SUPPLEMENTARY STAFF EVALUATION REPORT

TO: Hearings Panel – Hearing 72

FROM: Tania Bray, Policy Planner

FILE NO.: R435-6, R430-6-2

SUBJECT: **SUPPLEMENTARY STAFF EVALUATION REPORT TO HEARING 72**
Change 61: Wainui Bay Spat Catching

"In Committee"

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1. RESPONSE TO MATTERS RAISED IN THE HEARING

This supplementary report considers, from a planning perspective, a number of matters raised in the written and verbal evidence presented at the hearing for Plan Change 61 - Wainui Bay Spat Catching. Recommendations are provided where appropriate.

1.1 Issues and Options

1.1.1 Activity Status - Notification

Several submitters presenting evidence at the hearing requested that the activity status of the farms remain discretionary because the public would have no opportunity to participate if the activity status was changed to controlled.

Whether or not the public have the opportunity to participate is set out in sections 95A and 95B of the RMA (see below). Notification is independent of the activity status.

95A Public notification of consent application at consent authority's discretion

(1) A consent authority may, in its discretion, decide whether to publicly notify an application for a resource consent for an activity.

(2) Despite subsection (1), a consent authority must publicly notify the application if—

(a) it decides (under section 95D) that the activity will have or is likely to have adverse effects on the environment that are more than minor; or

(b) the applicant requests public notification of the application; or

(c) a rule or national environmental standard requires public notification of the application.

(3) Despite subsections (1) and (2)(a), a consent authority must not publicly notify the application if—

(a) a rule or national environmental standard precludes public notification of the application; and

(b) subsection (2)(b) does not apply.

(4) Despite subsection (3), a consent authority may publicly notify an application if it decides that special circumstances exist in relation to the application.

95B Limited notification of consent application

(1) If a consent authority does not publicly notify an application for a resource consent for an activity, it must decide (under sections 95E to 95G) whether there is any affected person, affected protected customary rights group, or affected customary marine title group in relation to the activity.

(2) The consent authority must give limited notification of the application to any affected person unless a rule or national environmental standard precludes limited notification of the application.

(3) The consent authority must give limited notification of the application to an affected protected customary rights group or affected customary marine title group even if a rule or national environmental standard precludes public or limited notification of the application.

(4) In subsections (1) and (3), the requirements relating to an affected customary marine title group apply only in the case of applications for accommodated activities.

Unless there is a rule in the Plan requiring a particular activity be notified then until an application is before the Council and the nature of the activity is assessed against the above criteria, no presumption can be made regarding notification. In the past, two of the farm's applications were notified. However, the other four were not because they were renewed under special one-off legislation.

If Council were to include a rule in the Plan requiring applications for spat catching at Wainui Bay be notified, then this may relieve some of the concerns of the submitters. Based on past practice and the wording of the 95A and 95B then such a rule may have limited or no effect on applicants.

It is my recommendation that the committee consider the benefits of including such a rule in accordance with 95A(2)(c) of the RMA in the proposed plan change.

1.1.2 Outstanding Natural Landscape and Features

(a) Independent Advice

Through the hearing, criticism was made that Council should have obtained independent advice regarding the impacts of the spat catching farms, particularly on landscape.

The requestor has worked closely with or been in communication with a lot of different Council staff during the drafting of the request. This is a practice advocated by the New Zealand Planning Institute through the Quality Planning Website as it enables the aspirations of the requestor and the concerns of the Council to be raised and changes made to the draft Plan Change prior to lodging. The draft request was reviewed twice by Council staff prior to lodging, and once following lodgement. A number of changes were made to the draft at the request of staff.

With particular regard to the landscape evidence, it is my understanding that Council staff had input in identifying appropriate candidates for the expert panel and the final composition of the expert panel comprised of five highly regarded landscape architects. The experienced landscape architects reached a consensus view on the matters under consideration. Three Council staff attended the workshop with the expert panel (as active observers) and representatives from the Department of Conservation and the Industry were also present. The findings of the expert panel were not inconsistent with two independent reports commissioned by the Tasman District Council (the Small Working Group and Vicky Froude's (2013) work). For these reasons, it was considered unnecessary to commission further landscape evidence.

