr Bentley revisited the site following the adjournment of the hearing and in reply evidence provided a statement from his evidence for the recent consent application for the expansion of MF 8217. He maintained the view that MF 8217 and adjacent MF 8216 (and any expansion of either) were inappropriate from a landscape and natural character perspective.
732. The End of Hearing Report confirmed there was no change to the section 42A report recommendation to reject the submission.

Evaluation

733. The submission from Kuku Holdings Limited sought expansion of the AMA seaward to accommodate the proposed extension of the existing marine farm seaward which was refused by the Council in 2021 and is currently under appeal. The amended relief now seeks to expand the proposed AMA by not moving the existing farm seaward and allowing expansion of the marine farm seaward to the notified AMA boundary, which was to accommodate the seaward movement of the existing marine farm, not to accommodate expansion of marine farming activity at the site.
734. The Panel considers this request is contrary to the intentions of Variation 1 as it will not provide positive effects to the inshore benthic ecological values and will increase the existing

⁵⁴ Statement of Evidence of John Hudson for Kuku Holdings Limited (26 October 2021); Statement of evidence of Della Bennett for Kuku Holdings Limited (26 October 2021); and Statement of evidence of Jeffrey Meachen for Kuku Holdings Limited (26 October 2021).

level of marine farming within the enclosed waters. The Panel notes the close proximity of the Tawhitinui king shag breeding colony (approximately 850 m) and finds any increase in marine farming will increase vessel activity associated with servicing and maintaining the existing marine farm.

735. The existence of a structure exclusion area within the inshore part of the current consented area supports the view that a seaward shift is appropriate to avoid adverse benthic impacts and removes the identified area from within the AMA.
736. A seaward shift of the AMA also provides a more adequate buffer from the ONFL boundary that is consistent with seaward boundary of the ONFL for the remainder of Tawhitinui Bay. It is clear the existing marine farms have resulted in a reduction in the width of the seaward boundary of the ONFL and inclusion of the marine/seascape component of the bay from the ONFL.
737. The Panel accepts the evidence of Mr Bentley that Tawhitinui Bay is highly sensitive to adverse natural character and landscape effects and that any expansion of the existing marine farm is inappropriate.
738. The Panel finds the requested extension to the AMA is contrary to the intention of Variation 1 and will not give effect to Policies 11, 13 and 15 of the NZCPS.
739. The Panel considers that it has evidence to conclude that the adverse effects on outstanding landscape values and on natural character of continuing to provide for marine farming at MF 8217 and 8216 are likely to result in planning provisions that do not give effect to Policies 13 and 15 of the NZCPS.
740. In taking a strategic and precautionary approach to considering the future vision for aquaculture at Tawhitinui and the 'appropriateness' of the sites for aquaculture, the Panel determines to not provide AMA for the two existing marine farms.
741. The Panel acknowledges that there was not a submission specifically on MF 8216. However, the Panel has had regard to the EDS submission regarding the environmental bottom lines set by Policies 13 and 15 of the NZCPS. In the context of the concern identified above, it is considered that the EDS submission provides scope to remove both AMAs.

Decision

742. The Panel accepts the section 42A report recommendation to reject the submission and not provide an extension to the notified AMA.

743. As discussed above, in relation to giving effect to Policies 13 and 15 of the NZCPS, the Panel rejects the section 42A recommendation and determines to not provide an AMA for sites MF 8217 and MF 8216 located in Tawhitinui Bay. The notified AMAs are deleted from the Variation 1 maps.

MF 8405 Tory Channel

744. The notified AMA for existing marine site MF 8405 proposed a seaward movement of the consented area in accordance with the MARWG recommendations.

745. The MDC submission sought removal of the section of the proposed AMA that overlaps with the ESMS. The KiwiRail Holdings Limited submission supported the notified AMA. Tory Channel Aquaculture Limited's submission requested an AMA over the existing farm site, shown in map HP-Draft 034 yellow.

746. Further submissions opposed the MDC submission and referenced the benthic survey from the re-consenting process in January 2020 and the history of the ESMS.

747. The section 42A report noted the ESMS was on the seaward side of the existing marine farm and that a portion of the consented area was located over the ESMS, which was unsatisfactory from an ecological perspective. The report noted there were no other marine farms in the bay forming a ribbon pattern and therefore the submitters' request to not move seaward had some merit. It highlighted the small structure exclusion areas along the inshore boundary of the site would remain within the AMA if it was not moved seaward.

748. The section 42A report recommended providing an AMA based on the consented area.

Evaluation

749. The Panel notes this marine farm pre-dates the MSRMP and that the CMZ1 zone boundary was cut around the marine farm site. It is apparent that the environmental values which the community sought to protect through the CMZ1 zone have been reinforced over time. The existing marine farm is isolated from other aquaculture development and is one of only two existing marine farms within the CMZ1 zone in Tory Channel. The Panel acknowledges the community has identified this area of Tory Channel as inappropriate for aquaculture and seek removal of existing marine farms.

750. The Panel does not consider the recent re-consenting of the existing marine farm means it is located within an appropriate area for aquaculture from a strategic perspective. The Panel must give effect to the objectives of the NZCPS, which is quite different to the requirement to have regard to the provisions of the NZCPS in considering a consent application.

