



Tasman Resource Management Plan

Private Plan Change 61 Wainui Bay Spat Catching

August 2016

Report prepared under Section 42A to assist in fulfilling the requirements of
section 32AA of the Resource Management Act 1991

Contents

1.0	Introduction	3
1.1	Purpose of the Report	3
1.2	Submitter References.....	3
1.3	Scope	3
1.4	Recommendations on Matters Raised	4
1.5	Statement of Experience	4
2.0	Background	5
2.1	The Plan Change Request.....	5
2.2	Site and Locality	6
2.3	Past and Present Use.....	7
3.0	History of the Planning Provisions for Wainui Bay.....	8
3.1	1980 – 1990.....	8
3.2	1991 – 2000.....	8
3.3	2001 – 2011.....	9
4.0	Statutory Context.....	10
4.1	Introduction.....	10
4.2	Statutory Requirements	10
4.3	Other Relevant Documents.....	15
5.	Issues Raised	16
5.1	General - Plan Change 61	16
5.2	Activity Status.....	17
5.3	Outstanding Natural Landscape and Features etc.	25
5.4	Heritage	33
5.5	Climate Change	35
5.6	Conditions on the Activity	37
5.7	Biosecurity.....	41
5.8	Minister of Conservation-Minor Amendments.....	43
Appendix 1:	Recommended Decisions on Submissions.....	45

1.0 Introduction

1.1 Purpose of the Report

This report is prepared in accordance with Section 42A of the Resource Management Act 1991 for the hearing of Proposed Plan Change 61: Wainui Bay Spat Catching (PC61), a private plan change request made by Wainui Bay Spat Catching Group. In this report I assess the Plan Change from a Resource Management Act 1991 (RMA) perspective. This evidence is my professional opinion and the Hearings Panel may not reach the same conclusion having considered all the evidence brought before it.

This report includes the following:

- The background to the Plan Change including a description of the request, the site and the statutory process followed.
- An assessment of the request against the relevant requirements of:
 - The Resource Management Act 1991 (RMA)
 - The New Zealand Coastal Policy Statement
 - The Tasman Regional Policy Statement (TRPS)
 - The Tasman Resource Management Plan (TRMP)
- A discussion of the issues raised in the submissions and application
- Recommendations to the Hearings Panel.

The matters raised have been grouped as follows:

- 5.1 General
- 5.2 Activity Status of Spat Catching
- 5.3 Outstanding Natural Landscapes and Features etc. (ONL)
- 5.4 Heritage
- 5.5 Climate Change
- 5.6 Conditions on the Activity
- 5.7 Biosecurity
- 5.8 Minister of Conservation – Minor amendments

1.2 Submitter References

In this report, reference numbers adopt the format of:

Plan Change number . Submitter number. Decision Requested number

For example, “C61.4127.5” is Plan Change 61, Submitter 4127, 5th decision requested.

1.3 Scope

For the Hearing Panel to consider matters raised in the submissions, the matters must be “*on the Plan Change*”. Submissions which request changes which cannot legally be given effect to through the Resource Management Act 1991 or seek to introduce new matters not previously raised in the Plan Change are considered to be “*out of scope*” and cannot be considered in the decision.

There are several matters raised in the submissions which request changes which are considered to be “*out of scope*”. Where the matters are considered *out of scope* the recommendation to the Hearings Panel is that no decision should be made.

1.4 Recommendations on Matters Raised

Once a request for a private plan change has been accepted by Council under clause 25(2)(b), Part 1 of the Schedule 1 applies. After considering a plan change, Clause 29 of the Schedule 1 allows Council to decline, approve or approve with modifications, the change and give reasons for its decision. For a private plan change request, this means Council is able and obliged to consider the request in its entirety and is not restricted to considering just those matters raised in submissions. There is no legal requirement for Council to address each submission individually. For these reasons, this report groups the submissions and broader matters by issue. The report then discusses the matters raised within each issue and provides recommendation(s) regarding that issue. The Hearings Panel, after hearing all the evidence provided including the content of this report, will make its decision. To assist the Hearings Panel, Appendix 1 of this report contains specific recommendations regarding the decisions sought by the submitters.