1.1.3 Conditions on the Activity

(a) Lighting

At the hearing, the effect of light spill on land/residences, panning spot lights and the reflection of artificial light on the water was raised. It is my understanding that the issue was not so much about the service vessels travelling at night but the use of lighting on the vessels to identify ropes and to illuminate the work area.

Ms Collin's in her submission sought no artificial lighting be used and Ms Foxwell at the hearing also discussed the issue of lighting. Both submitters are residents in the Bay.

The Plan Change proposes a controlled activity condition that lights from working vessels at the site do not shine onto land where those lights may cause a nuisance. The management of lighting is also included as a matter of control in the restricted discretionary activity rule. Mr Davies in his evidence suggested that the consent holders currently have no restrictions on the use of lights and that the proposed condition, that lighting not cause nuisance to land, ought to eliminate the complaints in this regard.

It is noted in the Wainui Bay Code of Practice (Appendix N of the application) that "*all spotlights are to be turned off after lines are located and the vessel is secured to the line, 'working' deck lights are only to be used when required*". Mr Sutherland in his evidence states that the consent holder is party to this Code of Practice. If this is correct then the operators should already be restricting the use of lights to some extent while working.

Very limited lighting evidence was presented at the hearing. No specific evidence was presented at the hearing regarding the impact on the industry if no artificial lighting was allowed, as requested by Ms Collins. Mr Roundtree did however state that lighting was required for practical and safety reasons at certain times of the year, especially during winter.

Based on the information presented at the hearing, I consider that if the Code of Practice is complied with and an appropriately worded condition is included in the consent, then the effect of light spill could be minimised. The current wording proposed in the Plan Change is quite broad. There may be some benefit in being more specific about the effects that are to be controlled.

(b) Hours of Operation/Noise

The hours of operation and the effect of noise on amenity was also raised during the hearing.

The hours of operation proposed in the Plan Change are the same as the hours of operation currently imposed as a condition of consent. Mr Roundtree in his evidence stated that the conditions are generally calm first thing in the morning which makes for safer and quicker working conditions. Mr Roundtree also stated that work did not commence at 6.00 am every day, but there were occasions when they needed to start work early. They were aware that there were more people in the Bay during the summer months and they try to be conscious of that. Mr Roundtree considered limiting the hours of operation from 6.00 am to 8.00 pm was practical and appropriate. Ms Collins in her submission requested that the hours of operation be restricted to the hours of 7.00 am to 7.00 pm. Ms Foxwell also requested that the hours of operation be reduced/moved to a more reasonable hour.

No detailed information was provided by either submitters or the applicant regarding when, how often or how many boats are operating at any one time, or what the noise level readings are at residential boundaries. For this reason, I believe it is quite hard to quantify the size of the problem.

The TRMP includes noise levels in the rural zone which provide for a greater level of noise between 7.00 am to 9.00 pm Monday to Friday and 7.00 am to 6.00 pm Saturday. All other times (including public holidays) a lesser level of noise is required. The day/night noise levels specified in the Plan Change is similar to that required for the adjoining rural land use in the TRMP, however there is no specific hours associated with these day/night levels.

From the evidence presented at the hearing it appears that the cumulative noise of up to 10 boats operating in a small area, for extended periods of time and the periodic early start of work, has an adverse effect on the amenity of residents - for at least part of the time. The TRMP currently provides for lesser and greater noise to be made based on the time of day, time of week and time of year.

I recommend that further consideration be given to hours of operation and the potential to further mitigate the adverse effect of noise on residential amenity.

1.1.4 Minister of Conservation – Minor Amendments

(a) Amendment to Proposed Wording

The Minster of Conservation sought changes to clarify the intent of certain provisions by making it clearer that the catching of any spat other than mussel spat was a prohibited activity. The report recommended the acceptance of the changes sought with modification.