751. The Panel notes the history of the development of the ESMS and the proposed boundary adjustments. The ESMS was investigated further after the PMEP was notified. The MARWG did not have the benefit of the recent information gathered for the creation of this ESMS and an appropriate buffer. The Panel has had regard to the information and mapping that supports a variation to the PMEP identifying the ESMS boundaries. The Panel accepts the ESMS boundaries have been set to provide for the protection of the bryozoan mound and a 100 m buffer. The Panel considers the ESMS and its buffer zone should not be included within a defined AMA.
752. The Panel also has the benefit of the Council's multibeam sonar survey data which indicates that additional parts of the existing marine farm are located over hard substrate which is not protected by existing structure exclusion areas. The Panel considers this may relate to the limitations of the biological survey methods used to identify benthic values.
753. The Panel has no evidence on the adverse effects of the existing farm on natural character and landscape values and therefore cannot ensure Policy 13 and 15 of the NZCPS can be given effect to in providing an AMA at this location.
754. The Panel considers the proposed AMA is inappropriate due to adverse effects significant benthic values and is contrary to Policy 11 of the NZCPS.
755. The Panel considers it has insufficient information to give effect to Policy 13 and Policy 15 of the NZCPS.
756. In taking a strategic and precautionary approach to considering the future vision for aquaculture in Tory Channel and the 'appropriateness' of the site for aquaculture, the Panel determines to not provide an AMA for the existing marine farm. The Panel considers this is within the scope of the EDS submission regarding the environmental bottom lines set by Policies 11, 13 and 15 of the NZCPS.

Decision

757. For the reasons outlined, the Panel rejects the section 42A recommendation and determines to not provide an AMA for existing marine farm MF 8405. The notified AMA is deleted from the Variation 1 maps.

New AMAs Proposed through Variation 1

758. The notified Variation 1 maps proposed the creation of new AMAs in Richmond Bay, Waihinau Bay and Marys Bay for the relocation of existing marine farms from inappropriate areas.

759. Proposed new AMAs were also put forward in submissions and the Panel heard evidence on some of these proposed new AMAs from submitters.
760. The section 42A report writers responded to the submitters' evidence presented at the hearing and provided the Panel with reply evidence from Council's technical experts Mr Grogan, Mr Wade and Mr Bentley on the proposed new AMAs.
761. The Panel considers the proposed new AMAs below.

Admiralty Bay (Hapuku Rock)

762. Clearwater Mussels Limited ('Clearwater') and Talley's Group Limited ('Talley's') requested two new AMAs at Hapuku Rock, Admiralty Bay, in evidence at the hearing. These two new AMAs were identified in the maps attached in Schedule 2 of their submissions as 'possible new AMA areas' with similar characteristics for the relocation of existing marine farms. The two new 15 ha AMAs were shown either side of existing marine farm MF 8057, which was not provided an AMA in the notified plan due to adverse effects on natural character and landscape values.
763. Mr Davidson provided evidence for Clearwater and Talley's on the benthic effects of the two new proposed AMA at Hapuku Rock based on an ecological report by Davidson Environmental Ltd.⁵⁵ He noted the two 15 ha sites were located over deep mud and mud/shell substrate and were subject to elevated wave energy and tidal currents, which would lessen marine farming impacts compared to more sheltered sites. He noted no surface dwelling benthic biological communities of interest were recorded during the survey and infaunal communities recorded were typical of mud habitats. He highlighted the presence of hard substrate within the north-eastern inshore edge of the proposed new northern AMA and recommended no longlines be placed in this area to avoid adverse effects on benthic values.
764. Mr Joshua Hunt provided an assessment of landscape, natural character and visual amenity effects and a statement of evidence supporting the proposed AMA sites located at Hapuku Rock. He concluded the values identified by the ONFL would not be compromised by the proposed AMAs due to the modified terrestrial backdrop, containment by the landform and the expansive nature of Admiralty Bay. He considered the magnitude of effect on landscape and natural character would be 'low' and the effect on visual amenity 'very low'.
765. Mr Ron Sutherland provided planning evidence for Clearwater and Talley's and concluded the existing marine farm MF 8057 and the two new proposed AMA sites were appropriate from a

⁵⁵ Davidson Environmental Limited (2021) 'Ecological report for two proposed marine farm AMA sites located near Hapuku Rock, Admiralty Bay, Marlborough Sounds'. Report number 1105

planning perspective.⁵⁶ He noted that one of the proposed AMA had been slightly reduced to approximately 13 ha, as shown in Appendix RDS1 of his evidence.

766. The section 42A report referred to the map of new 'possible' AMAs included in Schedule 2 of the submissions and stated the new proposed AMA resulted in the same fundamental issue of being in an inappropriate area as the existing marine farm.
767. The Boffa Miskell Report 2018 considered existing marine farm MF 8057 has a large magnitude of effect on local landscape values due to domination of the water body in the relatively small and open embayment. It noted mussel farms detract from the biophysical, sensory and associative values, notably the associations with the entry/exit points to Te Hoiere/Pelorus Sound and the legibility of the rugged and remote seascape values, due in part to the lack of containment. It concluded marine farming in this location was contrary to Policy 15 of the NZCPS.
768. At the end of the hearing, Mr Bentley stated his view that any aquaculture development in this location would have adverse effects on the areas significant natural character and landscape values.
769. In reply evidence, Mr Bentley maintained the view that any AMAs located along this part of coastline would be inappropriate from a natural character and landscape perspective.