1.5 Statement of Experience

- My name is Tania Leslie Bray. I hold a Bachelor of Science (Geography) from Otago University and a Master of Philosophy (Planning) from Massey University. I am currently employed as a Policy Planner by the Tasman District Council. My Masters is accredited by the New Zealand Planning Institute, of which I have previously been a long term member. I have been employed at Tasman District Council since August 2014.
- Prior to commencing employment at Tasman District Council, I was employed for 13 years as a Strategic Planner and two years as a Development Planning Officer for Marlborough District Council. I have had extensive involvement in coastal policy development and aquaculture in Marlborough.
- I have visited the site of the proposed Plan Change and I am familiar with the surrounding environment. I also attended the 12 June 2015 Wainui Bay Spat Farms Annual Consent Holder Meeting.

2.0 Background

2.1 The Plan Change Request

On the 15 October 2015 the Wainui Bay Spat Catching Group lodged a private plan change (PC 61) with the Tasman District Council (TDC) regarding the mussel spat catching and holding farms located in Wainui Bay.

When a Council receives a private plan change application the council has four options.

- Adopt the plan change as their own;
- Accept the plan change which then continues as a private plan change;
- Reject the plan change; or
- Deal with the request as a resource consent application.

After considering the material received in the application, TDC made the decision on 19 November 2015 to **accept** the private plan change request (PC61) and to proceed to public notification.

The Plan Change was notified on 12 March 2016, with the submission period closing on 26 April 2016. Within this time, 16 submissions were received. The Summary of Decisions Requested was publicly notified on 14 May 2016, with the further submission period closing on 30 May 2016. Further submissions were received from three organisations.

No late submissions were received for the Plan Change.

The purpose for Wainui Spat Catching Group making the request is as follows:

- To provide certainty of mussel spat supply in the future, in order to ensure the ongoing viability of the mussel farming and processing industry in the top of the South Island, and in New Zealand.
- To recognise that Wainui Bay is first ranked in New Zealand in terms of the reliability and quality of spat fall, and similar to Ninety Mile Beach in terms of the quantity of spat fall. The industry believes that the entire mussel farming and processing industry is dependent upon a reliable source of spat, and Wainui Bay is considered the foundation stone of the industry.
- To recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural wellbeing of people and communities.
- To do no more than what is currently being done at Wainui Bay, aside from ensuring mussel spat catching and holding can continue for the foreseeable future post 2024. No new water space is being sought.
- To encourage use of the site for mussel spat catching and holding only, by making full mussel farming at the site a prohibited activity.
- To acknowledge the impact that mussel spat catching at Wainui Bay has on the amenity of neighbours and visitors to the area, by placing additional environmental controls in the Plan to better manage these impacts.

The Plan Change proposes the following changes to the TRMP:

- (i) Amendments to Chapter 22 Aquaculture- Introduction.
- (ii) Minor amendments to 22.1.3.1, 22.1.20 and 22.1.30.

- (iii) New definition for “Mussel Spat Holding”.
- (iv) New Aquaculture Management Area (AMA 4) specifically for Wainui Bay. The boundaries proposed match the currently consented boundaries.
- (v) Provide for mussel spat-catching and mussel spat-holding within the AMA 4 as Controlled and Restricted Discretionary Activities (where controlled conditions are not met).
- (vi) Introduce a number of conditions to address potential amenity effects.
- (vii) Prohibit aquaculture activities other than mussel spat-catching and mussel spat-holding within AMA4.

The Plan Change essentially brings the provisions for Wainui Bay spat catching and holding farms under the current aquaculture framework in the TRMP, provides clarity around the activity, limits the type of aquaculture that can occur, introduces new conditions for the activity and changes the current activity status from discretionary to controlled/restricted discretionary. No change to the size or location is proposed.

