

Decision following the hearing of an application for resource consent under the Resource Management Act 1991



PROPOSAL

It is proposed to establish, operate and maintain a 221-hectare marine farm approximately 3.6km east of Ponui Island, in the Firth of Thames. The marine farm would be utilised to grow and harvest New Zealand Green-lipped Mussels™ (*Perna canaliculus*).

This resource consent is **granted**. The reasons are set out below.

Application number:	CST60335843
Site address:	Coastal Marine Area, Firth of Thames
Applicant:	Ponui Aquaculture Limited
Hearing commenced:	Tuesday 4 August 2020, 9.30 am
Hearing panel:	Mark Farnsworth (Chairperson) Melean Absolum Juliane Chetham
Appearances:	<p><u>For the Applicant:</u> Amanda Hills, Legal Laurie Beamish, Ngāi Tai ki Tāmaki Peter Bull, Applicant Peter Clough, Economic Helen McConnell, Marine Mammals Rob Greenway, Recreation Dr Peter Wilson, Marine Ecology and water column Dr Carina Sim-Smith, Biosecurity John Hudson, Landscape, natural character and amenity Robin Britton, planning</p> <p><u>For the Submitters:</u> Thelma Chamberlin David Chamberlin Vesta Gribben</p> <p><u>For Council:</u> Brad Allen, Team Leader Andrew Wilkinson, Planner James Bentley, Landscape Architect Kala Sivaguru, Coastal Ecology Ashishka Sharma, Coastal Processes Christiaan Moss, Harbour Master Sam Otter, Senior Hearings Advisor</p>

Hearing adjourned	Tuesday 4 August 2020
Commissioners' site visit	Monday 3 August 2020
Umupuia Marae Visit	Monday 3 August 2020
Hearing Closed:	28 August 2020

INTRODUCTION

1. This decision is made on behalf of the Auckland Council ("the Council") by Independent Hearing Commissioners Mark Farnsworth, Melean Absolum and Juliane Chetham, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("the RMA").
2. This decision contains the findings of our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. The application was publicly notified on 15 November 2019. A total of fifteen submissions were received within the statutory submission period, with one in support and fourteen in opposition. An additional submission was received from Sharon Reid (submission 16). As the body of the submission referred to a different resource consent application this submission has not been considered.
4. A comprehensive section 42A hearing report ("**the Section 42A Report**") was prepared by **Andrew Wilkinson**, Planning Consultant, Scott Wilkinson Planning. Mr Wilkinson recommended that consent be granted. The s42A report was supported by technical reviews and advice from the following specialists:
 - **Dr Kala Sivaguru & Ms Ashishika Sharma** on marine ecology and coastal water allocation;
 - **Mr James Bentley & Ms Kerrtu Ots** on landscape, natural character and visual amenity; and
 - **Mr Christiaan Moss**, Deputy Auckland Harbour Master, Auckland Transport, on navigation.

Summary of proposal and activity status

5. The applicant's Assessment of Environmental Effects¹ (**AEE**) and the Section 42A Report² provided a full description of the proposal and its location. In summary the applicant proposes to establish, operate and maintain a 221-hectare marine farm, in the Coastal Marine Area (**CMA**), to the east of Ponui Island in the Hauraki Gulf.

¹Applicant's AEE at p8

²Section 42A Report at [7]

6. The marine farm will be utilised to: grow and harvest New Zealand Green-lipped Mussels™ (*Perna Canaliculus*); and for mussel spat holding, on conventional longline structures.
7. Approval is also sought for associated discharges to water and disturbance to, and deposition on, the seabed.
8. The site of the proposed marine farm is located in clear, open, coastal water approximately 3.6 kilometres (**km**) from Scully Reef on the eastern side of Ponui Island; 6.7km from the nearest other marine farm and 12.4km west of Deadman's Point on the Coromandel Peninsula³.
9. The proposed farm layout and growing structures are detailed in the AEE⁴. In summary the farm will comprise:
 - 8 farm blocks situated in a rectangular area of coastal space 1,700 metres (**m**) x 1,324m;
 - Each block will occupy an area of 350m x 600m and be separated by 100m access ways; and
 - Farming operations⁵ will require the use of anchors, warp lines, backbone lines and floats.
10. The farm will be serviced⁶ from the Coromandel Sugar Loaf Wharf facilities. No new land-based facilities are proposed as part of the application.
11. The proposal requires resource consents pursuant to section 12 of the Resource Management Act 1991 (**RMA**) as it involves the following activities:
 - to erect, use and maintain marine farm structures in the CMA and fixed on the seabed (s12(1)(b));
 - to disturb the seabed (s12(1)(c));
 - to deposit material on the seabed (s12(1)(d));
 - to occupy space in the Coastal Marine Area (s12(2)(a)); and
 - to undertake marine farm activities in, on, under, or over the coastal marine area (s12(3)(a)).

The Section 42A Report notes that the application requires consideration as a *Discretionary Activity*⁷.

³ Applicant AEE at p8

⁴ Ibid at [2.3]

⁵ A full description can be found in the AEE at [2.3.1 – 2.3.5]

⁶ AEE at [2.4]

⁷Section 42A Report at p11, AEE at [3.2]

Procedural matters

12. As noted above, a submission was received from Sharon Reid (submission 16), which contained information relating to a different resource consent application. The submission has not been withdrawn⁸. The Section 42A Report notes that the submission is not relevant to this application, we concur and we have set this submission aside.

Relevant statutory provisions considered

13. In accordance with section 104 of the RMA, we have had regard to the relevant statutory provisions including the relevant matters of Part 2 and sections 104, 104B, 105, 107, 107F and 108.

Relevant standards, policy statements and plan provisions considered

14. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the following documents.
- Hauraki Gulf Marine Park Act 2000 (s7 and s8) (“**HGMPA**”);
 - New Zealand Coastal Policy Statement 2010 (“**NZCPS**”):
 - Objectives 1, 2, 3, 4 and 6, and Policies 2, 6, 8, 11, 13, 15 & 23;
 - Auckland Unitary Plan (Operative in Part) 2016 (“**AUP(OP)**”):
 - Chapter B – Regional Policy Statement;
 - Chapter E – Auckland-wide:
 - Section E18 – Natural character of the coastal environment; and
 - Section E19 – Natural features and natural landscapes in the coastal environment;
 - Chapter F –Coastal (Operative on 31 May 2018):
 - Section F2 – Coastal – General Coastal Marine Zone;
 - Subsection F2.15 – Aquaculture (particularly).
15. The above provisions are comprehensively detailed in Section 5 of the AEE and sections 13 & 14 of Mr Wilkinson’s Section42A report for the proposed marine farm, and further addressed specifically in Ms Britton’s statement of evidence⁹. Those provisions were not in dispute and are adopted for purpose of this decision without further repeat (per s113(3) RMA).

⁸Section 42A Report at [10]

⁹ Ms Britton EIC at [128 – 218]

16. We also considered the following other matters to be relevant and reasonably necessary to determine the application in accordance with section 104(1)(c) of the RMA:

- Marine and Coastal Area (Takutai Moana) Act 2011;
- Statutory Acknowledgements:
 - Te Kawerau ā Maki Claims Settlement Act 2015; and
 - Ngāi Tai ki Tāmaki Claims Settlement Act 2018.
- The Auckland Council Navigation Safety Bylaw 2014;
- The Hauraki Iwi Environmental Plan 2004 (Whaia Te Mahere Taiao a Hauraki);
- The Hauraki Gulf Marine Spatial Plan 2016 (Sea Change – Tai Timu Tai Pari).

Local Board comments

17. The Section 42A Report records¹⁰ the application was sent to the Waiheke Local Board on 14 January 2020. The Local Board advised that they had no material objection to this resource consent application.

SUMMARY OF EVIDENCE HEARD

18. The evidence presented at the hearing responded to the issues and concerns identified in the Council planning officer's recommendation report, the application itself and the submissions made on the application.

For the applicant

19. In accordance with the requirements of the RMA, the Applicant's experts' evidence had been pre-circulated. Each expert, at the hearing, tabled a summary of the key points of their evidence and spoke to it.

20. The evidence and submissions presented by the Applicant are summarised below.

21. The applicant's Legal Counsel **Amanda Hills** co-ordinated the Applicant's case and spoke to the pre-circulated Opening Legal Submissions¹¹ which had been prepared by herself and **Emma Deason**. Ms Hill provided:

- An overview of the proposal as applied for; and
- A consideration of Mr Wilkinson's position¹².

¹⁰ Section 42A Report at [8]

¹¹ Supported by an electronic casebook of all cases referenced.

¹² Hill & Deason Opening Legal Submissions at [6-7]

22. Ms Hills' advocated that the applicant had comprehensively addressed, by way of expert evidence, all the points (both concerns and clarification required) that had been raised in submissions received and identified in the Section 42A Report¹³, in particular:
- Government policy support for aquaculture¹⁴;
 - Sea Change¹⁵;
 - The precautionary approach¹⁶;
 - Impact on ecology¹⁷;
 - Impact of marine mammals¹⁸;
 - Impact on natural character¹⁹;
 - Impact on landscape²⁰;
 - Effects on visual amenity²¹;
 - Impact on recreation and navigation²²; and
 - Biosecurity impacts²³.
23. Ms Hills noted²⁴ that she was in agreement with Mr Wilkinson and Ms Britton that there was no need to have recourse to Part 2 of the Act as the AUP gives effect to the NZCPS.
24. Ms Hills also addressed the legal issues arising out of submissions, including:
- Precedent setting implications²⁵;
 - The size of the proposed farm²⁶;

¹³ Section 42A Report at pp13- 15

¹⁴ Hill & Deason Opening Legal Submissions at [10-16]

¹⁵ *ibid* at [17 -24]

¹⁶ *ibid* at [25-31]

¹⁷ *ibid* at [32-43]

¹⁸ *ibid* at [44-55]

¹⁹ *ibid* at [56-85]

²⁰ *ibid* at [86-128]

²¹ *ibid* at [129-139]

²² *ibid* at [140-145]

²³ *ibid* at [146-152]

²⁴ *ibid* at [153]

²⁵ *ibid* at [158-162]

²⁶ *ibid* at [163-164]

- The benefits to Ngāi Tai ki Tāmaki Trust²⁷; and
 - Pollution and debris²⁸.
25. Ms Hills concluded by looking at the aquaculture-specific RMA sections and the proposed conditions of consent. .
26. **Laurie Beamish**, a resident of Umupuia, and kaumatua of Ngāi Tai ki Tāmaki, in his written evidence²⁹ outlined his whakapapa and the relationship of Ngāi Tai ki Tāmaki to Te Pounui a Peretu (Ponui Island) and Tīkapa Moana (Hauraki Gulf). He told of his life-long commitment to the Iwi, and to the continued enhancement of, the mauri and wellbeing of the Hauraki Gulf as a kaitiaki for Ngāi Tai ki Tāmaki.
27. He outlined the consultation undertaken with other Iwi with interests in this area: Ngāti Whanaunga and Ngāti Pāoa. He explained why kaimoana is so important to Ngāi Tai and how kaitiakitanga would guide the Iwi's involvement in the aquaculture industry. He was of the view that given the Iwi's aspirations, Peter Bull is the ideal partner for them and the Iwi would bring Mātauranga Māori to the partnership and would incorporate the Iwi's traditions with modern aquaculture practice.
28. Mr Beamish explained³⁰ the six key benefits of the farm to the Iwi:
- The ability to express and impart Iwi values;
 - Employment opportunities;
 - Having Mana and control over food resources;
 - Environmental benefits stemming from the deployment of filter feeding species in the gulf;
 - Upholding the Mana of Umupuia Marae; and
 - Providing an income stream.
29. In addressing the concerns of submitters Beamish noted:
- The effects of mussel farms are well understood and manageable;
 - The visual and amenity effects of the farm would be removed instantly if the farm was removed in the future; and
 - The ecological effects are reversible.