Evaluation

770. The Panel has considered the matter of scope for consideration of the two new 'possible' AMAs shown in Schedule 2 maps of the submissions from Clearwater and Talley's and in evidence presented at the hearing. The Panel accepts that these two new AMAs were identified as 'possible' relief in the original submissions and were therefore open to comment by way of further submissions.
771. The Panel disagrees with Mr Hunt's view that the proposed new AMAs are contained by the surrounding landform and do not detract from the area's natural character and landscape values.
772. On the basis of the Panel's site visit and the conclusions of the Boffa Miskell Report 2018, the Panel finds that the proposed new AMAs are located in an inappropriate area for aquaculture due to adverse effects on natural character and ONFL values.

⁵⁶ Appended to his evidence were 'A Recreation and Tourism Effects Assessment' (November 2021) by Mr Rob Greenaway, 'Assessment of Potential Environmental Effects on Marine Mammals' (July 2015) by Dr Deana Clement and a 'Cultural Impact Assessment' (31 August 2015) by Mr Frank Hippolite.

Decision

773. The Panel determines the proposed new AMAs for relocations of marine farms from inappropriate areas should not be provided for. No changes to the plan provisions are required.

Okuri Bay

774. Clearwater and Talley's requested two new AMAs at Okuri Bay, in evidence at the hearing. These two new AMAs (eastern and western) were identified in the maps attached in Schedule 2 of their submissions as 'possible new AMA areas' with similar characteristics for the relocation of existing marine farms.

775. Mr Davidson provided evidence for Clearwater and Talley's on the benthic effects of the two new proposed AMAs in Okuri Bay based on an ecological report by Davidson Environmental Ltd.⁵⁷ He recommended rejection of two areas of the proposed AMAs as inappropriate for marine farming based on the presence of horse mussel beds (the entire proposed eastern AMA) and the presence of coarse soft sediments, bivalves and brachiopods (western AMA). He surveyed the area seaward of the proposed eastern AMA, as an alternative eastern AMA, and concluded it was appropriate for marine farming.

776. Mr Hudson provided a landscape assessment report and evidence assessing the natural character and landscape effects of the two proposed AMAs. He noted Okuri Bay was not identified in the PMEP as either ONC or ONFL. He considered Mr Davidson's alternative eastern AMA was unfavourable from a landscape perspective given it was located mid bay. He suggested an alternative area in Okuri Bay in his Figure 3.

777. Mr Sutherland provided planning evidence for Clearwater and Talley's and advised the two proposed AMAs had been amended in response to the recommendations of Mr Davidson, as shown in his Appendix RSD1. He noted the eastern proposed new AMA had been moved slightly offshore and reshaped; and the western proposed new AMA had been shortened to avoid benthic habitat identified by Mr Davidson. He highlighted the amendments were aligned with Mr Bentley's recommendations.

778. The Panel heard supplementary legal submissions from Mr Clark regarding the scope of the amended proposed AMAs reflecting the recommendations of Mr Davidson and Mr Hudson. He urged the Panel to take a practical approach rather than a legalistic approach in determining the scope of the Clearwater and Talley's submissions and whether the proposed

⁵⁷ Davidson Environmental Limited (2021) 'Ecological report for two proposed AMA sites located in Okuri Bay, Tasman Bay'. Report number 1101

changes to the AMAs were within scope. He appended the map included with the Clearwater and Talley's submission marked 'Possible New AMA Areas, Okuri Bay, Current Basin' showing a 20 ha western AMA and a 10 ha eastern AMA.

779. Due to the submissions received only appending maps to the submission as 'possible' AMAs and not specifically requesting new AMAs in Okuri Bay in the relief sought or providing any supporting evidence, the s42A report did not make specific recommendations. However, the report noted that the proposed eastern AMA overlapped with a site previously refused consent.
780. In reply, the section 42A report writers concluded that only the western AMA and eastern AMA were within the scope of the original submission and there was insufficient information included with the submissions for the public to comment on the 'possible' additional sites. However, they requested comment from Council's technical experts on the alternative proposed AMAs in the event the Panel concluded these could be considered to be within scope. They concluded that Okuri Bay may be suitable for some additional marine farms for relocating farms, but that further investigation was required and could not be completed through the current variation.
781. Mr Wade commented that the presence of horse mussels at drop camera 9 in the western AMA would warrant further investigation to identify the extent of the horse mussel beds. In relation to the eastern AMA, he considered that the use of eight drop camera images over 12.488 ha was insufficient to characterise the benthic environment.
782. Mr Grogan commented the western AMA did not give rise to any navigational concerns assuming it did not extend too far northward; and that minor adjustments may be needed to avoid confusion with existing navigational aids. He considered the eastern AMA would give rise to navigation concerns due to inconsistency with the ribbon or strip approach, complicating access to anchorages and its location on a headland.
783. Mr Bentley considered from a landscape perspective there was some limited capacity for aquaculture development in Okuri Bay close to the existing MF 8009. He noted the entire coastline in this area rated as holding very high levels of natural character. He considered the proposed western AMA was too large (20 ha) and too long for the landform and rocky shore. He recommended removing the north area of the western AMA from the headland and separating the remaining AMA into two blocks to respond to the topography.
784. In reply evidence, following his site visit, Mr Bentley considered the proposed western AMA was inappropriate from a landscape perspective. He did not support the alternative 'teal

coloured' AMA proposed by Mr Hudson. However, he considered there was capacity in Okuri Bay for limited aquaculture development from a landscape perspective and his Figure 3 showed the extent of this in orange.

