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Marlborough Sounds

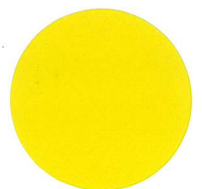
Resource Management Plan

Volume One

Objectives, Policies and Methods

February & March 2003

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Marlborough Sounds Resource Management Plan

The purpose of the Marlborough Sounds Resource Management Plan is to promote the sustainable management of the natural and physical resources of the Marlborough Sounds area including the coastal environment. The Plan is a combined Plan containing the regional, regional coastal and district plans for the Marlborough Sounds area. The Plan sets out the objectives and policies and methods, including rules for the Marlborough Sounds area.



Plan Status

The Plan was made operative **in parts** on the 28 February 2003 and on 28 March 2003. The provisions not yet operative are identified on the page containing Council's seal and within the text of the Plan.

From time to time the Council also puts forward proposal plan changes to its resource management plan. The variations and proposed changes can be viewed on the Plan Changes page.

Plan Content

The Marlborough Sounds Resource Management Plan is comprised of three volumes:

Volume One

Contains the introduction to the Plan, which incorporates information requirements for resource consent applications, cross boundary matters and monitoring. Volume One contains the issues to be addressed by the Plan as a whole, the objectives, policies and methods to be used in promoting sustainable management of the natural and physical resources of the Marlborough Sounds and the environmental results anticipated from their implementation.

Volume Two

Sets out the rules to achieve the objectives, policies and methods including the assessment criteria for those activities subjected to resource consents.

Also contains the interpretation section which defines the words, terms and phrases used in the Plan.

Volume Three

Contains the planning maps for the Marlborough Sounds Resource Management Plan.

Review of Marlborough Sounds Resource Management Plan

The Plan is currently under review. For more information see Review of Resource Management Documents.

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9.0 Coastal Marine

9.1 Introduction

The Act defines the coastal marine area as being that area surrounding the coastline from mean high water springs to the outer limits of the territorial sea (12 nautical mile limit). This includes the foreshore, the seabed, the coastal water and the airspace above the water. By virtue of this definition, a vast proportion of the Marlborough Sounds planning area is coastal marine area.

Section 12 of the Act places restrictions on the use of this area. Generally these restrictions mean that no person can use the coastal marine area in any way, unless it is allowed for by a rule in a regional coastal plan (the Plan) or by a resource consent. This includes disturbance of the foreshore or seabed and any occupation of the coastal marine area to the exclusion of other persons.

Management of the coastal marine area is the responsibility of the Marlborough District Council (as one of its regional functions) under section 30(1)(d) of the Act. This function is shared between the Council and the Minister of Conservation. The Minister, amongst other things, must approve the regional coastal plan and in the case of the Plan the relevant coastal sections.

The Minister is also responsible for the New Zealand Coastal Policy Statement which has an important influence on Council's management of the coastal environment. The Plan cannot be inconsistent with the Statement.

The Council's role in the coastal marine area is twofold and follows from the way in which people's use of the coastal marine area is restricted under the Act. Council has the role of allocating the right to occupy space in the coastal marine area. That is, allocating or authorising the use of public resources for private benefit. The Council also has the role of promoting the sustainable management of the natural and physical resources of the coastal marine area. This carries the onus of ensuring that these resources and the qualities associated with them, remain available for the use, enjoyment and benefit of future generations.

The Council's primary tool for managing the coastal marine area and fulfilling its section 30(1)(d) functions, is the Plan. The main issues identified by the Plan in relation to the coastal marine area follow on directly from Council's role in the management of the coastal marine area. Within the Urban Environment section the Plan deals specifically with Port and Marina activities separately from this Coastal Marine section.

The Act contains provisions enabling the regional councils to implement a system of coastal tendering to safeguard the Crown's interest in the foreshore and seabed, as well as to secure benefits such as meeting a public expectation that coastal allocation will be fair and efficient.

A reform of the legislation covering the management of marine farming - the Aquaculture Reform 2004 - came into effect on 1 January 2005. The aim of the reform was to create a more integrated aquaculture management regime, with a balance between enabling economic development, looking after the environment, settling the Crown's Treaty obligations to Maori, and responding to community concerns. As a result of this reform, marine farming is now mostly covered by the Resource Management Act, with one process for planning where marine farms should go and for granting consents for them to occupy coastal

space. Areas for new marine farming (Aquaculture Management Areas - AMAs) need to be identified in the Plan, and coastal permits for marine farms within AMAs are issued by the Council. The Ministry of Fisheries contributes to the Plan process by testing for any undue adverse effects on commercial, customary or recreational fisheries prior to an AMA being approved in the Plan. Space within AMAs is also to be allocated to iwi to settle Maori claims to commercial marine farming.