²⁷ ibid at [165-178]

²⁸ ibid at [179]

²⁹ A summary of Mr Beamish's evidence does not do justice to the sentiments expressed.

³⁰ Beamish EIC at [38]

30. **Mr Peter Bull**, a mussel farmer, spoke to his pre-circulated evidence noting that this was a joint venture between Paddy Bull Limited and Ngāi Tai ki Tāmaki. In summary the key points made in his evidence were:
- New water space is important because each farm site has different characteristics;
 - This site has characteristics that would make it great for farming;
 - The farm will grow mussels from spat from Kaitaia;
 - The application is for 221 hectares;
 - Vessels will visit the site for initial farm installation. Time spent by vessels at the farm will change as the site is developed.
31. Mr Bull outlined the benefits of mussel farming to the region and gave projections of the values to be created from the venture. Consent is sought for 35 years. A comprehensive set of proposed conditions has been volunteered.
32. In addressing the concerns of submitters, especially Mr Chamberlin, he noted that they were prepared to work with submitters. If consent is granted, they would be prepared to do regular beach clean-ups³¹ and pick up floats if contacted.
33. **Dr (Jen-hui) Carina Sim-Smith**, an Associate Senior Marine Scientist at Coast and Catchment Limited provided a brief of expert evidence which addressed marine biosecurity. The following is a summary of key points of her evidence.
34. It is possible that the proposed farm and operations may introduce new pests and diseases to the area. This probability can be reduced by appropriate management measures. The main pests of concern are:
- the clubbed tunicate (*Styela clava*);
 - Japanese kelp (*Undaria pinnatifida*);
 - the Mediterranean fan worm (*Sabella spallanzanii*); and
 - the droplet tunicate (*Eudistoma elongatum*).
35. All of these pests are already present in the inner Hauraki Gulf. Overall; there is a high probability that the proposed farm will eventually be colonised by pest species that are present in the area. Recommended management methods will reduce the pest population on the farm.
36. The impacts that these pest species have on New Zealand's marine ecosystem are unknown and difficult to quantify. They have the potential to out-compete native species and can cause changes in the community composition. At present, there is

³¹Paddy Bull Limited undertakes 3-4 beach clean-ups per year.

little evidence to suggest that any of these pest species will have a major adverse impact on New Zealand's marine ecosystem.

37. Little is known about the diseases of New Zealand mussels, but the known diseases are ubiquitous in the marine environment and only appear to cause mortality under stressful environmental conditions (e.g. excessive rain or heat). Adopting the recommended mitigation methods will help reduce the likelihood of new pest and disease incursions. It is intended to only use stock from local or pest-free sources.
38. In the context of pest species already recorded in the Inner Hauraki Gulf, and the non-farm related pathways present (some of which, like water currents, are uncontrollable), the additional biosecurity risk created by the proposed farm is considered to be less than minor if the recommended mitigation methods are implemented.
39. **Helen McConnell**, a Principal Consultant at SLR Consulting provided a brief of evidence which assessed the effects of the proposal on marine mammals found off Ponui Island and in the extended Firth of Thames/inner Hauraki Gulf area. In summary, her findings on species found in this area are:
 - Common dolphins are likely to have a frequent presence around the proposed farm;
 - Four other species are likely to occur on a sporadic or seasonal basis (Bryde's whales, bottlenose dolphins, orca and New Zealand fur seals);
 - Two species could possibly have an occasional seasonal presence - southern right whales and humpback whales; and
 - Other marine mammal species probably only occur as rare visitors to the area.
40. The proposed farm location does not specifically constitute important habitat for any marine mammal species, in particular it does not constitute habitat that is important during the vulnerable life stages of any indigenous species. Ms McConnell did not overlook the fact that the Inner Hauraki Gulf (**IHG**) as a whole is a habitat in the coastal environment that is important during the vulnerable life stages of indigenous marine mammals (including Bryde's whales, bottlenose dolphins, common dolphins and orca). The proposed farm is a small percentage of the overall available habitat for those species, and therefore significant effects are avoided. She was of the opinion that, assuming recommended mitigation measures are followed:
 - The potential habitat exclusion/modification effects on dolphins, orca and baleen whales from the proposed farm will be minor;
 - The potential habitat exclusion/modification effects on New Zealand fur seals from the proposed farm will be negligible;

- The potential effects of entanglement on dolphins, orca and baleen whales from the proposed farm will be minor;
 - The potential effects of entanglement on New Zealand fur seals from the proposed farm will be negligible;
 - The potential effects of underwater noise on marine mammals from the proposed farm (in terms of both installation and operation) will be negligible;
 - The potential trophic effects on marine mammals from the proposed farm will be negligible;
 - The potential effects of marine debris on marine mammals from the proposed farm will be negligible; and
 - The potential effects of boat strike on marine mammals from the proposed farm will be negligible.
41. Ms McConnell provided recommendations to minimise interactions between the proposed farm and marine mammals. These recommendations have been incorporated into proffered conditions which were presented in the evidence of Ms Britton.
42. Evidence on landscape, natural character, and visual amenity was provided by John Hudson, a Landscape Architect and Principal of Hudson Associates. Mr Hudson recorded that as part of the application he had prepared a Landscape and Natural Character, and Visual Amenity Assessment using a method recommended by the New Zealand Institute of Landscape Architects. Mr Hudson's key assessment findings are summarised below. At the hearing Mr Hudson used a series of photos to illustrate the points he was making.
43. The existing landscape character rated as high for both the broader context and the site and localised vicinity. Effects of the proposal on the landscape character of the broader context were considered very low, with effects on the site and localised vicinity assessed as low-moderate.
44. The existing natural character of the broader context was rated as moderate and the existing site and localised vicinity was found to be moderate-high. The effects of the proposal on natural character at the broader context were assessed as very low and low for the site and localised vicinity. He pointed out that there is significant separation between Ponui Island and the application site.
45. Although effects on landscape and natural character at the site and localised vicinity were low-moderate and low respectively; the nearer the focus to the site, the greater the effects become as the prominence of the site increases and the extent of context it is considered within decreases.

46. Visual amenity was assessed from a range of individual viewpoints at varying distances from the site and at different elevations. The effect varied with distance and context. Closer water-based views were assessed as having a low-moderate effect on visual amenity, while distant water-based views from selected locations, such as a shipping route 3.7km away, were assessed as having a very low effect. The effect on visual amenity for mid-range positions, such as water-based views 1.5km north-east of the site and 800m north-east of the site, was assessed as very low and low respectively. While the effect from a number of shore-based views, such as the eastern coast of Ponui Island and Orere Point, were assessed as very low and very low/no change respectively.
47. The effect of farm navigational lighting was assessed by field work where Mr Hudson considered several existing marine farms and night light situations. During the field work an extensive scattering of lighting was visible along the coast of the mainland from settlements. Mr Hudson recorded that while readily observable, point source lighting did not cause disruption to the clarity of the night sky. The proposed navigational lighting for the Ponui mussel farm will not affect the natural darkness of the night sky.
48. Cumulative effects of the proposal on landscape character were assessed as low for the broader context and very low/no cumulative effects on the site and localised vicinity. Cumulative effects on natural character were assessed as very low for the broader context and very low/no cumulative effects on the site and localised vicinity. It was also considered that the proposal will result in low/no cumulative effects on visual amenity when simultaneous views are considered, very low cumulative effects when viewed successively, and low cumulative effects when viewed sequentially.
49. It was Mr Hudson's conclusion³² that the proposed marine farm is located well beyond any area of outstanding value identified in any planning document and complies with the provisions of the NZCPS. It is an appropriate activity in terms of all planning provisions and has no significant adverse effects on landscape character, natural character or visual amenity.
50. Peter Clough, a Senior Economist at the New Zealand Institute of Economic Research, provided a brief of evidence that addressed 'economics'. He provided us with his understanding of economics in the context of the RMA; describing the importance of aquaculture to the New Zealand, and local, economy and some of the challenges facing the aquaculture industry going forward. He provided a consideration of why, from an economic perspective, the proposed Ponui Mussel Farm will make a positive contribution to the well-being of the Auckland, Thames-Coromandel, and New Zealand economies.
51. In his conclusion³³ Mr Clough noted that he had explored how the proposed Ponui Mussel Farm would be adding incremental capacity to the existing aquaculture

³² Hudson EiC at [47]

³³ Clough EiC at [50]

activity around the Firth of Thames, and in doing so, adding to the expenditure, jobs and income opportunities in the region, both in South Auckland with the opportunities for expanding processing capacity and in the Thames-Coromandel District in building on its existing marine farming capabilities. It is consistent with the broad direction given by the Government's Aquaculture Strategy. It is also significant for the Thames-Coromandel District in providing alternative sources of jobs and incomes. The farm will make a positive contribution to regional and national economic well-being.

52. Dr Peter Wilson, a Senior Coastal Scientist at 4Sight provided a brief of evidence which addressed the potential ecological effects of the proposed mussel farm in the Hauraki Gulf, east of Ponui Island. He spoke to a tabled summary of the key points of his evidence. Dr Wilson told us that the effects of mussel farming are well known and have been shown to be low when placed in appropriate environments. It was his opinion, that the proposed location for this mussel farm is appropriate to minimise the potential small-scale effects on water quality, sediment quality, and benthic ecology. The main reasons for his opinion that the farm is appropriate as proposed were:

- The effect of mussel farming on water quality is highly likely to be less than minor and most likely negligible.
- One of the main potential effects of mussel farming is the excretion of bio-deposits from the mussels, which are then dispersed into the water column and settle on the seafloor. The magnitude of sedimentation will be mitigated to a certain extent due to the proposed farm's position in a well-flushed location and having moderate water depth. The potential environmental effect from such sedimentation is likely to be low. Monitoring of sediment physico-chemical characteristics is recommended to assess any measurable effects on the organic content of the seabed from the mussel farm.
- Surveys conducted at the proposed location have shown the benthic habitat and biota are typical of the Firth of Thames and Hauraki Gulf. Both the habitat and the biota are unlikely to be sensitive to the limited potential effects of mussel farming and, therefore, benthic ecological monitoring is not required.
- Mussel farms have the potential to provide both positive and adverse effects on seabirds. In general, the potential adverse effects of mussel farms on seabirds are not considered significant. Two of the most notable potential effects arise from some seabirds' attraction to lighting on the farm, which is necessary for navigation safety, and from farm-derived debris that may be ingested by seabirds. With appropriate management the risk of these potential effects to seabirds is likely to be low.
- If any effects were to occur to the benthic environment from the mussel farm, they would be reversible within 5 to 10 years (or less).

The proposed mussel farming area is likely to be in the swell corridor for two surf breaks on the western Firth of Thames. These surf-breaks are not nationally or

regionally significant. MetOcean Solutions conducted an assessment of effects and concluded the potential effect of the mussel farm on surf breaks is considered to be minor to less than minor.