Evaluation

785. The Panel agrees with the s42A report writers that only the 'possible' western AMA and eastern AMA are within the scope of the original submission and that the other alternative AMAs are out of scope of the submissions.
786. The Panel finds the proposed seaward movement of the western AMA, as assessed by Mr Davidson is outside the scope of the submissions. The Panel has considered Mr Davies legal submission urging a 'practical approach' to the matter of scope, but note the evidence suggests this site is inappropriate due to adverse landscape and navigation safety effects.
787. The Panel finds the alternative AMAs proposed in evidence by Mr Hudson are out of scope of the map attached to the submissions. Again, in response to the legal submission, the Panel considers that even if these sites were within scope there is insufficient evidence to determine the appropriateness of these alternatives or to assess potential environment effects.
788. The Panel notes there is very little overlap between Mr Bentley's Figure 3 orange areas and the 'possible' AMAs shown in the maps attached to the submissions. The Panel therefore finds the orange areas identified are outside of the scope of the submissions and cannot be considered by the Panel.

Decision

789. The Panel determines that no new AMAs are provided in Okuri Bay through Variation 1. No changes to the provisions are required.

Onapua Bay

790. The submission from Apex Marine Farm Limited ('Apex') requested the provision of three new AMAs in Onapua Bay to enable the development of new marine farms sought as part of a private plan change and concurrent resource consent applications U170038, U170039 and U170040, which are currently on hold.
791. The section 42A report rejected the submission and recommended no new AMAs be provided in Onapua Bay. In Reply, the section 42A report writer confirmed their recommendation remained unchanged having heard Apex's evidence presented at the hearing.

Evaluation

792. The evidence presented in relation to Apex's submission point 112.15 is summarised in the Panel's separate written decision⁵⁸ and is not repeated in this part of the decision on Variation 1 for reasons of efficiency.

Decision

793. The Panel accepts the section 42A report recommendation to reject the submission and accept the further decision; and not provide three new proposed AMAs for new aquaculture development at Onapua Bay. No changes to the provisions are required.

Richmond Bay

794. The notified Variation included a number of new AMAs in Richmond Bay for the relocation of existing marine farms from identified inappropriate areas based on the recommendation of the MARWG due to the history of extensive scallop dredging in this area.

795. Ngāti Kuia raised general concerns regarding the effects of new farms in Kapaua/Richmond Bay. However, no further evidence was provided at the hearing.

796. Minister of Conservation sought that the proposed new AMAs are assessed against the principles set out in Policy 13.21.3. Dr Solly, for the Minister of Conservation, concluded that the scale of net effects of relocating farms from inappropriate locations should be 'neutral to positive' depending on the values considered. Mr Baxter, for the Minister of Conservation, reviewed the benthic surveys undertaken by Mr Davidson and highlighted the need to avoid a subtidal reef extending off the headland to the east of the large southern AMA and a hydroid tree field along the inshore area of the northern AMA.

797. KCSRA submitted the relocation of farms to Richmond Bay was unnecessary and environmentally unsustainable.

798. The Marlborough Environment Centre Incorporated (**MEC**) and FNHTB opposed the provision of any new AMAs in Richmond Bay due to adverse effects on ecological and natural character and landscape values. MEC highlighted the bay is one of a few relatively undeveloped stretches of coastline in Pelorus Sound and should be protected.

799. FNHTB submitted the new proposed AMAs in the Richmond Bay would increase aquaculture within the king shag feeding area and added to the development in this significant habitat. The submission noted Richmond Bay was zoned CMZ1 in the MSRMP, which indicated the

⁵⁸ Decision and Report Apex Marine Farm Limited – Submission Point 112.15 to Variation 1 of the Proposed Marlborough Environment Plan (April 2023)

presence of environmental values to be protected from aquaculture. For these reasons, FNHTB sought deletion of the proposed new AMAs located in Richmond Bay.

800. In evidence for FNHTB, Mr Wynne-Jones noted that there had been no benthic assessment undertaken in Richmond Bay. He highlighted the importance of this 'middle part of the feeding area' which is used by king shag from Duffers Reef and considered the new AMAs would increase the 'anthropogenic creep' in their most important feeding area.
801. Section 42A report highlighted the need to revisit the Schedule 1 process to afford the public due consideration of the alternative sites proposed. The report writers acknowledged there was a level of uncertainty as to whether the relocation of marine farms from inappropriate areas would fit within the proposed AMAs. The section 42A report writers agreed that all new AMAs should be assessed against Policy 13.21.3, which would require a biological report to be completed to assess benthic values and ensure there were no sensitive benthic habitats requiring protection beneath the proposed new AMAs.
802. Mr Wade commented Richmond Bay has not been dredged for scallops for several years and he considered it was a large assumption that because it had been subject to historic dredging activity that there were no significant ecological species or habitats present. He considered the multibeam sonar survey data suggested quite a varied seafloor in terms of pits and hollows on the northern side of the bay and a large reef system at the southwest entrance to the bay.
803. Mr Bentley highlighted there was currently very few existing marine farms in Richmond Bay, comprising only two mussel farms and a salmon farm. He noted it was one of the largest bays in the Waitata Reach landscape and that most of the surrounding land use was in advanced stage of regeneration. He advised Richmond Bay was not identified as an ONFL area but that the entire bay and much of the land has high natural character.
804. Mr Bentley considered the appropriate level of aquaculture in the bay depended on the relationship between the scale of the development and the scale of the landscape, avoiding sensitive areas, co-locating effects together, and integration of aquaculture without degrading landscape and natural character values.
805. In reply evidence, Mr Bentley stated that the bay was large enough to support some further development if it was carefully located. His Figure 2 recommended amendments to the proposed AMAs as shown in orange, including expansion adjacent to the two existing marine farms and alternative sites to those notified.