9.1.1 Coastal Occupancy Charges

The Resource Management Amendment Act 1997 gave regional councils the opportunity of introducing a charging regime for the occupation of coastal space within the coastal marine area. The amendment placed a responsibility on councils to place a statement in their Regional Coastal Plans, either to set out a charging regime or to say they will not do so. The Act also specified that any money so collected must be spent on the sustainable management of the coastal marine area.

Section 64A of the Act requires Council to have regard to both public and private benefits in determining whether or not a coastal occupation charging regime should apply. Council must consider the extent to which:

- Public benefits from the coastal marine area are lost or gained; and
- Private benefit is obtained from the occupation of the coastal marine area.

The premise underlying coastal occupation charges is that exclusive occupation of the coastal marine area is a privilege not a right - it is public space over which everyone has a right of access, and if used so as to exclude others a similar option of use, the public should be compensated for that exclusion and loss of opportunity.

Most occupations will result in elements of both public and private benefit, and the extent to which they are exclusive will vary. The identification of benefits (public/private) is limited to those directly arising from a structure which is occupying the space, not the associated activity that is facilitated by that structure being present. The benefits or otherwise of the associated activity are assessed through the coastal permit process.

Council has carried out an exercise to assess the relative benefits associated with different types of occupation. This has allowed a comparative assessment in terms of where the principal benefit lies. If charges are to offset the loss of public opportunity as a consequence of exclusive occupation, they should apply in principle wherever there is a net private benefit to the occupier.

In carrying out this exercise Council considers that it is justified in principle in charging for occupation of coastal space in circumstances where net private benefit is greater than net public benefit. In these circumstances the Council is committed to introducing a coastal occupancy charging regime.

Council has completed an information database on the various occupations within the Coastal Marine Area and is satisfied that it now has adequate information in that database to enable the implementation of a coastal occupancy charging regime. However, further work, is required to determine the circumstances in

which charges will be imposed (and possibly waived), the level of charges and use of monies received, as well as preparing plan provisions, including objectives, policies and methods, to implement such a regime.

In determining an appropriate regime for charging for the occupation of coastal space, the Council will take account of the scale of the occupancy, such as the amount of coastal space occupied, as well as the private versus public benefit discussed above

The Council is committed to this process and proposes to introduce provisions dealing with coastal occupation charges into the Marlborough Regional Policy Statement. A new regional policy statement is scheduled to be notified in December 2009. These provisions would then be implemented through plan change or plan review processes.

The Act requires that any money received by the Council from a coastal occupation charge must be used only for the purpose of promoting the sustainable management of the coastal marine area. Through the Marlborough Regional Policy Statement, this Resource Management Plan and State of the Environment Monitoring, the Council has already set out some of the issues for sustainably managing the coastal marine area.

In the context of the Plan, issues concerned with promoting the sustainable management of the coastal marine area can be found in many of the chapters of the Plan, given the integrated nature of the document. However those chapters of specific relevance include the following: Natural Character (2); Indigenous Flora and Fauna and their Habitats (4); Landscape (5); Tangata Whenua and Heritage (6); Public Access (8); and Coastal Marine (9).

9.1.2 Aquaculture Management

The Act states that aquaculture activities (marine farming) can only take place within areas identified in the Plan as Aquaculture Management Areas (AMAs). Marine farming is prohibited outside AMAs. Council has the main role in managing marine farming in the Marlborough Sounds. Providing for marine farming within AMAs enables effects on the community, environment and economy to be managed in an integrated way through the Plan preparation processes, before individual applications for marine farms are considered. The cumulative effects of several marine farms in one area can also be considered.

The Ministry of Fisheries (MFish) continues to play a significant role in the creation of AMAs. Before starting on the public notification processes for including a new AMA in the Plan, Council must request MFish to undertake an assessment as to whether the proposed AMA would have an "undue adverse effect" on commercial, customary or recreational fishing. Areas within the proposed AMA that would unduly affect customary or recreational fishing will be removed from the proposal prior to notification. Any areas that would unduly affect commercial fishing will be identified in the Plan and anyone wanting to

establish a marine farm in those parts of the AMA must first reach an agreement with the affected quota holders before they can apply for a resource consent.