53. Dr Wilson questioned³⁴ the Council preference for a monitoring condition³⁵ based on the Enrichment Stage approach developed by Cawthron³⁶. He was of the view that the methodology had some limitations in the Firth of Thames, and as a result it was not appropriate to apply the Enrichment Stage approach to mussel farms in Auckland and Waikato regions.
54. **Robert Greenaway**, a Director of Rob Greenaway & Associates, provided evidence which reviewed the recreation values of the marine setting where the mussel farm is proposed and assessed the effects of the proposal on these values. He undertook a review of a range of recreational data covering the site of the proposed farm and the wider Hauraki Gulf. He noted: - the proposal area is well-separated from terrestrial settings and there are no public reserves near the site. The only regularly-used public terrestrial locations nearby are the beaches of Ponui Island. The eastern coast of Ponui Island is also a popular boating area, but less-so than more sheltered areas around the islands of the Hauraki Gulf. Mussel farms in the Firth of Thames represent its most significant casual recreation fishing destinations and they are key targets for fishing charters.
55. The proposal has very limited potential to directly affect marine recreation in the Hauraki Gulf or Firth of Thames, largely due to its separation from visitor settings. However, debris washing ashore from the farm have the potential to adversely affect coastal recreation. The majority of users of the coastal marine area to the east of Ponui Island, including the beaches there, would be unaware of the presence of mussel farming at this location unless they were targeting the farm for fishing or encountered buoys and other debris washed ashore. Mr Greenaway recommended conditions which will limit this potential and will require the Applicant to conduct beach clean-up programmes at least three times a year. These recommendations have also been incorporated into proffered conditions which were presented in the evidence of Ms Britton.
56. Mr Greenaway noted the location of the marine farm will need to be advised to boat owners to reduce navigation risks, and while it is mandatory to advise Land Information New Zealand (LINZ) of the farm location for mapping purposes, he recommended some local and regional publicity about the farm location and the placement of relevant data online.
57. Consultant planner, **Robin Britton**, provided planning evidence. The key summary points of her evidence were:
- - This application is a joint-venture application by Ponui Aquaculture Ltd.
 - - The applicant is seeking to undertake marine farming of *Perna canaliculus* otherwise known as the New Zealand Greenshell Mussel™.

³⁴ Wilson EIC at [114 -124}

³⁵ Section 42A Report at page 21

³⁶ Morrisey, D et.al., 2016: Firth of Thames and Hauraki Gulf Enrichment Stage Mapping. Waikato Regional Council Internal Series Report 2016/28, prepared by Cawthorn.

- Resource consent is sought to use and occupy space in the CMA for conventional longline structures and dropper ropes, for the purpose of mussel farming, including associated discharges to air and water and disturbance to and deposition on the seabed, and associated navigation aids.
- Under the Auckland Unitary Plan (AUP) the application is made in the Coastal - General Coastal Marine Zone. The AUP provides for marine farming and associated activities in this zone in Rule A115 (Table F2.19.9) as a discretionary activity.
- The appropriateness of the location has been assessed and Ms Britton was of the opinion that the proposed farm is in an appropriate location and is of an appropriate scale and form. The decision to locate in the proposed area was made in consultation with Ngāi Tai ki Tāmaki Trust. The scale reflects that the application is a joint venture project and that the scale is required to ensure economic viability for an off-shore site.
- The proposal will use natural resources (i.e. coastal waters, phytoplankton and space) to grow mussels in a sustainable manner. This marine farming activity will not result in a loss of the natural resources.
- Based on the evidence presented, the proposed farm would enable growth within the mussel farming industry, with the resultant positive effects on the economic, cultural and social wellbeing of local communities.
- In terms of environmental effects, no significant adverse effects have been identified.
- Mitigation has been proffered by way of consent conditions, for navigation safety, marine debris and floats, in particular. Management Plans will be prepared in respect of biosecurity and marine mammals.
- Cumulative effects have been assessed as being of low impact and acceptable in the context of the proposed site and the wider Firth of Thames.

58. Ms Britton, in addressing the planning context of the proposal noted:

- The proposed marine farming activities are consistent with the policy directives of the NZCPS, HGMPA, and AUP. This policy framework seeks to protect and/or limit the disturbance of natural environments while providing for development including reference to marine farming located in areas which are “appropriate” and which will not have significant adverse effects on areas with outstanding natural landscapes, natural features or natural character.
- The AUP provisions which are particularly relevant to the assessment of the proposed marine farm. The proposed marine farm is located in the Coastal – General Coastal Marine Zone. The purpose of this zone is stated as being to provide for use and development in the CMA, while (among a wide range of

matters) enabling economic well-being through appropriate use and development.

- Aquaculture is specifically addressed in chapter F2.15. This chapter envisages new aquaculture development, and notes that it needs to be located in appropriate locations, and that the relationship of Mana Whenua with their ancestral waters needs to be respected.
- The activity is classified as a discretionary activity under Rule A115.16. The proposed farm meets the objectives and policies of the AUP, and in particular chapter F2.15 Aquaculture.
- The proposed area is also supported by the Hauraki Gulf Sea Change (marine spatial plan) and the Government's and Aquaculture New Zealand's respective strategies for growth in the industry.
- The proposed marine farming activity is a sustainable use of natural and physical resources and would have positive effects and benefit to the social, economic and cultural wellbeing of iwi, Ponui Aquaculture Ltd and the local and regional (Auckland and Waikato) communities.
- Environmental effects are avoided, remedied or mitigated, through appropriate site selection, the farm layout and its distance offshore, and the provision for public access and safe navigation routes, as well as through the application of the resource consent conditions.

SUBMITTERS

59. **Thelma Chamberlin**³⁷ tabled a supplementary representation and spoke to it. She reminded us of the need to adopt a precautionary approach toward a proposed activity whose effects on the coastal environment are uncertain, unknown, or little understood, but could be significantly adverse.
60. She expressed concern over;
- The potential pollution of the water and surrounding beaches;
 - Night sky light pollution; and
 - Impacts on the Hauraki Gulf as a recreational area.
61. It was her conclusion that other sites are more appropriate for this type of development and that future aquaculture ventures should be required to formulate comprehensive clean-up programmes.

³⁷Section 42A Report at pp203 -203

62. **David Chamberlin** spoke to the combined representation³⁸ of himself and **Ros Chamberlin**. He illustrated his submissions with a series of tabled photographs, and provided a very graphic sample of the type of debris (rubbish) that he and his family had recovered from the foreshore.
63. Their concerns were:
- Safe navigation – two factors: the site could be a significant hazard and punctured and split buoys pose a risk to small vessels;
 - Negative impact on aesthetics;
 - The proposal, if granted, would set a precedent, and
 - The proposal will add to the pollution from already consented mussel farms.
64. **Vesta Gribben** spoke to her submission³⁹, key points made included:
- Concern over aquaculture Gulf sprawl;
 - The large foot-print of the proposal;
 - Unnatural structures result in a negative impact on natural character;
 - The site will attract fishers which in turn will have a negative impact on the facilities at Kawakawa Bay;
 - Negative impacts on marine wildlife; and
 - Negative navigation impacts.

FOR THE COUNCIL

65. Mr Wilkinson provided his Section 42A Report with a recommendation that consent should be granted, subject to conditions. His recommendation was supported by specialist reports from technical experts in relation to marine ecology & coastal processes (Dr Sivaguru & Ms Sharma), landscape and visual effects (Mr Bentley & Ms Ots), and navigation (Mr Moss).
66. Dr Sivaguru highlighted the difference that was still in play with regards to a Council preference for a monitoring consent condition based on the Enrichment Stage approach developed by Cawthorn⁴⁰.
67. After having heard all the evidence, and representations, Mr Wilkinson confirmed his recommendation that consent should be granted, subject to conditions.

³⁸Section 42A Report at pp148-151

³⁹ibid at pp166-177

⁴⁰See paragraph 53 above.

THE APPLICANT (IN REPLY)

68. Ms Hills provided a brief oral summary overview of the applicant's case. She emphasised how the applicant had systematically addressed the concerns of the submitters. She indicated that a written closing statement would be filed.
69. An Initial Closing Reply, dated 7 August 2020, addressed the following matters:
- Alternatives;
 - New processing factory;
 - Noise;
 - Boffa Miskel I Peer Reviews; and
 - Use of existing infrastructure.
70. A Supplementary Reply, dated 26 August, addressed:
- the proposed conditions of consent; and
 - Statutory Acknowledgements.

PRINCIPAL ISSUES IN CONTENTION AND OUR FINDINGS

71. After analysing the submissions received, set out in the Section 42A Report⁴¹ the issues that were raised in submissions are:
- Adverse effects on recreation and navigation;
 - Adverse visual amenity, landscape and natural character effects (including light pollution);
 - Debris - Plastic waste pollution in the marine environment i.e. buoys, ropes;
 - Excessive quantity of aquaculture operations in Hauraki Gulf / cumulative effects / Size of the operation proposed / Additional industry in the Hauraki Gulf is of concern;
 - Planning framework;
 - Adverse effects on ecology (including marine life);
 - Potential adverse nutrient loadings in the water column;
 - Biosecurity effects;

⁴¹Section 42A Report at pp13 -14

- Adverse water quality effects;
- Adverse effects are not identified or assessed adequately in the AEE and instead rely on conditions;
- Adverse effect on the potential relocation of the Port of Auckland;
- Limited and narrow economic benefit;
- Adverse cultural effects - mis-representation as a joint venture with Ngāi Tai ki Tāmaki, no evidence of appropriate mana whenua consultation;
- Baseline monitoring; and
- Inappropriate location.

72. After analysis of the application and evidence (including proposed mitigation measures); undertaking a site visit; attending Umupuia Marae; reviewing the Section 42A Report and recommendations; reviewing the submissions; seeking clarification from the experts; asking for further information, and concluding the hearing process, we are satisfied and find that the Applicant has comprehensively and systematically addressed each of these issues⁴².

73. The expert evidence of the applicant was largely uncontested. While submitters did take the opportunity to reinforce the points made in their initial submissions, they did not support their submission points by providing further information in response to the Applicant's expert witnesses' evidence. Nor did the submitters raise questions about the experts' evidence or test its veracity. Notwithstanding these observations and our finding in paragraph 69 above, we have provided commentary and specific findings on:

- Adverse effects on recreation and navigation;
- Adverse visual amenity, landscape and natural character effects (including light pollution);
- Debris - Plastic waste pollution in the marine environment i.e. buoys, ropes and
- Inappropriate location.

Navigation Safety Effects

74. One of the common themes in the submissions opposing the application were the potential impacts of the proposal on safe navigation. Points made included:
"Not in the right place for a mussel farm – this is a large area in the middle of heavy

⁴² A comprehensive evaluation of each of the issues along with the mitigation proposed can be found in the evidence of Ms Britton. The Applicant's opening legal submissions also addressed each of the issues, highlighting the key findings, the opinions and the clarification provided by the experts.

boating traffic and will be unsightly and a marine navigation hazard⁴³”.

“Navigation hazard. This area is accessed by one of the highest used boat ramps in New Zealand⁴⁴”.

“...so while the area is not on a navigation route it is wrong to suggest there is no significant navigational impact from the proposal⁴⁵”.