Evaluation

806. The Panel acknowledges that Richmond Bay is currently relatively free from marine farming activity and is surrounded by land that is in various stages of indigenous vegetation regeneration. The bay has high natural character and is largely unmodified.
807. The Panel considers there is insufficient information on the environmental values that need to be protected in Richmond Bay to provide new AMAs for the relocation of marine farms from inappropriate areas. Without the ability to assess potential adverse effects on cultural, natural character, landscape and ecological values, the Panel cannot be sufficiently confident that the environmental effect of the relocation of existing marine farms from inappropriate areas will be neutral or positive, as sought by the Minister of Conservation.
808. The Panel agrees with Mr Wade that it is a large assumption to assume there are no significant benthic values present because of historic scallop dredging activity within the wider bay. The Panel considers site specific biological reports are required to ensure significant benthic values which maybe present are protected for AMAs can be established.
809. The Panel notes the concerns of Mr Bentley that any new aquaculture development would need to be very carefully located to maintain existing natural character and landscape values. The difference between the notified proposed AMAs and Mr Bentley's recommended orange boxes (on his Figure 2) raises the matter of scope. The evidence indicates to the Panel that further assessment is required to determine any appropriate level and location of new aquaculture without adversely affecting existing natural character and landscape values.
810. The Panel acknowledges the submission by Ngāti Kuia concerning effects on cultural values and relationships, however, no evidence was provided clarifying these concerns. The Panel agrees that such matters are relevant considerations in deciding appropriate locations for new AMAs established for the relocation of existing marine farms from inappropriate areas. The Panel notes it has amended Policy 13.21.3 to include a requirement to recognise and provide for the traditional and continuing relationship of Marlborough's tangata whenua iwi with the moana and sites of significance, which is addressed earlier in this decision.
811. The Panel agrees that new AMAs for the relocation of existing marine farms should be assessed under Policy 13.21.3 (as amended by this decision) and finds there is insufficient information available at this time to enable such an assessment within the scope of this Variation.
812. The Panel recommends that the establishment of any new AMAs for the relocation of existing marine farms in Richmond Bay are considered through a future plan change.

Decision

813. The Panel accepts the submissions to remove the notified new AMAs and determines to remove AMA 13 in CMU 22 (Inner Pelorus).

Waihinau Bay

814. A new AMA was notified in Waihinau Bay (AMA 11) for the relocation of existing marine farms from inappropriate locations.

815. MFA proposed minor amendments to the boundaries of the proposed AMA as shown in HP-Draft-079 yellow.

816. The section 42A report accepted the changes proposed by MFA shown on HP-Draft 079 and recommended provision of an AMA for the relocation of existing marine farms from inappropriate locations.

817. Mr Wade commented that the seafloor appeared fairly uniform at Waihinau Bay using the multibeam data, but considered there was insufficient information to assess biogenic habitat forming species in soft sediment locations.

Evaluation

818. The Panel considers there is potential for a new AMA at Waihinau Bay in the location identified on map HP-Draft-079 yellow for the relocation of existing marine farms from inappropriate areas. However, the Panel accepts the expert advice of Mr Wade that there is insufficient evidence to consider the appropriateness of the proposed new AMA to ensure the protection of significant benthic habitats. The Panel considers further investigation through a future plan change is required to give effect to the provisions of the NZCPS for establishment of a new AMA in Waihinau Bay for the relocation of existing marine farms.

Decision

819. The Panel recommends the Council withdraws notified new AMA 11 in CMU 44 at Waihinau Bay.

Marys Bay

820. Sanford Limited requested a new proposed AMA between Marys Bay and Homewood Bay to provide for space lost at other marine farm sites. However, no location map or supporting evidence was provided with the submission. Evidence provided for Sanford Limited at the hearing indicated it was not yet known whether the new AMA would be needed.

821. The End of Hearing Report noted that given no further information was provided by the submitter at the hearing, there was insufficient evidence to assess the appropriateness of the site.
822. A small new proposed AMA was notified in Marys Bay for the relocation of existing marine farms from inappropriate locations.
823. The section 42A report noted the notified proposed AMA site was very small. Mr Wade commented that the west of the proposed new AMA at Marys Bay lay partially over the reef slope that runs off the headland to the west of the AMA. He considered there was insufficient information to assess the appropriateness of the site from an ecological perspective.
824. The AMA proposed by Sanford and that its exact placement was hard to determine on the information provided in the submission. The report requested the submitter provide further information at the hearing and no recommendation was made.