Part of the Aquaculture Reform 2004 included the settlement of Treaty of Waitangi commercial aquaculture claims through the Maori Commercial Aquaculture Claims Settlement Act 2004. These provisions are intended to settle all Maori claims to commercial marine farming interests since September 1992. Iwi are provided with an allocation of area for marine farming equivalent to 20% of marine farming spaces allocated since 1992 and 20% of new marine farming space. This is partly met through the allocation to iwi of some of the new space that comes available through the creation of AMAs. This is intended to ensure iwi have access to coastal marine space to develop their marine farming interests, and to allow the marine farming industry to develop without risks from ongoing Treaty claims.

Existing lawfully established marine farms are deemed to be AMAs, which means they do not need to be included in the Plan through a Plan Change. Marine farming permits and licences granted under previous Marine Farming and Fisheries legislation are generally deemed to be coastal permits.

When resource consents for a marine farm are about to expire, if the site is in an AMA, the existing marine farmer can make an application for a new marine farming consent for the same water space. The application from the existing marine farmer will be decided first, before any other application can be considered for that space.

Creating new AMAs requires a Plan Change. There are three different processes available to undertake this:

- a Council-initiated Plan Change, where Council decides to undertake a plan change to establish an AMA in the coastal marine area;
- a standard Private Plan Change, where any person or organisation can request a change to the Plan to establish an AMA in the coastal marine area; and
- a Council Invited Private Plan Change (I P P C), which involves the Council inviting applications from the public to establish new AMAs. The Council may identify areas of the coastal marine area which will be excluded from applications. These Plan Changes are processed in a similar manner to Private Plan Changes.

All these processes follow the consultation and public notification processes set out in the Act.

Removal or modification of existing AMAs in the Plan, including deemed AMAs, also involves a Plan Change process.

Once an AMA is created, 20-40% of authorisations (or the right to apply for a resource consent for marine farming) are allocated by the Council to a trustee to resolve historic Treaty claims, and the remaining authorisations become publicly available.

Where AMAs have been created through a Council-initiated Plan Change, the remaining authorisations are allocated by public tender. Where an AMA has been created through the IPPC process the remaining authorisations are allocated to the person or organisation that requested the Plan Change. Where an AMA has

been created through the standard Private Plan Change process the Act specifies that the authorisations are allocated by public tender unless an alternative method of allocation is used. Once the authorisations have been allocated, the holders of the authorisations then need to apply for resource consents for marine farming.

9.2 Issue

Restriction of public access to the coastal marine area due to the private occupation of coastal space.

Occupation of coastal space involves the Council allocating or authorising the use of public resources for private benefit.

In some cases the use of resources sought is temporary or non-exclusive, generally associated with surfacewater activities such as shipping, recreational boating, swimming or with seabed disturbance activities such as dredging or dumping. In other cases the use of resources requires a degree of use which results in the exclusion of other persons or activities, for example: ports, marinas, marine farms and structures (jetties, swing moorings, boatsheds, and subaqueous cables). Such uses generally rely on a coastal location and to varying degrees, contribute to the wellbeing of individuals and the community in general. Further, the Act and the New Zealand Coastal Policy Statement both recognise that 'use' can be made of the coastal marine area resources and that this does involve occupation of coastal space for private benefit.

For these reasons, it is necessary and appropriate that activities or 'uses' which require a coastal location and which consequently involve the occupation of coastal space, are provided for in the Plan. In providing for these uses which require access to areas of, or the resources of, the coastal marine area, adverse cumulative and other effects must be addressed. Namely the wider context of enabling the community to provide for its social, economic and cultural wellbeing, and preserving the natural character of the coastal environment.

The marine farm industry that has developed in the Marlborough Sounds is of significant value to the nation in terms of export earnings, and also to the

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region in terms of the employment and income flows that are derived from the industry. A substantial infrastructure involving processing facilities, ports, harvesting vessels and a multitude of other services has developed based on the marine farm industry and Sounds communities have been revitalised as a result of the development of the industry. All of that infrastructure is reliant upon marine farming which utilises the coastal marine area and the provisions of the Plan recognise that to maintain the strength of the industry, generally it is essential for resource consents to be able to be renewed to continue those marine farming activities.

The Plan recognises that in appropriate areas of the Sounds provision needs to be made respectively for conservation, residential/recreation interest and the interest of important industries utilising Sounds resources such as marine farming, tourism, forestry and land-based farming.

In addition, ongoing research is constantly occurring as to other means of aquaculture production involving species other than the present predominant species of mussels and it is possible that some other species may involve lesser effects on the environment through having less visible surface structures. The current Plan provisions are based on the predominant bi-valve marine farm structures. It may become necessary for those provisions to be re-addressed by plan change.