“The proposed mussel farm poses a significant inconvenience and detour to the regular navigational route into the Hauraki Gulf past Ponui Island⁴⁶”.

75. Mr Wilkinson records in the Section 42A Report⁴⁷ that the proposal was provided to Auckland Transport's Harbourmaster's Office. The Deputy Harbourmaster **Christiaan Moss** provided comments which confirmed that there are no identified concerns with the proposal. A navigation lighting plan had been provided to the Harbourmaster's Office and that plan has been agreed to in principle.

76. We concur with the observation of Ms Britton⁴⁸ that a distinction has to be drawn between a “navigation hazard” and a “navigation inconvenience”. We accept the submission of Ms Heath that the proposed farm may cause some inconvenience but as noted by Ms Britton, the applicant is not seeking exclusive occupation, vessels will still be able to navigate both through and around the farm. The key factor, in our consideration, is reasonable access will be preserved⁴⁹. Our site visit confirmed that there is a major corridor (sea-room) between Ponui Island and the western border of the proposed farm for the transit of vessels moving north.

77. We find that the potential navigation safety effects have been considered, addressed and will be mitigated by the layout of the farm. To elaborate vessel skippers will find that reasonable access around and through the farm has been preserved. Night time navigation safety has been addressed by an approved Navigation Lighting Plan.

Recreation Effects

78. The potential adverse impacts of the proposal on recreation was another common theme and was referenced in 12 submissions. Comments included:

“the gulf is a recreational zone that appeals to a large portion of this countries residents and visitors.....Keep the gulf as a zone for Aucklanders and visitors⁵⁰”.

“My family and I, like many residents of Kawakawa Bay – Orere Communities, are

⁴³ Andrea Brydon – Section 42A Report at pp134-135

⁴⁴ Kawakawa Bay Boat Club – Section 42A Report at pp144-145

⁴⁵ Kingfisher Trust – Section 42A Report at pp142-143

⁴⁶ Patricia Heath – Section 42A Report at pp204 - 215

⁴⁷ Section 42A Report at pp24

⁴⁸ Britton EiC at [141]

⁴⁹ *ibid* at [142]

⁵⁰ Vincent Arden – Section 42A Report at pp152-153

recreational users that both enjoy and place high value on the wide-open and natural landscape of the coast, ocean and islands within the area, particularly while being out on the water⁵¹.

One submission in support of proposal referenced the positive recreational effects of the proposal noting:

“I am a recreational fisherman. I love fishing in mussel farms as they sustain and attract fish⁵²”.

79. Mr Greenaway in his evidence, concluded⁵³ that the proposal area is a low-use recreation setting, as originally identified by the Sea Change – Tai Timu Tai Pari Hauraki Gulf Marine Spatial Plan. Mr Greenaway’s main concern related to the potential for debris from the marine farm to wash ashore on local beaches and he recommended conditions to ensure that two of the (at least) three beach clean-ups occur immediately before the busiest boating periods, and include the eastern side of Ponui Island. This recommendation has been adopted by the Applicant.
80. Mr Greenaway was of the opinion that the marine farm has limited potential to adversely affect marine recreation and will serve as a fishing destination. He also recommended a condition requiring advertising the location of the mussel farm in the New Zealand Fishing News, and online via New Zealand Fishing World, and providing a marked chart to the Kawakawa Bay Boat Club, and making a digital version of a marked chart with all relevant GPS points available online (with relevant keywords for internet searches). That condition has been volunteered by the Applicant.
81. Submitters at the hearing did reference the negative impacts that the proposal would have on marine recreation however Mr Greenaway’s conclusions were not directly contested. Mr Wilkinson, in addressing recreational boating noted⁵⁴ - there is adequate navigable water space around the farm footprint for boating and recreational activities, hence the proposal will not have significant effects on recreational users. We concur and adopt this as our finding.

Adverse visual amenity, landscape and natural character effects

82. Adverse visual amenity, landscape and natural character effects were referenced in 10 of the submissions received. Comments included:

“The proposed mussel farm will see sea space, of over 221 hectares being occupied by built structures as specific to aquaculture. This in an area where there is no existing ocean sprawl. The construction of such a mussel farm poses a significant change to the natural environment for, in my opinion, a very narrow economic

⁵¹ Doreen Nelson – Section 42A Report at pp192-201

⁵² Dick Bavelaar 42A Report at [138-139]

⁵³ Greenaway EIC at [63-64]

⁵⁴Section 42A Report at pp24

return⁵⁵.

In my opinion, the proposed mussel farm, will result in a significant decline, in the amenity value of area for recreational users like myself⁵⁶.

83. Mr Hudson assessed the impact of the proposal on landscape and natural character, and both were considered at a broad scale as well as a site and localised scale. He found the existing landscape character rated as high for both the broader context and the site and localised vicinity. The effects on landscape character of the broader context were considered very low, with the effects on the site and localised vicinity assessed as low-moderate⁵⁷.
84. In addressing natural character Mr Hudson found that the existing natural character of the broader context was rated as moderate and the existing site and localised vicinity was found to be moderate-high. The effects on natural character at the broader context was assessed as very low and low for the site and localised area⁵⁸.
85. Visual amenity had been assessed from a range of individual viewpoints at varying distance from the land at different elevations. The effects on visual amenity for a mid-range position (water-based views 1.5km northeast of the site and 800m northeast of the site) were assessed at very low and low respectively. The effects from a number of shore-based views (eastern coast of Ponui Island and Orere Point) were both assessed as very low.
86. Mr Hudson also assessed⁵⁹ the cumulative effects of the proposal on landscape character as low for the broader context and very low/no cumulative effects on the site and localised vicinity. Cumulative effects on natural character were assessed as very low for the broader context and very low/no cumulative effects on the site and localised vicinity. He also considered that the proposal will result in low/no cumulative effects on visual amenity when simultaneous views are considered, very low cumulative effects when viewed successively, and low cumulative effects when viewed sequentially.
87. Mr Hudson's evidence was not questioned. We accept that at an individual, experiential level a person may find that proposal has significant adverse impacts for them. Conversely, others may find it to have minor effects. We are satisfied, and find the applicant has given adequate consideration to visual amenity, landscape and natural character impacts, including identifying⁶⁰ a series of factors that reduce the adverse impacts of the proposal on visual amenity, landscape and natural character.

⁵⁵ Julie McWhannell – Section 42A Report pp178 - 189

⁵⁶ Vincent Vingerhoeds – Section 42A Report pp154 – 164. Vesta Gribben made the same submission – Section 42A Report at 167 - 177

⁵⁷ Hudson EiC at [15]. Landscape Character effects [122 – 153]

⁵⁸ *ibid* at [15]. Natural Character effects [154 – 170]

⁵⁹ *ibid* at [19] Cumulative effects [180 – 199]

⁶⁰ Hudson EiC at [217]

Light Pollution

88. Light pollution was raised in 10 submissions, Thelma Chamberlin in her supplementary representation took the opportunity to reinforce her initial submission on light pollution⁶¹:

“Light pollution is an increasing problem. The area in which it is proposed to build a mussel farm in, as noted in the developer’s report, an area of isolated beauty, one of the few areas left within the reach of Auckland in which the full beauty of night skies can be seen. It is important that this be protected for future generations of New Zealanders”.

89. John Hudson’s supplementary evidence⁶² provided a photographic representation of the potential impacts of Ponui mussel farm lights on the night environment. He was of the opinion⁶³ that while readily observable, point source lighting is visible along the coast of the mainland from settlements, and does not cause disruption to the night sky. There are even less effects resulting from lighting required on existing mussel farms. The proposed navigational lighting for the Ponui mussel farm will not affect the natural darkness of the night sky.

90. We accept that the lighting from the Ponui mussel will be introducing a new lighting effect into a relatively dark environment. Based on the evidence of Mr Hudson we find that the cumulative impacts of the required lighting will be minor and it will not cause disruption to the night sky.

Debris - Plastic waste pollution in the marine environment i.e. buoys, ropes

91. Concern over plastic pollution and other debris from operational mussel farms was raised in 5 submissions, comments included:

“The Firth of Thames is already littered with plastic waste from mussel farms i.e. Buoys, ropes. Any expansion will increase the likelihood of more plastic waste in the marine environment, which will add more strain to an already stressed environment”⁶⁴.

92. As noted above⁶⁵ David and Ros Chamberlin took the opportunity to provide the panel with an actual sample, typical of the large quantity of debris (ie. particular small plastic tie rope for attaching a mussel line to the backbone rope) that they have recovered from the beaches on their property at the southern end of Ponui Island.

93. David Chamberlin noted that over the last 2-3 years they had picked up 60 or more mussel buoys that have washed up on their coast. He observed that many of the

⁶¹ Chamberlin Supplementary Representation at [2]

⁶² Hudson Supplementary Evidence at pp10- 11, Figures 9 & 10

⁶³ Hudson EiC at [18-19]

⁶⁴ Trish Rea – Section 42a Report pp140-141. George Couldrey made the same submission - Section 42a Report pp140-141.

⁶⁵ See paragraph 62

mussel farms that are already producing this waste are owned by the same group that are part of this application⁶⁶.

94. The Applicant acknowledged the concerns over pollution. Mr Bull's evidence addressed the issue⁶⁷ where he recorded the management of mussel farms has improved significantly in recent years, with the aquaculture industry committed to the A+ Sustainable Management Framework. The aquaculture industry is aware of the risks of pollution from its activities and is taking active steps to have minimal effect as possible in this regard.
95. In regard to concerns over lost buoys Mr Bull noted that his company had changed its farming methodology in response to the industry-wide problem of losing floats, particularly during storms. Given the cost of floats there is a commercial incentive to reduce losses. He advised that if floats do wash up on Ponui Island they would be happy to receive a phone call and pick them up.
96. We came to view that pollution emanating from mussel farms is an acknowledged problem. Submitter concerns over pollution are justified and we accept that pollution can have significant impact at a beach level. The Applicant has recognised the pollution problem, Mr Bull told us that farm management techniques have been changed, staff trained, and he offered consent conditions that will help mitigate the problem. We are satisfied that the pollution concerns have been adequately addressed.
97. To address the pollution concerns the applicant has volunteered a condition of consent to undertake beach clean-ups of the coastline inshore of the Ponui farm at least three times a year. We have incorporated this offer into the conditions of consent.

Inappropriate Location

98. The proposed location and size of the mussel farm was referenced in a number of submissions⁶⁸. One of the common submission themes was that the proposed mussel farm and activities presents 'ocean sprawl' that will have a significant impact on the area.
99. We were reminded in the Opening Legal Submission⁶⁹ of the applicant that a comprehensive assessment of effects had been undertaken in selecting the site. It is a location that avoids navigation routes and is not in a high use area. The Hauraki Gulf Forum has produced a marine spatial plan entitled *Sea Change – Tai Timu Tai Pari*⁷⁰; the area to the east of Ponui Island is one of thirteen areas which has been identified as being considered appropriate for aquaculture (subject to a resource

⁶⁶ David & Ros Chamberlin – Section 42A pp148-151

⁶⁷ Bull EiC at [55- 72]

⁶⁸ For example: Chris Newman – Section 42A Report at pp136-137;

⁶⁹ Applicant's Opening Submission at [23]

⁷⁰ Hauraki Gulf Forum: Sea Change Tai Timu Tai Pari 2016

consent). Ms Britton was of the view⁷¹ *Sea Change* was an important document to be considered in the context of this application. While it is recognised that *Sea Change* is a non-statutory document, it has undergone significant community consultation, involving central government, local government and mana whenua.