Evaluation

825. The Panel accepts the End of Hearing Report that there is insufficient evidence to enable consideration of the appropriateness of the new AMA proposed by Sanford Limited and the notified proposed AMA for the relocation of existing marine farms from inappropriate areas. The Panel recommends that the establishment of any new AMAs in Marys Bay for the relocation of existing marine farms are considered through a future plan change.

Decision

826. The Panel rejects the Sanford submission and determines to not provide the AMA proposed by Sanfords located between Marys Bay and Homewood Bay. No changes to the provisions are required.
827. The Panel recommends the Council withdraws the notified new AMA 13 at Marys Bay.

Waitui Bay

828. The submission from Waitui Holdings Limited sought provision of two AMAs for experimental submerged kelp/seaweed farming in two areas identified on the western side of Waitui Bay (CMU 45).
829. The section 42A report noted the intention of Variation 1 was to provide for existing marine farms and not to provide for new aquaculture development that is not currently consented within the enclosed waters of the Marlborough Sounds. For this reason and on the basis of the expert assessment of Mr Bentley, the report rejected the submission and recommended that no new AMAs should be provided for in Waitui Bay.

830. Mr Bentley's assessment highlighted the ONFL values of the broader outer Sounds landscape, including impressive formative process, a sense of remoteness and wilderness and the presence of limited structures. He recommended rejection of the provision of any AMAs in this area due to adverse effects on landscape and natural character values, and the sensitivity of the exposed embayment.
831. Mr Clark presented legal submissions at the hearing on behalf of Waitui Holdings Limited, which is owned by Mr Noel and Mrs Debbie Moleta. He outlined the family's long farming history with the land surrounding Waitui Bay and their long-term vision for their property as guardians of the land. He submitted the bay was suitable for sustainably growing kelp/seaweed on the western side of the bay using submerged structures and that no marine farming structures would be visible other than corner buoys marking the location of the sites. He noted the experimental nature of the development would make the cost of a future plan change prohibitive. He submitted the relief sought was a mechanism to not prohibit activity such as a submerged kelp farm in the bay.
832. In response to Minute 15, Mr Bentley remained of the view the proposed AMAs were inappropriate due to adverse effects on landscape and natural character values. He considered the proposal to submerge marine farming structures on the seabed would not avoid adverse effects on the existing degree of naturalness; and highlighted service vessels would still be required to operate and maintain a marine farm.
833. The End of Hearing Report confirmed there was no change to the section 42A report recommendation.

Evaluation

834. Waitui Bay and all adjacent bays are recognised as ONFL areas which must be protected under Policy 15 of the NZCPS. There are currently no marine farms located within Waitui Bay and the marine environment has a high degree of naturalness. The marine environment is recognised as having high natural character, tending to very high and ONC towards the Cape Lambert peninsula. The Panel accepts the evidence of Mr Bentley that the entire bay is highly sensitive to adverse effects from a landscape and natural character perspective.
835. The Panel finds Waitui Bay is inappropriate for aquaculture activities given its outstanding natural landscape values and high natural character. While it is acknowledged that submerging marine farming structures on the seabed would reduce visual effects and effects on landscape/seascape values, it would not avoid adverse effects on natural character values

and the current unmodified natural sequence of the seabed or the adverse effects of activity associated with servicing and maintaining a submerged marine farm.

836. The Panel finds that to give effect to Policies 13 and 15 of the NZCPS outstanding natural character must be preserved and outstanding landscape values must be protected by avoiding the adverse effects of marine farming activity in Waitui Bay.
837. The Panel has considered Mr Davies legal submissions to enable consideration of a resource consent application for a submerged marine farming operation as a discretionary activity in this CMU. The Panel considers this is not appropriate given the intention of Variation 1 is to prevent any increase in marine farming activity within the enclosed water of Marlborough Sounds until concerns regarding cumulative effects are addressed.

Decision

838. The Panel accepts the section 42A report recommendation to reject the submission and not provide new AMAs in Waitui Bay. No changes are required.

Plan Provisions for New AMAs Provided for Relocation of Existing Marine Farms

839. Overall, Mr Wade considered there was insufficient information on the benthic ecology and habitat at all of the proposed new AMA sites to evaluate the appropriate location of AMAs to avoid adverse effects on significant marine biodiversity. He was concerned that a limited number of images obtained using drop camera technology was insufficient to characterise large areas of the seabed and to identify significant benthic values that need to be protected.
840. Mr Bentley recommended that there was an opportunity to relocate marine farms into some of the larger bays (for example Forsyth or Beatrix Bay) that are currently occupied by marine farms. He considered some of the larger bays retained an ability to absorb further aquaculture without detrimentally affecting landscape values or natural character condition, but that further site-specific assessments would be required.
841. The Panel acknowledges Mr Wades caution regarding the lack of technical evidence on benthic ecological values and the need to undertake further assessments before new AMAs are created. The Panel has considered how this can be addressed through this process.
842. The Panel agrees with Mr Bentley that there may be further opportunities to relocate marine farms into some existing areas of aquaculture development without adversely affecting natural character and landscape values. The Panel generally accepts the premise that it is preferable to relocate existing marine farms from inappropriate areas to areas currently

utilised for aquaculture development, where this can be accommodated without risk of increasing adverse cumulative effects.