The Marlborough Regional Policy Statement (Policies 7.2.10) highlights a number of key considerations for assessing proposals to occupy areas of coastal space. Essentially, public access and recreational use are identified as matters of prime importance for Marlborough. Any allocation for private benefit must not compromise these important values.

Further important values are highlighted by the Regional Policy Statement in order to guide the allocation of space for aquaculture, these include "...marine habitat sustainability, habitat protection, landscape protection, navigation and safety, and, compatibility with other adjoining activities" (Policy 7.2.10(d)). Tangata whenua values, including access to traditional coastal resources, is also an important consideration in the allocation of coastal space.

Being able to use and develop the public resources of the coastal marine area is a privilege. Often people expect this as of right, particularly if they own land adjacent to the coastal marine area.

9.2.1

Objectives and Policies

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| Objective 1 | The accommodation of appropriate activities in the coastal marine area whilst avoiding, remedying or mitigating the adverse effects of those activities. |
| Policy 1.1 | Avoid, remedy and mitigate the adverse effects of use and development of resources in the coastal marine area on any of the following: <ol style="list-style-type: none"> a) Conservation and ecological values; b) Cultural and iwi values; c) Heritage and amenity values; d) Landscape, seascape and aesthetic values; |

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| | <ul style="list-style-type: none"> e) Marine habitats and sustainability; f) Natural character of the coastal environment; g) Navigational safety; h) Other activities, including those on land; i) Public access to and along the coast; j) Public health and safety; k) Recreation values; and l) Water quality. |
| Policy 1.2 | Adverse effects of subdivision, use or development in the coastal environment should as far as practicable be avoided. Where complete avoidance is not practicable, the adverse effects should be mitigated and provision made for remedying those effects to the extent practicable. |
| Policy 1.3 | Exclusive occupation of the coastal marine area or occupation which effectively excludes the public will only be allowed to the extent reasonably necessary to carry out the activity. |
| Policy 1.4 | <p>Manage the effects of port and harbour activity by establishing a boundary around specific areas suitable and necessary for port activities in:</p> <ul style="list-style-type: none"> • Picton (including Shakespeare Bay); and • Havelock. |
| Policy 1.5 | <p>Manage the effects of marina activity and future development by establishing a boundary around the marina areas at:</p> <ul style="list-style-type: none"> • Picton; • Waikawa; and • Havelock. |
| Policy 1.6 | Ensure recreational interests retain a dominant status over commercial activities that require occupation of coastal space and which preclude recreational use in Queen Charlotte Sound, including Tory Channel, but excluding Port and Marina Zones. |
| Policy 1.7 | Avoid adverse effects from the occupation of coastal space in or around recognised casual mooring areas. |
| Policy 1.8 | Avoid any adverse cumulative effects of foreshore structures by taking into account the existence of other suitable structures prior to erecting new ones. |
| Policy 1.9 | Avoid foreshore structures in areas of recreational use where there is an adverse effect on recreation values. |

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| Policy 1.10 | Provide for defence purposes under the Defence Act 1990, provided adverse effects are avoided, remedied and mitigated. |
| Policy 1.11 | Enable roading activities where adverse effects on the coastal environment can be avoided, remedied or mitigated, and provide for the protection of existing roads from coastal processes. |
| Policy 1.12 | To enable a range of activities in appropriate places in the waters of the Sounds including marine farming, tourism and recreation. |
| Policy 1.13 | Enable the renewal as controlled activities of marine farms authorised by applications made prior to 1 August 1996 as controlled activities, apart from exceptions in Appendix D2 in the Plan. |
| Policy 1.14 | Consideration of other methods of marine farming having lesser effects than long line bi-valve farming in the future. |

By controlling the erection of structures and other activities (including marine farms) that use or occupy coastal space, the effects of these are able to be addressed. The extent of occupation and development needs to be controlled to enable all users to obtain benefit from the coast and its waters.

Policy 9.2.1.1.7 recognises that unconstrained casual mooring areas are important, and often crucial in terms of safety, for anchoring boats on a casual basis.

The policies seek to provide guidance and control on the individual and cumulative adverse environmental effects of marine farms and structures and their use, particularly visual effects. The term 'structure' is defined by the Act as any building, equipment, device or other facility made by people and which is fixed to land (ie; the foreshore or seabed) and includes any raft (section 2).

Separate provision for marine farm transfer sites is no longer appropriate as there is no consistent demand for any particular location or description of the effects of transferring marine farms. Accordingly, transferring a marine farm is treated as a new site where adverse effects can be considered.