100. The applicant's Initial Closing Reply also addressed alternatives in some detail⁷² referencing what they considered was the leading case⁷³ on alternatives. The Court found:

"The effects of the windfarm were significant, such as to trigger the consideration of alternative locations as a matter "relevant and reasonably necessary to determine the application" for the purpose of s 104(1)(c). However, it found that this consideration did not allow the Court to seek from the consent authority anything more than "a description of any possible alternative locations" (as opposed to a 'fine grain' analysis that the Court was not entitled to require)."

101. The Applicant submitted that the evidence shows that the environmental effects of mussel farming at this location are not significant and, therefore, the argument about potential alternative locations falls away.
102. We concur with, and adopt the opinion of Ms Britton⁷⁴, based on the evidence presented, that the proposed site is an appropriate location for aquaculture and is consistent with the intent expressed in *Sea Change* for aquaculture in the Hauraki Gulf and would meet the joint venture aspirations of Ngāi Tai ki Tāmaki. The site has significance to Ngāi Tai ki Tāmaki, being within its rohe moana, and given its proximity to Umupuia Marae.

Summary of Findings – Effects

103. Overall, we concur with the opinion of Mr Wilkinson⁷⁵, that the proposal will have adverse effects through the occupation of the CMA by the activity. However, given the mitigation measures offered by the applicant, and the proposed conditions of consent, the adverse effects will not be significant.

Relevant Statutory Documents – s104(1)(b)

104. An analysis of the objectives, policies and rules of the relevant planning documents had been undertaken by both Mr Wilkinson⁷⁶ for Council and Ms Britton⁷⁷, for the Applicant. There was general agreement on the applying provisions. With the exception of the HGMPA, these analyses were not contested by the submitters. We do not intend to provide a full account all the relevant objectives and policies of the

⁷¹ Britton EIC at [169]

⁷² Applicant's Initial Closing Reply at [2 – 7]

⁷³ Meridian Energy Limited v Central Otago District Council [2010] NZRMA 447

⁷⁴ *ibid* at [174]

⁷⁵ Section 42A Report at pp27

⁷⁶ *Ibid* at pp27-37

⁷⁷ Britton EIC at [128- 217]

planning documents where there was agreement, other than a very brief summary.

New Zealand Coastal Policy Statement 2010 (NZCPS)

105. The relevant provisions of the NZCPS have been considered and it was concluded that the proposal is consistent with the NZCPS. In particular, the NZCPS includes a strong management directive for aquaculture. The proposed marine farm has a functional need to be located in the CMA. The proposed location has been carefully considered in conjunction with Ngā Tai ki Tāmaki, to minimise any adverse effects on other coastal users or values and the physical environment. It is an appropriate location.

Hauraki Gulf Park Act 2000 (HGMPA)

106. Sections 7 & 8 of HGMPA have the effect of being an NZPS. A number of submitters referenced the HGMPA as giving support to their opposition. The same wording was repeated in a number of submissions:

“It is very clear that the intention of the HGMPA is protect the natural, historical and physical resources of Hauraki Gulf and I implore Council to ensure appropriate consideration is given to the following stated objectives of the HGMPA:

Part 1, 8 (d)- The protection of the cultural and historic association of people and communities and in around the Hauraki Gulf with it natural historic, and physical resources.

a) Part 1, 8 (f)– the maintenance and, where appropriate, the enhancement of the natural, historic, and resources of the Hauraki Gulf, its island, and catchments which contribute to the recreation and enjoyment of the Hauraki Gulf for the peoples and communities of the Hauraki Gulf and New Zealand⁷⁸.”

107. Ms Britton provided an analysis of the applying sections of the HGMPA.⁷⁹ She was of the opinion that the application is consistent with, and meets the purpose of the HGMPA. We concur with the view of Ms Britton that expert evidence has demonstrated that the actual and potential adverse effects of the proposed marine farm on the life supporting capacity of the coastal environment were identified as being low. In terms of visual amenity and recreation, the proposed farm area will not result in any significant adverse effects, due to its distance from shore and from main navigation routes.

108. We find, and adopt the opinion of Ms Britton that the application is consistent with, and meets the purpose of, the HGMPA

⁷⁸ Vesta Gribben, Patricia Heath, Doreen Nelson, McWhannell Family & Vincent Vingerhoeds.

⁷⁹ Britton EIC at [162 – 167]

Auckland Unitary Plan Operative in Part (AUP(OP)).

109. A comprehensive analysis of the applying provisions of the AUP(OP) can be found in both Section 42A Report and the evidence⁸⁰ of Ms Britton. In the absence of evidence that contests that analysis we find that the application is consistent with the objectives and policies of the AUP.

Other Matters – s104(1)(c)

110. We have considered the following matters outlined below.

Marine and Coastal Area (Takutai Moana) Act 2011 (MACA 2011)

111. The applicant has provided evidence that the required consultation under MACA 2011 has been undertaken.

Statutory Acknowledgements

112. The Hauraki Gulf is subject to two statutory acknowledgements under the Treaty of Waitangi Settlement Act:

- Te Kawerau ā Maki Claims Settlement Act 2015; and
- Ngāi Tai ki Tāmaki Claims Settlement Act 2018.

113. We sought clarification from the applicant on what effect had been given to the statutory acknowledgements. We were told⁸¹ Ngāi Tai ki Tāmaki is the co-applicant in this case. The relevant shareholders in Ponui Aquaculture Limited, for the iwi, are the trustees of Ngāi Tai ki Tāmaki Tribal Trust, being the Post Settlement Governance Entity under their Treaty Settlement.

114. Te Kawerau ā Maki had not been specifically consulted in relation to this application. The Area of Interest in their Deed of Settlement does not include Ponui Island or the application site. Notwithstanding this, Mr Beamish confirmed that the proposal had been related to Te Kawerau ā Maki and other mana whenua that are part of the Wai o Hua Roopu in the Tamaki Collective Settlement and no concerns had been raised. We also note there were no submissions in opposition from iwi.

Sea Change – Tai Timu tai Pari (Marine Spatial Plan)

115. As already noted,⁸² we were informed by Ms Britton⁸³ that the Hauraki Gulf Forum (constituted under the HGMPA) has produced a marine spatial plan entitled “Sea Change – Tai Timutai Pari” (Sea Change). Sea Change focuses on securing a healthy, productive and sustainable resource for all users of the Hauraki Gulf. She considered Sea Change to be an important document to be considered in terms of

⁸⁰ibid at [175 – 217]

⁸¹Applicant’s Supplementary Reply Submissions at [35-36]

⁸² Paragraphs 99 and 102, above

⁸³ibid at [168]

this application. Ms Britton provided us with analysis⁸⁴ of the document's importance. She notes Sea Change identified 13 areas which could be considered to be appropriate for further aquaculture growth, subject to a resource consent process for each area. The area east of Ponui Island was one of these areas. To guide the identification of appropriate areas for further development, the Sea Change Aquaculture Roundtable (which contributed to the development of Sea Change), identified underpinning criteria. The proposed farm site meets the criteria for identifying appropriate locations for aquaculture growth and is consistent with the intent expressed in Sea Change for aquaculture.

New Zealand Government Aquaculture Strategy 2019

116. Launched in September 2019, the Government's Aquaculture Strategy sets out an all-of-Government strategy and work plan to deliver on "the sustainable growth pathway". This is a non-statutory document but provides guidance on the national-level direction for this industry. Ms Britton considered⁸⁵ this strategy to be an important consideration in the context of this application, and particularly given COVID-19 recovery projections and directions. Ms Britton was of the view the proposed marine farming application is consistent with the focus on: growth for the industry, sustainable practices, supporting productivity in the region, ensuring biosecurity is managed to best practice standards, and enabling Ngāi Tai ki Tāmaki to become directly involved in aquaculture.
117. We endorse the opinion of Ms Britton that this application is consistent with and would contribute to, meeting the outcomes expressed in the Government's Aquaculture Strategy.

Other relevant RMA Sections

Matters relevant to discharge and coastal permits - s105

118. Under s105 we must have regard to additional matters for any application for discharge permit or a coastal permit that would contravene s15 or s15b of RMA. We were informed the proposal includes the discharge of contaminants or water into water. The Mr Wilkinson considered⁸⁶ these discharges to be incidental to the aquaculture activity and he was of the opinion based on the review carried out by the Council's specialists (Ms Sivaguru and Ms Sharma) that the effects on the localised environment will be minor. We are satisfied that the provision of s105 will be met by adherence to the proposed conditions of consent which will ensure that there is no significant adverse effect on the receiving environment.

Restrictions on discharge permits – s107

119. Under s107 we must have regard to the restrictions on the granting of certain

⁸⁴ibid at [168 – 174]

⁸⁵Britton EiC at [219-222]

⁸⁶Section 42a Report at pp39

discharge permits that would contravene s15 or 15A. We were told⁸⁷ the proposal satisfies the provisions of s107. An assessment by Council's specialists (Ms Sivaguru and Ms Sharma) generally concurs with the Applicant's assessment that the effects on the localised environment are not significant. In the absence of contrary evidence, we find that the provisions of s107 have been met.

Conditions of Resource Consent – ss108, 108AA

120. As noted above, at the conclusion of the hearing there was a difference in approach between the Applicant and Council over elements of the consent conditions, with the primary point of difference being what parameters should be measured as part of environmental monitoring at this site. We directed the Applicant and the Council's specialists to caucus on this issue. We were provided with a caucus statement dated 26 August which set out the points of agreement and disagreement.
121. The council and applicant agreed on:
- what should be covered in the Environmental Monitoring Plan (EMP) for the site;
 - That baseline monitoring should be undertaken at the site; and
 - Other monitoring should occur once the farm is 50% developed, once it is 100% developed, and at three-yearly intervals after full development.
122. The difference in approach to monitoring water quality was not resolved. The Applicant maintained its view that:
- Sediment physico-chemical characteristics is the only necessary environmental monitoring parameter given the anticipated level of effects from the proposed farm; and
 - Monitoring of water quality (specifically chlorophyll-a), benthic macroinvertebrates and total free sulphides is not justified and would be of little benefit.
123. Council maintained its view that sediment physico-chemical characteristics, water quality (specifically chlorophyll-a), benthic macroinvertebrates, and total free sulphides should all be monitored at this site.
124. The Applicant's Supplementary Reply Submissions advocated that we should disregard the effects of an activity for which a future resource consent is required (ie. further aquaculture in the Auckland region). In terms of s108, it is wrong to impose conditions unrelated to the effects of this application, or to allow concern over the effects of applications yet to be made to influence conditions. That reasoning is further reinforced by s 108AA, where the adverse effects must be linked to *the*

⁸⁷ibid at pp40

activity. It was submitted that imposition of water quality monitoring conditions would be disproportionate to the anticipated level of effects. Should any future expansion of marine farming in the Auckland Region give rise to concerns around cumulative effects, Council can use a s128 review process to amend the environmental monitoring condition “as considered necessary to determine whether the exercise of this consent is causing an adverse effect on the marine environment.”