2.2 Site and Locality

Wainui Bay is located in south eastern Golden Bay. Within Wainui Bay the farms are located east of Able Tasman Point, adjacent to, but separate from the rock and reef structure that extends out from the Point. See Figure One below for the location.

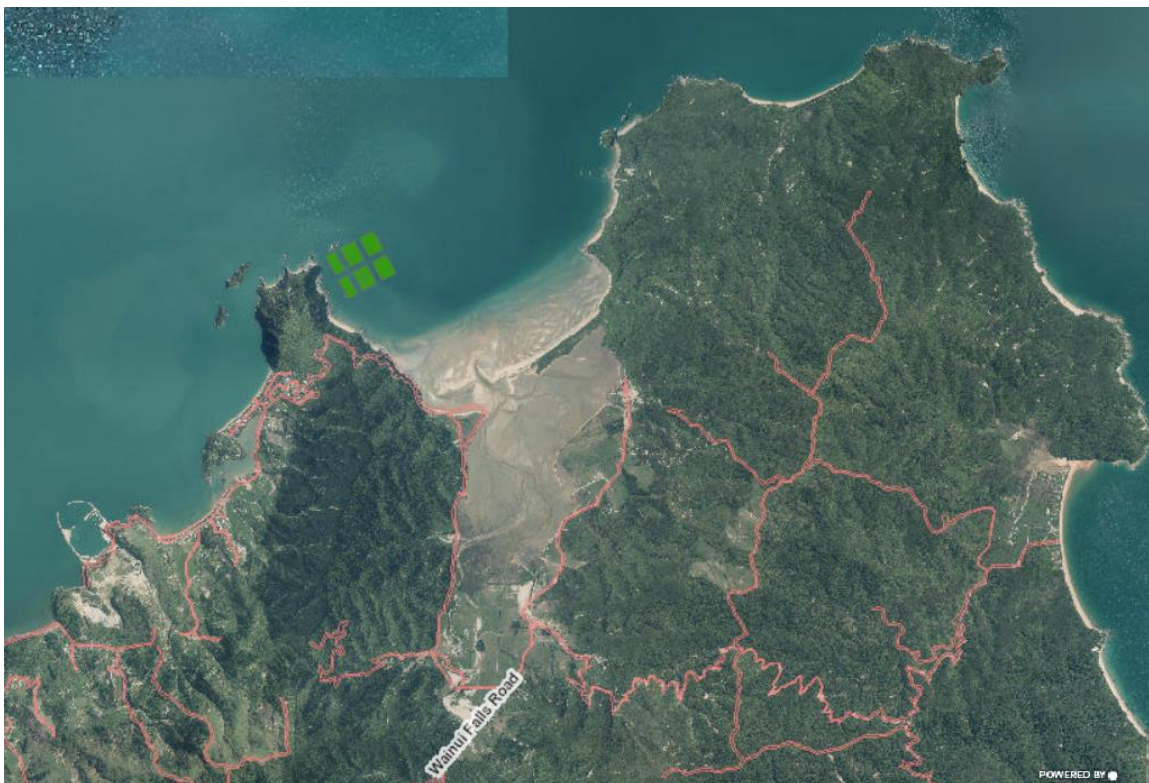


Figure One: Wainui Bay and the mussel spat catching and holding sites.

The land immediately adjacent to Abel Tasman Point is privately owned by Tata Lands Limited. That land is subject to an open space covenant. The house on that section is located on an elevated platform above the Wainui Bay spat farms.

Immediately adjacent to the Tata Lands Limited land is a property owned by A De Lambert and the New Zealand Guardian Trust Company Limited. On that title are holiday homes that overlook the site. In addition, there are nine houses in total in the Bay in the vicinity of the farms.