Council acknowledges that management and allocation of fisheries resources is to be determined under the provisions of the Fisheries Act 1996 as opposed to the Act. However, Council can control the effects created by fishing as long as those controls are not imposed for a fisheries purposes eg; controls imposed for the protection of vulnerable, unique coastal substrate.

The importance of public access and recreational use is recognised in a number of the occupation policies above, (particularly 1.5) as required by the Marlborough Regional Policy Statement. Council sees the future wellbeing of Marlborough and particularly the Sounds area linked to an increase in the recreational use of coastal resources. It is therefore important to ensure that allocation for coastal space for private use does not occur at the expense of public

access and recreation values. It is also important to remember that there are no inherent development rights within the coastal marine area.

Policy 9.2.1.1.2 reflects Policy 3.2.2 of the New Zealand Coastal Policy Statement, which provides a hierarchy whereby adverse effects should be avoided as far as practicable in the first instance, and where these effects cannot be avoided they must be mitigated and remedied to the fullest practicable extent. This is a general policy that applies throughout Chapter 9.

Policies which further address the environmental effects of activities occupying coastal space need to be considered in conjunction with those above. Refer to section 10.6: Port and Harbour Activities; Chapter 10.7: Marina Activity; Chapter 19: Water Transportation; and, the second issue in this chapter, section 9.3.

9.2.2

Methods of Implementation

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| Zoning | <p>The coastal marine area is incorporated into two coastal marine zones (except for port and marina areas).</p> <p>The limits of the Coastal Marine Zones align with the boundary of the coastal marine area, being the: outer limits of the territorial sea; and line of mean high water springs and where the line crosses a river, as agreed between the Minister of Conservation and the Council in the Memorandum of Agreement dated 4 December 1995 or any subsequent amendment to that agreement.</p> <p>Rules have been incorporated to control activities and structures in these zones.</p> <p>In Coastal Marine Zone 1 the Plan identifies those areas where marine farms are prohibited in accordance with Policies 9.2.1.1.1 and 9.2.1.1.6. These areas are identified as being where marine farming will have a significant adverse effect on navigational safety, recreational opportunities, natural character, ecological systems, or cultural, residential or amenity values.</p> <p>In addition to the two coastal marine zones the Plan identifies particular zones for the following activities:</p> <ul style="list-style-type: none"> • Port and harbour activity; and • Marina activity. <p>Such areas are managed for these activities.</p> |
| Rules | <p>Rules and resource consents generally provide for activities which require coastal space where the adverse effects of occupation are avoided, remedied or mitigated in terms of the assessment criteria and standards identified.</p> |

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| | <p>Within Coastal Marine Zone 2 out to 50 metres from mean low water mark, and beyond 200 metres from mean low water mark, marine farms are non-complying activities. In those areas marine farming involving fin fish farming may be appropriate and it is recognised that consent may be granted by a resource consent application.</p> <p>Rules enable the use of the coastal marine area for defence purposes.</p> |
| Other Legislation | The Council will use its powers and functions under harbour legislation to control navigational conflicts between surface water activities. |
| Liaison | The Council will send notice of permissions for structures to the Hydrographic Office of the Royal NZ Navy, and the Maritime Safety Authority. |
| Monitoring | The Council will monitor the effects of permitted and consented activities in the coastal marine area to: determine the effectiveness of plan policies and rules; assess compliance with consent conditions; and promote sustainable management. |

Rules and zoning will provide certainty with respect to what can and cannot be done in the coastal marine area. In addition, they provide the environmental certainty and control which is needed in this sensitive area.

Policy 3.2.1 of the New Zealand Coastal Policy Statement requires plans to define the type of use and development that would be appropriate in the coastal environment. The policies and methods (ie, rules) provide guidance to resource users on this.

9.3 Issue

Adverse effects of activities on the natural and physical resources of the coastal marine area.

Given the geography of the Marlborough Sounds, the coastal marine area performs a significant role as a receiving environment. The Marlborough Sounds are large, drowned river valleys. Queen Charlotte Sound is the simpler of the two, approximately 45 km long and indented by many small bays and coves. Pelorus Sound is a complex maze of large inlets, bays, coves and islands. The drowned river valleys are only part of the catchments which extend inland as far as the Marlborough Sounds planning area. To a significant extent it is the activities taking place on the land which determine the environmental quality of the coastal marine area. The coastal marine area is effectively the end point for all activities and their effects.

Rigid controls are necessary in the coastal marine area as this is the 'environmental sink' where the effects of all coastal and land-based activities impact. Coastal marine ecosystems depend on uncontaminated seawater, undisturbed seabed or foreshore and healthy land and freshwater ecosystems adjacent to the coast.