125. We set out in our Second Direction⁸⁸ that we preferred the approach of Dr Wilson and that we were looking for consistency with other consented farms in the vicinity. To this end we have accepted the advocacy that the Ponui site is more similar to Rangipakihi,⁸⁹ in terms of water depth and being in a well-flushed environment. Given the environmental characteristics and anticipated effects of this application are more consistent with Rangipakihi, it is relevant, and appropriate, that conditions should be similar. Rangipakihi requires monitoring of sediment physico-chemical characteristics, specifically total free sulphides, sediment organic matter, and redox potential. No water quality or benthic macroinvertebrate monitoring is required. Dr Wilson’s recommendations are more akin to the conditions for Rangipakihi, except that he recommends that grain size, total nitrogen and phosphorus should also be monitored, and explains in his evidence why total free sulphides need not be monitored. We have adopted the approach recommended by Dr Wilson.

Duration of resource consent – s123

126. The applicant has requested a 35-year term of consent. Under s123A of RMA, an aquaculture consent may not be issued for less than 20-years unless the reasons specified under s123A(2) are met. Mr Wilkinson has recommended⁹⁰ a term of 35-years. We find no reasons not to grant a 35-year term.

Part 2 RMA

127. The provisions of s104 of RMA are subject to Part 2. Mr Wilkinson was of the opinion⁹¹ that there was no need to resort to assessing Part 2; and while Ms Britton concurred⁹² with this opinion she did provide⁹³ a comprehensive Part 2 assessment because of submitters’ stated concerns that the proposal does not meet the purpose of the RMA. In summary it was her opinion that the proposed farm:
- is located in an appropriate area;
 - is a sustainable use of natural and physical resources;
 - will have positive effects and benefit to the social, economic and cultural

⁸⁸ Second Direction of the Panel – 5 August 2020.

⁸⁹ Rangipakihi and Waitoetoe Mussel Farms (CST60303341 & CST60303342), granted by Auckland Council to Westpac Mussel Distributors December 2018.

⁹⁰ Section 42 Report at pp41

⁹¹ *ibid* at pp42

⁹² Britton EIC at [223]

⁹³ *ibid* at [223 -237]

wellbeing of iwi and the local and regional (Auckland and Waikato) communities;

- avoids any actual and potential significant adverse or adverse effects on the environment through appropriate site selection, the farm layout and its distance offshore, and the provision for public access and safe navigation routes; and
- avoids, remedies or mitigates environmental effects, through the matters raised above and in the expert evidence presented, as well as through the application of suitable resource consent conditions.

128. We find the proposed marine farm is an appropriate activity in the location and meets the principles of Part 2 of the RMA.

Decision

129. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 104B, 105, 107, 107F, 123 and Part 2 of the Resource Management Act 1991, resource consent is **GRANTED** to construct, operate and maintain a 221 hectare mussel farm to the east of Ponui Island in the Hauraki Gulf subject to the conditions set out below.

Reasons for the decision

- i. In accordance with our assessment under ss104(1)(a) and (ab) of the RMA, the actual and potential effects from the proposal are found to be acceptable. The adverse effects from the proposal on: the water column; ecology and animals including biosecurity; coastal processes; navigation and safety; landscape, visual and natural character; public access and recreation; Māori cultural values; and from discharges to the Coastal Marine Area (CMA) are able to be avoided, remedied or mitigated as a result of the undertaking of the activity as proposed and in accordance with conditions of consent.
- ii. The proposal will have positive effects in social and economic terms in respect of employment opportunities, the ability to support existing aquaculture industries, as well as providing for recreational fishing opportunities.
- iii. In accordance with our assessment under s104(1)(b) of the RMA, the proposal is found to be consistent with the relevant statutory documents. In particular the use of the site for the aquaculture activity will not detract from the life-supporting attributes of the wider Hauraki Gulf and will not impact on the natural, historical, physical, and cultural values associated with the Gulf.
- iv. In accordance with our assessment under s104(1)(c) of the RMA, the following other matters have been considered:

- the applicant has provided evidence of the required consultation under the Marine and Coastal Area (Takutai Moana) Act 2011. Tai ki Tāmaki, have a statutory acknowledgement over the area.
 - The proposal is consistent with the Sea Change – Tai Timu Tai Pari, the non-statutory marine spatial plan, which recognises the role that aquaculture can play within the Hauraki Gulf, and the proposal is within one of the areas of the Hauraki Gulf identified as being able to potentially accommodate such an activity.
- iv This proposal achieves the sustainable management purpose of the RMA, as set out in Section 5 in Part 2, because the proposal will provide for the Applicant’s social and economic wellbeing in a manner that adequately avoids, remedies and mitigates adverse effects on the environment.
- v. The granting of this consent will allow Ngāi Tai ki Tāmaki to exercise kaitiakitanga thereby strengthening their relationship with Tīkapa Moana. This is Ngāi Tai ki Tāmaki’s home.

Conditions

This consent shall be carried out in accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced by the Auckland Council (Council) as resource consent number **CST60335843**.

Report title and reference	Author	Dated
Ecological Assessment of a Proposed Mussel Farm Site North-Western Firth of Thames for Takutai Ltd. Application for Resource Consent, Ecological Report, Rev 1.3	Oliver Bone, Ecology Consultant, 4Sight Consulting	January 2019
Landscape Assessment entitled “ <i>Firth of Thames, Ponui Marine Farm</i> ”	Hudson Associates Landscape Architects	November 2019

Drawing title and reference	Author	Drawing Number	Dated
Appendix 1A: Survey Plan	Dunwoodie & Green Surveyors Ltd	Sheet 2	May 2017
Appendix 1B: Overview of Proposed Marine Farm	Dunwoodie & Green Surveyors Ltd	Sheet 3	May 2017
Appendix 1C: Indicative layout and structure diagrams pages 4-6			
Appendix 1D: Proposed lighting plan	Dunwoodie & Green Surveyors Ltd	Sheet 2	May 2017

Other additional information	Author	Dated
Appendix 4: Consultation / Written Approvals a. Ngāi Tai ki Tāmaki – Letter from Ngāi Tai ki Tāmaki Tribal Trust entitled “Proposed aquaculture farm off-shore from Ponui Island”	Laurie Beamish, Trustee	11 October 2018
Appendix 4: Consultation / Written Approvals b. Department of Conservation – email to Robin Britton entitled “Application for aquaculture farm – Ponui Island”	Department of Conservation	31 May 2018
Appendix 4: Consultation / Written Approvals c. MACCA a) Letter sent and b) Response Received a) Email sent from Robin Britton to iwi entitled “RMA Consent Application for Mussel Farm in Firth of Thames” b) Response Received – email from Mike Baker of Ngaati Whanaunga entitled “MACCA Notification”		6 and 7 December 2018
Letter entitled “Ponui Aquaculture Ltd, c/- Peter Bull, Paddy Bull Ltd and Laurie Beamish, Ngāi Tai ki Tāmaki, Application No: CST60335843, Response to s92 Requests”	Robin Britton	17 July 2019
Report entitled “Potential effects of mussel farms on surf, Hindcast wave statistics at several surf breaks in the Firth of Thames Report prepared for Ponui Aquaculture Ltd”	MetOcean Solutions	8 Jul 2019
Letter entitled “Re: Request for further information under section 92 of the Resource Management Act 1991 for Ponui Aquaculture Ltd/Peter Bull Ltd, Application number: CST60335843”	4Sight Consulting	29 May 2019

1. The consent holder shall pay the Council an initial consent compliance monitoring deposit of \$1,020 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent.

Note

The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent have been met, will the Council issue a letter confirming compliance on request of the consent holder.

Lapsing date

2. Under section 125(1)(b) of the Resource Management Act 1991(the RMA), this consent lapses three years after the date of commencement unless:
 - a) The consent is given effect to; or
 - b) The Council extends the period after which the consent lapses.

Consent Expiry

3. This coastal permit shall expire 35 years after the date of commencement unless it has lapsed, been surrendered or been cancelled at an earlier date pursuant to the RMA.

Commencement date

4. Pursuant to s116A of the RMA, the coastal permit shall not commence until an aquaculture decision is made by the Chief Executive of the Ministry of Primary Industries under the Fisheries Act 1996.

Activities authorised by this coastal permit

5. This coastal permit authorises:
 - a) Construction, placement, alteration, removal or demolition of structures used for the farming of Greenshell Mussels™ (*Perna canaliculus*) (RMA s12(1)(b))
 - b) Disturbance of the foreshore and seabed, incidental to the farming of *Perna canaliculus* (RMA s12(1)(c), (e), (g))
 - c) Deposition of material in, on or under the foreshore or seabed, incidental to the farming of *Perna canaliculus* (RMA s12(1)(d))
 - d) Occupation of 221 ha of the common marine and coastal area by the marine farming activity (RMA s12(2)(a))
 - e) Activities that contravene a rule in the regional coastal plan (RMA s12(3))

- f) Discharge of contaminants or water into water, incidental to the farming of *Perna canaliculus* (RMA s15).
6. Only rope that has already been seeded with mussels or spat for holding may be installed at the site (i.e. no empty spat catching rope may be installed).
7. The Approved Area for the marine farm is bounded by the following co-ordinates (World Geodetic System 1984):

	Northing	Easting
NE corner	36 51 25.87S	175 16 00.62E
NW corner	36 51 26.16S	175 14 51.99E
SW corner	36 52 08.29S	175 15 02.40E
SE corner	36 52 08.01S	175 16 11.04E

Marine Farming Structures

8. A farm layout plan confirming the details of the marine farming structures (including details of anchoring and mooring systems), spacing of lines for each stage of development, and details of navigation lighting and marking, shall be provided to Council within two months of completion of each block. The farm layout plan shall be accurate to plus or minus 10m and shall show the structures in relation to the Approved Area.
9. The consent holder may carry out alterations to marine farming structures that involve insignificant changes e.g. changes to anchoring systems or longline configuration, provided those are shown on an updated marine farm layout plan provided to the Council within two months of alterations.
10. Maritime New Zealand (MNZ) and Land Information New Zealand (LINZ) shall be provided with written notice of the details of the marine farming structures including their geographic location and method of navigation marking, within one month of the first surface structures being installed at the site.

Note:

Auckland Council will collate the information submitted to satisfy the requirement of condition 10, and will forward the details of all marine farms to MNZ and LINZ as part of the review of consent conditions project. The consent holder will be responsible for informing MNZ and LINZ of any subsequent changes.

Approved Area

11. If requested by the Council, a survey plan prepared by a registered surveyor that defines the boundaries of the marine farm (to an accuracy of plus or minus 10 metres) and confirms the position of the marine farm structures in relation to that area, shall be provided no later than two months from the date of receipt of that request.

A new survey plan will only be required if there is a significant alteration to the farm layout, or if compliance monitoring of the marine farm detects that the marine farm structures are significantly (e.g. more than 10m) outside the Approved Area.

The survey plan shall be made in accordance with the Surveyor General's Rules for Cadastral Survey 2002/2 or any regulations made in substitution thereof. The location co-ordinates are to be in terms of Geodetic Datum 2000, New Zealand Transverse Mercator Projection.

Navigation and Safety

12. Prior to the installation of any long-line structures, the boundaries of the marine farm shall be marked and lit, in accordance with the navigation and safety requirements of both MNZ and the Auckland Transport Harbourmaster (the Harbourmaster). These requirements comprise those specified in conditions 12-19, and such additional marking and lighting requirements that are deemed necessary by the Harbourmaster for the safety of navigation.