843. In line with this approach, the Panel has generally accepted small increases in the space occupied by AMAs (within the scope of the changes sought through the Variation) to accommodate additional backbone longlines from existing marine farms relocating from inappropriate areas, where these have been requested and where there is sufficient information available to support this. The Panel considers there may be further opportunities for such relocations within the scope of the notified AMAs and MFA/AQ proposed AMAs.
844. The Panel has determined that 21 existing marine farms are located in inappropriate locations and of these 17 marine farms have not been provided new AMA space for relocation. These existing marine farms are identified on Schedule x.
845. The Panel acknowledges the intention of Variation 1 was to provide new AMAs for the relocation of these existing marine farms without loss of total consented backbone length. However, the Panel finds that there is currently insufficient information to fully assess the appropriateness of any of these new locations without further investigation and consultation. The Panel also considers that there is merit in assessing further opportunities for small increases to AMAs to accommodate additional longlines in some areas.
846. An exception to the above approach has been made for MF8002 in Catherine Cove. As set out in the decision for the existing farm at Cherry Tree Bay, there are compelling reasons for the marine farm to move from the existing location.
847. There was comment at the hearing regarding the likely nature of the substrate on the seabed below the AMA proposed for replacement of MF8002, based on location and water depth. Although this expert and lay opinion was reassuring to a point, there remains uncertainty as to whether the AMA gives effect to Policy 11 of the NZCPS. The Panel was particularly conscious of the point made by Mr Wade that there is no benthic information available for Catherine Cove, including below the proposed AMA.
848. At the same time, the Panel accepts the need to recognise and provide for Ngāti Koata and the Elkington whānau's ongoing and enduring cultural connection to Catherine Cove.
849. In these circumstances, the Panel has decided to confirm the proposed AMA, but manage the residual risk to benthic habitat by way of the status of the marine farming activity. A restricted discretionary activity will apply to the relocation of MF8002 to the AMA. The rule provides for potential relocation from an inappropriate location, while allowing for potential adverse

effects on benthic habitat to be identified and considered through the subsequent resource consent process.

Decision

850. The Panel determines that the status of marine farming in the AMA provided as replacement space for MF8002 be provided for as a restricted discretionary activity as follows:

<p>[C]</p> <p><u>16.5.4 Marine farming using conventional longline structures in an AMA created as replacement space for MF8002, including the associated occupation of space in the coastal marine area, the erection, placement, use of structures, disturbance of the seabed and ancillary discharges to water, but excluding the discharge of feed and medicinal or therapeutic compounds.</u></p> <p><u><i>Standards and terms:</i></u></p> <p><u>16.5.4.1 The marine farm is identified on Schedule 4 of Appendix 29.</u></p> <p><u>16.5.4.2 The consent applicant holds an authorisation to apply for a coastal permit to occupy space within the AMA, in the location applied for, issued by the Marlborough District Council pursuant to Part 7A of the RMA and Policy 13.21.7 and the application meets all the terms in that authorisation, including that the applicant agrees to a condition that any marine farm permit replaced by the application will be surrendered no later than 24 months after the commencement of the replacement permit.</u></p> <p><u>16.5.4.3 The application is for the same, or shorter, total length of backbone or intertidal structures as a marine farm or farms which the current application is replacing.</u></p> <p><u>14.5.4.4 The line length must not exceed that specified for the AMA in Schedule 4 of Appendix 29.</u></p> <p><u>16.5.4.5 The application must be made within 3 years of 19 May 2023.</u></p> <p><u>16.5.4.6 The activity does not include the discharge of feed or medicinal or therapeutic compounds.</u></p> <p><u><i>Matters over which the Council has reserved discretion:</i></u></p> <p><u>16.5.4.7 Adverse effects on benthic habitat.</u></p> <p><u>16.5.4.8 Layout and design of the farm, including the number and length of backbone lines, and the arrangement of those lines including separation distances between lines.</u></p> <p><u>16.5.4.9 The layout, positioning (including density), lighting and marking of marine farm structures within the marine farm site, to ensure:</u></p> <p style="margin-left: 40px;"><u>(a) continued reasonable public access (including recreational access) in the vicinity of the marine farm, including separation between farms to facilitate public access to and from shore.</u></p> <p style="margin-left: 40px;"><u>(b) navigational safety, including the provision of navigation warning devices and signs.</u></p> <p><u>16.5.4.10 Appropriate and efficient use of space within the AMA, including</u></p>

	<u>layout and arrangement of marine farms.</u>
16.5.2.8	<u>Conditions requiring the surrender of an existing coastal permit or other method to ensure the allocation of space authorised by the consent replaces existing permits and rights to occupy space in a common marine and coastal area of the same or greater areal extent.</u>
16.5.2.9	<u>Integrity and security of the structures, including the anchoring systems</u>
16.5.2.9	<u>Maintaining the marine farm in good order to avoid the adverse effects of marine farming related debris and litter from their marine farming operation, including regular monitoring and removal of rubbish</u>
16.5.2.10	<u>Measures to control the visual appearance of surface structures in relation to location, density, materials, lighting and colour, and their compatibility with the surrounding coastal environment.</u>
16.5.2.11	<u>Measures to control noise effects from the operation, maintenance and harvest of the marine farm, including operating hours.</u>
16.5.2.12	<u>Measures to control the movement of stock, structures or equipment relocated from another region to manage the risk of spreading harmful aquatic organisms.</u>
16.5.2.14	<u>Supply of information and monitoring data to the Council</u>
16.5.2.15	<u>The removal of derelict, unused or obsolete structures</u>
16.5.2.16	<u>Review of the consent conditions.</u>
16.5.2.17	<u>The duration of the consent.</u>

851. The Panel considers the provision of new space for the relocation of the existing marine farms in Appendix 4 should be considered through a further plan change process.