The Minister did not oppose the recommended wording change. Mr Davies accepted the recommended change, however in his evidence he went on to provide further advice that in practical terms scallop spat attaches to the mussel ropes and is consequentially harvested at the same time.

The applicant had interpreted TRMP rule 25.1.3.1(g) as applying to Wainui Bay and that they could harvest scallop as a by-catch.

> *25.1.3.1(g) "Notwithstanding (e), mussel spat caught as a by-catch in scallop spat catching subzones, and scallop spat caught as a by-catch in mussel spat catching subzones, may be harvested."*

Mr Davies advised that the harvesting of scallop spat as a by-catch is of no commercial consequence to the applicants, however, the following new rule was proposed during the hearing.

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

The TRMP ordinarily provides for the harvesting of scallop spat as a by-catch of mussel farming (See *25.1.3.1(g)*). The provisions in the proposed Plan Change prohibit scallop spat catching as a primary activity and there are controls on the type of structures used.

It appears that it would be difficult to prevent the harvesting of scallop spat as a by-catch because the scallop spat attaches itself to the same rope as the mussel spat.

Re-seeding of the CMA with the scallop by-catch appears to be a more efficient use of a natural resource, than preventing the scallop spat from being used.

I recommend the wording proposed by the applicant be accepted.

The Minister of Conservation accepts the proposed amendment to the wording (See Appendix One)

1.1.5 Other Matters raised.

(a) Friends of Golden Bay (1)

The Friends of Golden Bay have requested in their evidence a "definition of 'mussel spat farming' be included in the TRMP and that it states that the maximum spat size be 40mm, as defined by Schedule 1 of the RMA Act (no 2) 2011".

The TRMP currently contains the following definitions:

Mussel spat – means any stage of lifecycle of Green-lipped mussels (pernaliculus canaliculus) less than 40 millimetres in length.

Mussel spat catching – means spat catching that is limited to the obtaining or retention of mussel spat and the harvest thereof from aquaculture structures.

The definition in the TRMP for "mussel spat" is the same as defined by Schedule 1 of the RMA Act (no 2) 2011. No change is recommended to the definitions.

(b) Friends of Golden Bay (2)

The Friends of Golden Bay have requested in their hearing evidence that "the Wainui Bay site be only used for mussel spat catching or holding[1], that no further expansion of the Wainui Bay farm will be allowed[2] and that if it is abandoned all structures must be removed[3]. The on–growing of mussels to harvestable size should be prohibited[4]".

1,3 and 4 are currently part of the Plan Change. The Plan Change currently restricts the area farmed to the existing area. For expansion to occur outside of these boundaries then a plan change would be required. No change is recommended to the proposed Plan Change following this request

(c) Friends of Golden Bay (2)

The Friends of Golden Bay have requested that the TRMP be altered to specify that "AMAs cannot be close to the shore because of the Environment Court (2001) ruling that AMAs in Golden Bay should be off shore. Further, it could state that any aquaculture sites close to the shore must be a discretionary activity so that they are open for periodic review."

These requests are beyond the scope of this Plan Change. If new policies were included in the Plan Change regarding the proximity of AMAs to shore, the policies would affect aquaculture in general which is beyond the scope of this Plan Change. It would be more appropriate to consider this request as part of the next review of the aquaculture provisions in the TRMP. This would enable the community as a whole to consider the suggested changes. It should be noted the RMA specifies the duration of consent for aquaculture up to 35 years and activity status does not affect how long a consent is issued for. I have no recommendation.

Hi Tania,

The Minister of Conservation has no issue with the harvest of scallop spat as long as it is by-catch and not the predominant activity. Therefore the proposed new paragraph Rule 25.1.3.1 (ga)(iv) satisfies the Minister's concerns.

If you have any queries, please contact me.

Kind regards

Ken Murray
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