Note:

The written approval of MNZ and the Harbourmaster is required for the placement of Aids to Navigation (markers and lighting). The Director of MNZ has the function under section 200(7) of the Maritime Transport Act 1994 (MTA) of approving any Aid to Navigation (AtoN) that is erected, altered or removed. The Harbourmaster also has the function under the Auckland Council Navigation Safety Bylaws of approving any AtoN. This includes any AtoN required to mark a marine farm.

13. The marine farm blocks shall be marked as a group, to meet the following specifications:
 - a) The extreme corners of the overall marine farm shall be marked with cardinal lights, of the required colour, markings and flash sequences to indicate safe passage of vessels, as stated in: "Maritime New Zealand, 2005: *New Zealand's System of Buoys and Beacons*" and as approved by the Harbourmaster. In addition:
 - i. Each cardinal mark light shall have a nominal range of 4nm;
 - ii. Each cardinal mark shall have a radar reflector fitted;
 - iii. Each cardinal mark shall have 4 reflective devices, that can be seen with a standard torch from 50m, placed equally around its sides so as to be visible from all directions; and
 - iv. Each cardinal mark shall be moored independently from any marine farming floats.
 - b) The approximate midway of each perimeter of the overall marine farm shall be marked with special marks as follows:
 - i. Each special mark shall be located on a yellow spherical buoy of at least 1m in diameter;

- ii. Each special mark shall have a yellow light which flashes 4 times every 15 seconds;
 - iii. Each special mark light shall have a nominal range of at least 2 nautical miles;
 - iv. Each special mark shall have a radar reflector fitted; and
 - v. Each special mark shall have 4 reflective devices, that can be seen with a standard torch from 50m, placed equally around its sides so as to be visible from all directions.
14. The requirements of condition 13 may be waived if the consent holder obtains the approval of the Director of MNZ, and the Harbourmaster, for an alternative lighting plan.

Note:

Any alternative lighting plan should be submitted to the Harbourmaster for approval (in principle) in the first instance. Once the lighting plan is approved in principle by the Harbourmaster, the applicant shall apply to the Director of MNZ for formal approval for the AtoNs.

15. Each end of every longline, and the middle of each of the seaward-most and landward-most long lines of each block, shall be marked with an orange buoy. All other buoys shall be black, and all buoys shall be a maximum of 300 litres in volume.
16. The orange buoys are to be clearly visible at all times.
17. Each buoy marking the corners of each block within the marine farm shall be clearly marked with the consent holder's name and coastal permit number.
18. If any part of the marine farm structure is lost into the marine environment and is of a size that could constitute a navigation and safety hazard, the consent holder shall immediately report the occurrence to the Harbourmaster and MNZ, and within 48 hours, provide the Harbourmaster with written details of the occurrence. All necessary steps shall be taken to find and retrieve the lost structure as promptly as is reasonably possible.
19. Any navigation mark or light that is not operating in accordance with specifications in conditions 12 or 13 above, shall be replaced or repaired as soon as practical, but at least within five days of the discovery of the mark or light malfunctioning or being lost.
- The Harbourmaster shall be notified within 24 hours following discovery of the malfunction or loss and subsequently following the repair or reinstatement of the mark or light.

Note:

The MNZ "Guidelines for Providing Aids to Navigation in New Zealand" specifies the availability target for any Category 3 Aid to Navigation (AtoN) to be at least 97% of the

time, and the response time for initiating repairs to any Category 3 AtoN to be the next working day.

20. Prior to the installation of any long-line structures, the consent holder shall:
 - a) Advertise the location of the marine farm in the New Zealand Fishing News and online via New Zealand Fishing World (or in similar publications);
 - b) Provide a marked chart to the Kawakawa Bay and Maraetai Beach Boat Clubs; and
 - c) Make a digital version of a marked chart with the GPS coordinates of the Approved Area available online.

Farm Management Conditions

21. The marine farm structures (including navigation lights and markings) shall be maintained in a good and sound condition to ensure that marine farming structures are situated and secured so as to remain within the Approved Area at all times. Any required repairs shall be made as soon as practicable, and within five days of the need for repair being observed. Particular attention shall be paid to maintenance of line tension to ensure loose lines that can potentially entangle marine mammals are avoided.
22. The consent holder shall ensure that any sub-contractor(s) engaged for works associated with the construction, operation and maintenance of the marine farm are made aware of the conditions of this coastal permit and shall take all practical measures to ensure compliance with these conditions by the sub-contractor(s).
23. All marine farming operations shall be undertaken in accordance with Aquaculture New Zealand's "A+ Sustainable Management Framework", and any subsequent updates to that document.
24. Other than those authorised by the Resource Management (Marine Pollution) Regulations 1998 and the Auckland Unitary Plan, or discharges authorised by this coastal permit, there shall be no discharge of contaminants such as oil, diesel, petrol or effluent to the coastal marine area (CMA) as a result of the exercise of this coastal permit.
25. No artificial foods or antibiotics shall be added to the water column as a result of the exercise of this coastal permit.
26. There shall be no disposal of rejected mussel crops to the CMA after they have been graded ashore.
27. Any non-biodegradable material lost or removed from the marine farming activities, including but not restricted to anchors, lines, droppers and buoys, shall be removed from the CMA and stored or disposed of on land.
28. The consent holder, or a person contracted by the consent holder, shall undertake beach clean-ups of the shoreline on the eastern coast of Ponui Island at least three times per calendar year to remove debris associated with the marine farming activity

authorised by this consent. Where reasonably possible, one beach clean-up shall be undertaken in the fortnight prior to Easter each year, and one in the first half of December each year.

29. No rafting up of buoys or storage of buoys shall occur at the marine farm.
30. No spat holding ropes are to be installed on the outermost lines of the farm (that is, along the farm boundaries, or on the outermost lines along the four edges of the site when only part of the farm is developed).

Biosecurity Conditions

Biosecurity Management Plan

31. Prior to installation of structures and operational activities commencing under this coastal permit, a Biosecurity Management Plan shall be prepared by a suitably qualified and experienced person(s) and submitted to the Council for certification. The objective of the Biosecurity Monitoring Plan is to address measures to minimise the likelihood of introducing, exacerbating and spreading any unwanted and notifiable marine organisms and marine pests through the marine farming activity and minimise any impacts through propagation on the marine farm if any such species are introduced.

Note:

There are additional biosecurity requirements under the Biosecurity Act 1993 which the consent holder should be aware of including

- Auckland Pest Management Strategy (RPMS), currently operative but due to be replaced prior to the end of 2020 with the new Auckland Regional Pest Management Plan (covers terrestrial and freshwater pests). Also note Regional Pest Management Plans in neighbouring regions where applicable.
 - Hauraki Gulf Controlled Area Notice, aligned to the RPMS and due to be updated when the new RPMP comes into effect.
 - *Marine pest programmes that have been agreed in principle through the Environment Court for addition to the new Auckland Regional Pest Management Plan.*
 - *Section 52 of the Biosecurity Act applies in relation to all declared pests (Unwanted Organisms) managed by the Ministry for Primary Industries.*
 - *Note that there is potential for additional statutory provisions to be introduced in the future in relation to marine pest management, through the development of an Inter-Regional Marine Pest Pathway Management Plan covering all of the four northern most regions*
32. The Biosecurity Management Plan shall include, but not be limited to, the following:

- a) Details of the marine pests, and unwanted and notifiable organisms identified by the Biosecurity New Zealand, Council and the marine farming industry, as requiring identification and recording;
 - b) Processes to be applied by staff operating the marine farm and vessels servicing the marine farm to inspect, identify, record and report to the Biosecurity New Zealand and Council on species identified in (a), as well as any marine pest species new to the area. This must include at least the date of observation, organisms observed and location and extent of infestation;
 - c) Timing of reporting to Biosecurity New Zealand and Council under (b);
 - d) Timing and frequency of an independent review, by a suitably qualified and experienced person(s), of the results gathered by staff operating the marine farm under (b);
 - e) Measures that will be undertaken to minimise the possible introduction, exacerbation or spread of species identified in (a);
 - f) Actions that will be undertaken if any new organisms are observed;
 - g) Measures to be taken to educate and train farm staff operating the marine farm on biosecurity requirements and responsibilities; and
 - h) Processes and timing for reviewing and updating the Biosecurity Management Plan in accordance with Condition 31.
33. The Biosecurity Management Plan shall be reviewed annually by the consent holder for the purpose of determining whether the terms are adequate to meet the objective set out in Condition 31, having regard to any change in circumstances. Any amendments to the Biosecurity Management Plan must be certified by the Council.
34. The consent holder shall ensure that all farm staff are trained in accordance with the requirements of the Biosecurity Management Plan (Condition 31) to be aware of the presence of any strange or unfamiliar marine and terrestrial species on the farm related vessels, vehicles, structures, machinery and equipment prior to them undertaking duties in marine farm related activities.
35. Before any vessel, structure (including pontoons), machinery or equipment to be used in marine farming activities, including barges to be used in construction and/or maintenance of any marine farming structure, is brought to the marine farm from outside the Pacific Coast of the Auckland and Waikato Regions, Council biosecurity staff shall be notified of the planned activities. This notification shall be provided prior to entry to the Auckland Region and may require an inspection for terrestrial and marine unwanted or risk species by a suitably qualified and experienced person.
36. In the event that any unwanted or risk species, which are new to the Auckland or Waikato Regions, are detected in the Approved Area:
- a) All vessels, structures (including pontoons), machinery and equipment shall be inspected and first certified by an appropriately qualified person that the vessels,

structures (including pontoons), machinery and equipment is clear of species of concern, prior to being taken to an area that is free of the pest species of concern, including use at another location outside the Auckland and Waikato Regions. This is to ensure that any unwanted or risk species are not spread to a location that is not infested by that species.

- b) The removal of biofouling including during harvesting of marine produce shall be managed to ensure that all practical steps are taken to reduce the risk of spreading unwanted or risk species. Disposal of unwanted or risk species must occur at an approved disposal site on land.

Note: Auditing

Council shall undertake audits of the Approved Area and the Biosecurity Management Plan to ensure implementation of the approved biosecurity protocols.

Environmental monitoring

- 37. The consent holder shall submit to the Council an Environmental Monitoring Plan (EMP) for certification at least one month prior to installing any structures on the site. The objective of the EMP is to provide procedures and processes for the monitoring, reporting and review of the environmental effects of the marine farming activities authorised by this coastal permit. The EMP shall specify, as a minimum:
 - a) The frequency of monitoring and parameters to be monitored;
 - b) The sampling/monitoring locations and the control/reference sites, taking into account the areas of most developed lines and representative sites of spatial and temporal variability;
 - c) Stocking density for 50 and 100%;
 - d) Methods and analysis to be used;
 - e) Reporting frequency and procedure for reporting to the Council on the monitoring information; and
 - f) Review procedures.
- 38. The EMP shall include a detailed monitoring programme appropriate to verify the predicted short term and long-term effects of the farming operation on sediment physico-chemical characteristics. The level or frequency of monitoring or the monitoring parameters may need to change should the monitoring detect an unexpected or unacceptable adverse effect of the marine farm.
- 39. Monitoring will be conducted on the following occasions:
 - a) Before the installation of the lines (i.e. baseline monitoring);
 - b) After the installation of 50% of the lines;
 - c) After the installation of 100% of lines; and

- d) every three years after the farm has been fully developed, for at least two monitoring occasions (i.e. at least 6 years). Once the farm has been fully developed, monitoring can cease after the results from two sequential monitoring occasions show no significant adverse effects, subject to the written confirmation of Council.