The road from Pohara and Tarakohe crosses a low saddle and continues down into Wainui Bay itself through a series of cuts made into the roading hill face. Wainui Bay is characterised by a patchwork of land uses, including farming, forestry, bush and batches. On the far side of Wainui Bay is Abel Tasman National Park, which commences shortly before the road end on the eastern side of the Bay.

The waters of Wainui Bay are bisected by a large sandspit, which encloses the inner bay with the exception of a small channel. The sandspit is within the Abel Tasman Foreshore Scenic Reserve, but is not part of the Abel Tasman National Park.

Wainui Bay has a natural topographical feature where offshore winds create an upwelling in the Bay and mussel spat appears in large quantities during these events. Spat congregate by tide and current in Wainui Bay, and Wainui Bay is considered to be an important source of spat for the aquaculture industry.

2.3 Past and Present Use

The first licenses and leases were issued for mussel farming in Wainui Bay in 1980. Marine farming was initially attempted in Wainui Bay in the late 1980s and sometime after that the farms were sold and mussel spat-catching commenced. Full mussel farming has not occurred since the 1980s. There are currently eight spat-catching and spat-holding farms in Wainui Bay which hold coastal permits until 31 December 2024.

The spat-catching and spat-holding farms in Wainui Bay are currently located in an Aquaculture Exclusion Zone and are provided for as an exception to the exclusion rules for that area. The Tasman Resource Management Plan (TRMP) provides for new coastal permit applications for the Wainui Bay sites, however there is no clear policy regarding the granting or otherwise for those consents. For this reason, the applicants are seeking clarity regarding the activity through this Plan Change.

3.0 History of the Planning Provisions for Wainui Bay

Reference has been made through the submissions to the farms history and previous planning decisions. A number of matters raised in the submissions use these past decisions as evidence supporting or opposing the Plan Change. A brief summary on the history has been included below for information purposes.

3.1 1980 – 1990

Marine farming licences were first issued in 1980 for the four sites off Abel Tasman Point. These were among the first marine farming licences issued for Tasman.

Following the issuing of these licences, the Nelson Bays United Council decided to undertake a marine farming study to identify areas where marine farming could be regarded as an acceptable use of water space. The study identified a number of potential marine farming sites, including the four existing sites at Wainui Bay, plus two additional 3 ha sites. On 10 July 1984 a Gazette notice was published prohibiting the granting of marine farm leases or licenses in all areas other than the areas identified (e.g. Wainui Bay and two others) in the marine farming study.

3.2 1991 – 2000

In October 1991 the Resource Management Act commenced and this replaced the planning related legislation that existed at the time. Under the transitional provisions of the RMA, previous planning decisions and documents continued to have status until they were replaced by newer RMA documents. The Transitional Regional Coastal Plan (TRCP) was one such document and in that document the spat-catching and marine-farming activities at Wainui Bay were considered discretionary activities by virtue of the 1984 Gazette Notice.

Two further coastal permits were issued for marine farming structures at Wainui Bay in 1992. These new farms were located on the outer edge of the site.

In December 1992, a discussion document was released by Tasman District Council discussing aquaculture and fisheries. The document mentioned the six sites at Wainui Bay and stated, “The relative merits of this site for aquaculture or for the preservation of the natural character of the coastal environment warrant further consideration”¹.

In June 1993, a policy paper on aquaculture was subsequently released by Council as part of a series of policy papers to support the preparation of the regional coastal plan for Tasman. The policy paper considered the options for aquaculture. The paper also identified the importance of the farms to industry and the impacts on natural character. A number of options were proposed, including the retention of the farms.²

The Proposed Tasman Resource Management Plan (PTRMP) was publicly notified on 25 May 1996 and this plan contained rules regarding the use of the coastal marine area. Under the

¹ Tasman District Council (1992) Coastal Environment Issues and Options- A Public Discussion Paper. pg 67

² Tasman District Council (1993) Aquaculture – Policy Paper 2 regional Coastal Plan, pg 31

publicly notified PTRMP the Wainui Bay farms fell within an area proposed as an “aquaculture exclusion area” (AEA) and as an activity that contravened a rule in the Plan they became a non-complying activity under the proposed Plan.