852. The Panel has also considered the status of the 17 inappropriately located farms for which no replacement space has been provided for in Variation 1. All but two of the marine farms are authorised by coastal permits that do not expire until 2031 or onwards (right through to 2042). In these circumstances, there is ample time for Council to undertake the investigations required to identify appropriate replacement space. For the other two farms, they expire in 2024 and 2025 so there is an element of urgency with respect to these farms.

853. It is anticipated that this work will include close involvement with the affected consent holder, including preferably the sharing of the costs of the investigation.

Offshore CMUs

MF 8001 Clifford Bay

854. No AMA was provided for MF 8001 on the basis the existing marine farm is located in the Offshore CMU where marine farming activity is a discretionary activity.

855. The Clifford Bay Marine Farms submission requested the provision of AMAs for the existing marine farm sites and provided four options, including the existing sites, sites further offshore, a different site configuration and relocation to another bay.
856. The MFA submission also requested provision of AMAs for the existing marine farms in the Offshore CMUs.
857. The Panel heard evidence for Clifford Bay Marine Farms from Mr Brad Coombs, Mr Rob Greenway, Dr Ben Robertson, and Dr Simon Childerhouse on the environmental effects of the proposed new AMA located 900 m further offshore than the existing consented area; and Ms Patricia Redwood as a director and Sir Tipene O'Regan as the founding Chairman of the company and for Ngāi Tahu and Te Rūnanga O Kaikōura as shareholders. Ms Redwood and Sir Tipene highlighted the significant investment in the existing farms, the importance of good water quality and the desire to move further offshore.
858. The section 42A report noted the recommendation of the MARWG that the appropriateness of marine farms located within the Offshore CMU should be determined through the resource consent process and an assessment of environmental effects as a discretionary activity.
859. Mr Bentley highlighted the seascape values and lack of modification or presence of other marine farms. He noted the marine farm was only partially developed and represented pioneering work. He considered it was appropriate to have regular decisions of re-consenting and supported the site not having an AMA provided.
860. In reply evidence, Mr Bentley supported the submerging and re-positioning of the farm further offshore due to beneficial improvements to landscape and natural character effects.

Evaluation

861. There is no prohibition on marine farming in the Offshore CMUs. The Panel accepts the Council recommendation that it is appropriate to provide for marine farming in these areas as a discretionary activity under Rule 16.6.13 to enable a full assessment of environmental effects.
862. The Panel is cognisant that both existing consented sites in the Offshore CMUs are operating under consents which are subject to adaptive management conditions. The consents allow for further staged development of the marine farms subject to further assessment of environmental effects to address uncertainty. The Panel consider it is appropriate that any new consents for the existing sites are considered as a discretionary activity.

863. The Panel agrees with the Council recommendation that AMAs should not be provided for these offshore farms given the uncertainty regarding the effects of the consented activity and the appropriateness of the sites for marine farming.
864. The Panel considers a decision to move the marine farm offshore is not within scope of Variation 1 and should be considered through a consent application process.

Decision

865. The Panel rejects the submission from Clifford Bay Farms and accepts the section 42A report recommendation to not provide an AMA for existing marine farm MF 8001. No changes to the provisions are required.

MF 8561 D'Urville Island

866. No AMA was provided for MF 8561 on the basis the existing marine farm is located in the Offshore CMUs where marine farming activity is a discretionary activity.
867. The submission from Wakatū Incorporation sought provision of an AMA for the existing marine farm.
868. The MFA submission also requested provision of AMAs for the existing marine farms in the Offshore CMUs.
869. Legal submissions at the hearing from Ms Evie Rainey, for Wakatū Incorporation, requested provision of an AMA to enable the existing marine farm to be reconseented as a controlled activity under the plan or a restricted discretionary activity under the NES-MA.
870. The section 42A report noted the recommendation of the MARWG that the appropriateness of marine farms located within the Offshore CMU should be determined through the resource consent process and an assessment of environmental effects as a discretionary activity.

Evaluation

871. There is no prohibition on marine farming in the Offshore CMUs. The Panel accepts the Council recommendation that is appropriate to provide for marine farming in these areas as a discretionary activity to enable a full assessment of environmental effects.
872. The Panel is cognisant that both existing consented sites in the Offshore CMUs are operating under consents which are subject to adaptive management conditions. The consents allow for further staged development of the marine farms subject to further assessment of environmental effects to address uncertainty. The Panel consider it is appropriate that any new consents for the existing sites are considered as a discretionary activity.

873. The Panel agrees with the Council recommendation that AMAs should not be provided for these offshore farms given the uncertainty regarding the effects of the consented activity and the appropriateness of the sites for marine farming.

Decision

874. The Panel rejects the submissions from Wakatū Incorporation and MFA and accepts the section 42A report recommendation to not provide an AMA for existing marine farm MF 8561. No changes to the provisions are required.

Appendices

- Appendix 1: List of appearances at hearing
- Appendix 2: Variation 1 provisions, as amended by decision
- Appendix 3: Spatial AMA decisions
- Appendix 4: Inappropriate marine farms