Note:

Ecological surveys conducted to support the resource consent application may be sufficient for the baseline survey. This must be agreed upon by the Council.

- 40. The EMP shall provide for monitoring of sediment physico-chemical characteristics within the marine farm area (under and between lines) and at two reference/control sites. This monitoring shall be generally undertaken by sampling with the most appropriate technology at representative sites. This will include sediment grab samples (in triplicate) to be analysed for sediment physico-chemical characteristics (grain size, redox potential, organic content, total nitrogen and phosphorus).
- 41. Monitoring reports shall be presented to the Council within three months of monitoring being conducted. The monitoring reports shall include, but not necessarily be limited to:
 - a) The provision of raw data, sampling sites, methodology and frequency information;
 - b) The environmental effects of the marine farm on sediment physico-chemical characteristics, and the extent to which these effects align with the assessment of potential effects provided with the resource consent application;
 - c) Whether any additional or further monitoring of the environmental effects of the marine farm is recommended; and
 - d) Whether any additional mitigation or change to the operation of the marine farm is required in order to ensure that the marine farm does not give rise to significant adverse environmental effects.
- 42. The EMP may include review procedures for the monitoring programme. A review may be initiated to update the EMP with new scientific knowledge or to align the monitoring programme with a wider Firth of Thames or Hauraki Gulf aquaculture monitoring programme, should one be established.

The consent holder shall submit any changes to the EMP to the Council for certification prior to implementation.

Marine mammals, birds and other protected species

- 43. The consent holder shall notify the Team Leader - Compliance Monitoring (Central) of any entanglements of:
 - a) Seabirds; and / or
 - b) Protected species under the Wildlife Act 1953.

Notice shall be in writing within five working days of any entanglement. Notification information shall include:

- i. The date of the entanglement;
 - ii. The name of the entangled species; and
 - iii. Whether remedial actions were undertaken.
44. The consent holder must prepare, implement and comply with a Marine Mammal Management Plan:
- a) The Marine Mammal Management Plan shall be prepared by the consent holder four months prior to the first installation of structures under this consent.
 - b) The Marine Mammal Management Plan shall be signed-off by a suitably qualified and experienced marine mammal scientist.
 - c) The Marine Mammal Management Plan shall be provided to the Department of Conservation for comment.
 - d) Three months after the date the Marine Mammal Management Plan is prepared, or after comments are provided by the Department of Conservation (whichever is sooner), the Management Plan shall be provided to the Auckland Council, along with any comments provided by the Department of Conservation.
45. The objectives of the Marine Mammal Management Plan must be to:
- a) avoid adverse effects and where it is not practicable to avoid effects to minimise those effects on marine mammals from the operation of the marine farm;
 - b) minimise the potential for interaction of marine mammals with the marine farm;
 - c) determine how the operation of the marine farm will be managed adaptively to avoid, remedy and mitigate adverse effects on marine mammals;
 - d) ensure that the best practicable option is adopted to avoid entanglement of marine mammals, having regard to best international practice, ongoing research and allowing for technological improvements;
 - e) establish recording, reporting and response procedures in the event of marine mammal interaction, entanglement, injury or death within the marine farm boundaries; and
 - f) outline any requirements to monitor and record the presence of marine mammals in the vicinity of the marine farm.

Extent of Occupation

46. The right to occupy part of the Common Marine and Coastal Area (CMCA) with the marine farm shall be limited to the Approved Area, but shall not be an exclusive right. The public or any class of persons may not be excluded from the area or any part of the area for which this coastal permit applies unless necessary for the normal

operation of the marine farm and only to the extent that this is required to enable safe operation of the marine farm.

Removal Condition

47. The consent holder shall inform the Council in the event that all, or part, of the marine farm site ceases to be used. In this event, the consent holder shall ensure that all structures in that area that were otherwise authorised by this coastal permit, and which are consequently no longer required, shall be removed by the consent holder (at the consent holder's own expense) within two months of the date of ceasing to farm the relevant area, or as otherwise agreed in writing by the Council.
48. Prior to the expiry, termination or surrender of this coastal permit, the consent holder shall within two months, or as otherwise agreed in writing by the Council, and at the consent holder's own expense, remove all marine farming structures associated with this consent from the CMA, to the satisfaction of the Council unless an application for a replacement consent has been accepted by the Council.

Review Conditions

49. Pursuant to sections 128 to 131 of the RMA, the Council may serve notice on the consent holder of its intention to review any, or all, of the conditions of the coastal permit within one year of any applicant under the *Marine and Coastal Area (Takutai Moana) Act* being granted customary marine title and/or protected customary rights by the Crown over any part of the foreshore or seabed encompassing the site of the marine farm.
50. Pursuant to sections 128 to 131 of the RMA, the Council may every five years from the commencement of this coastal permit serve notice on the consent holder of its intention to review any, or all, of the conditions of the coastal permit for the following purposes:
 - a) To address any adverse effect on the environment which may arise from the exercise of the coastal permit that were not anticipated at the time of commencement of this coastal permit;
 - b) To amend the biosecurity requirements under Conditions 31-36;
 - c) To amend the environmental monitoring condition as considered necessary to determine whether the exercise of this consent is causing an adverse effect on the marine environment; and
 - d) To respond to any new technology, standards or monitoring parameters relevant to the environmental monitoring undertaken in accordance with this coastal permit.

Advice notes

1. *Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.*
2. *For the purpose of compliance with the conditions of consent, “the Council” refers to the Council’s monitoring inspector unless otherwise specified. Please email monitoring@aucklandcouncil.govt.nz to identify your allocated officer.*
3. *For more information on the resource consent process with Auckland Council see the Council’s website: www.aucklandcouncil.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment’s website: www.mfe.govt.nz.*
4. *If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the Council within 15 working days of your receipt of this decision (for s357A) or receipt of the Council invoice (for s357B).*
5. *This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law.*
6. *Maintenance, repair and reconstruction of existing lawful structures, and the removal or demolition of structures, is a permitted activity under the AUP (OIP) subject to compliance with conditions of the permitted activity.*
7. *Except as provided for under condition 9 that enables maintenance and insignificant changes, the marine farming structures shall not be altered without first obtaining any other resource consents for such works or structures which are required under the AUP (OP).*
8. *The consent holder is advised that they are required to comply with all relevant provisions of the Building Act 2004.*
9. *The noise restrictions as outlined in the AUP(OP) shall be complied with during the marine farming operations.*
10. *The consent holder is advised that they have a general duty under Section 17(1) RMA to avoid, remedy or mitigate any adverse effect on the environment arising from the marine farming and spat holding activity.*
11. *The CMA shall not be used for the storage of marine farming waste.*
12. *Disposal of waste or material into the CMA is inappropriate, and shall be avoided. In particular, the disposal of organic and inorganic waste materials into the CMA is not a permitted activity.*
13. *Inspection and monitoring by Council in respect of the conditions of this consent may take place annually or more frequently in the event that a previous inspection or complaint indicates the need for more frequent inspection and monitoring.*

14. *This coastal permit does not authorise the exclusive occupation of space in the CMA. Marine farming structures and operations will result in some physical exclusion over some parts of the Approved Area. Pursuant to Section 122(5) of the RMA, the public or any class of persons may not be excluded from the area or any part of the area for which this coastal permit applies, unless necessary for the normal operation of the marine farm.*
15. *The consent holder is advised that they will be required to pay to the Council any administrative charge fixed in accordance with Section 36(1) of the RMA or any additional charge required pursuant to Section 36(3) of the RMA in respect of this coastal permit.*
16. *Pursuant to Section 126 of the RMA, if this coastal permit has been exercised, but is not subsequently exercised for a continuous period of five years, this coastal permit may be cancelled by the Council unless other criteria contained within Section 126 are met.*
17. *This coastal permit is transferable to another owner, upon application to the Council, on the same conditions and for the same use as granted and all approved variations (section 135 RMA 1991). The consent holder is advised that should they wish to transfer this coastal permit to any other person they must do so by advising the Council in writing in accordance with Section 135(1)(a) of the RMA. A fee is payable at the time of transfer to cover the cost of administration.*
18. *Sections 124 and 165ZH of the RMA and Section 49 of the Aquaculture Reform Act (ARA), enable continued operation of a resource consent that has expired provided the consent holder has applied for a new consent for the same activity at least 6 months before the expiry of the existing consent, or within 3-6 months with Council approval, until the application is either granted or declined and any appeals are determined, and requires any such application to be determined before any other coastal permit application for the same area of the CMA may be accepted by the Council.*

Aids to Navigation

19. *Prior to installing the Aids to Navigation the applicant must obtain the permission of both the Director of Maritime New Zealand and the Auckland Transport Harbourmaster under the Maritime Transport Act 1994 and the AC Navigation Safety Bylaws respectively. Under section 200(2) of the Maritime Transport Act 1994 (MTA) any person who operates a marine farm must provide navigational aids for that facility and is responsible for them. The Director of MNZ has the function under section 200(7) MTA of approving any navigational aid that is erected, altered or removed. The Auckland Transport Harbourmaster also has a function under the Navigation Safety Bylaws of approving any Aid to Navigation (AtoN). This includes any AtoN required to mark a marine farm.*

If the consent holder wishes to deviate from the navigation lighting requirements listed under conditions 12 and 13, the lighting plan should be submitted to Maritime New Zealand for the approval of the Director in the first instance. Once the lighting plan is

approved by MNZ, the lighting plan and approval should be forwarded to the Council with an application for the alternate lighting plan to be approved under the Auckland Council Navigation Safety Bylaws.

Approved navigational aids are a Permitted Activity under the AUP(OP) and may be located outside of the Approved Area.

Marine Mammals and Other Protected Species

20. *Marine Mammal Stranding or Entanglement*

It is acknowledged that in carrying out legitimate marine farming activities, from time to time there may be casualties to other marine life. To date there has been only one (disputed) report of marine mammal entanglement in relation to mussel aquaculture in New Zealand. It appears that loose, thin lines for spat catching pose the greatest entanglement threat to whales as evident by reports in both New Zealand and overseas. As such, the potential entanglement risks at New Zealand mussel farms are likely to be low since backbone lines are under considerable tension. Condition 21 requires particular attention to maintenance of the marine farming structures and the need to avoid loose lines that can potentially entangle marine mammals. Condition 6 precludes empty spat catching ropes from being installed on the farm, while Condition 30 precludes the location of spat holding ropes on the outer edges of the farm blocks due to the sporadic presence of Bryde's whales in this part of the Firth of Thames.

Biosecurity

21. *Sections 44 and 46 of the Biosecurity Act 1993 outline the reporting requirements for notifiable and other unwanted organisms. Under Section 44 of the Biosecurity Act 1993 every person has a duty to inform the Ministry for Primary Industries and Auckland Council Biosecurity Unit as soon as practicable, of the presence of an organism not normally seen or otherwise detected in New Zealand. Under section 46 of the Biosecurity Act 1993 every person is required, without unreasonable delay, to notify the Chief Technical Officer of the presence or possible presence of notifiable organisms.*



Mark C Farnsworth MNZM

Chairperson for the Panel
Melean Absolum & Juliane Chetham

9 September 2020