In 1998 the four original sites at Wainui Bay were granted coastal permits under the RMA for a term of ten years.

The sections dealing with aquaculture in the PTRMP attracted a wide range of submissions. Decisions on the submissions were released on 10 October 1998 and in the decision version of the PTRMP the AEA was extended and the Wainui Bay farms were explicitly provided for as a restricted discretionary activity. The Environment Court received six broad appeals on the general aquaculture provisions in the PTRMP. The provisions for Wainui Bay were not appealed and the provisions were “in effect” operative under the RMA.

3.3 2001 – 2011

The Environment Court subsequently heard and issued a decision in December 2004 for the appeals on the general aquaculture provisions. The decision introduced a new framework for aquaculture in Tasman. The new rules provided for spat catching and mussel farming within three Aquaculture Management Areas (AMAs) and prohibited aquaculture within the remainder of the coastal marine area in the Aquaculture Exclusion Area (excluding Wainui Bay). The findings of the first interim report are discussed in section 5.3.

The Wainui Bay provisions were also changed through the appeal decision document. As the provisions were not part of the appeal, it is assumed that the changes made were considered consequential amendments to enable a better fit between the Wainui Bay provisions and the new framework used for the generic aquaculture provisions. A new policy and explanatory statement specific to Wainui Bay was included as part of those consequential amendments. Mussel farming in Wainui Bay was also changed at this time from a restricted discretionary to discretionary activity.

The Minister of Conservation signed off the general and Wainui Bay aquaculture provisions in June 2005.

In a departure from the ordinary plan change process, further amendments were made to the general aquaculture provisions in the Tasman Regional Coastal Plan through Schedule 1 of the Resource Management Amendment Act (no 2) 2011. The amendments included the deletion of the definition for “mussel farming”. The aquaculture provisions and the remainder of Tasman’s Regional Coastal Plan were made operative in October 2011.

4.0 Statutory Context

4.1 Introduction

The RMA provides the statutory framework for decision-making on private plan change requests. Once a request for a private plan change has been accepted by Council under clause 25(2)(b), Part 1 of the Schedule 1 applies. After considering a plan change, Clause 29 of the Schedule 1 allows Council to decline, approve or approve with modifications the change and give reasons for its decision. For a private plan change request, this means Council is able and obliged to consider the request in its entirety and is not restricted to considering just those matters raised in submissions. This section sets out the statutory and other documents that Council is required to consider in making a decision on the Plan Change. Submissions are discussed in the following section.

4.1.1 Statutory Requirements

Section 66(1) requires assessment of the request against the:

- Council's functions under section 30
- The provisions of Part 2
- Requirements under section 32 and section 32AA.

4.1.2 Other Relevant Documents

Section 66(2) requires the Council to have regard to any regional policy statement, regional plans, any relevant management plans or strategies prepared under other Acts and the Crown's interests in the coastal marine area. In this case, I consider the following are relevant:

- Tasman Regional Policy Statement (TRPS)
- Tasman Resource Management Plan – Part III Coastal Marine Area

In addition to the above, Sections 67(1) and 67(3) and require the regional coastal plan and therefore this request, to state objectives, policies and rules, require those provisions to give effect to the New Zealand Coastal Policy Statement 2010 and the Tasman Regional Policy Statement (TRPS).

Tasman District Council is a unitary authority and under the RMA has prepared a combined regional, regional coastal and district plan. The combined plans together form the Tasman Resource Management Plan (TRMP). Where reference is made to the regional coastal plan in other documents then the reference is specifically to Part III of the TRMP.

4.2 Statutory Requirements

4.2.1 Section 5 - Purpose

The purpose of the Resource Management Act 1991 is to “promote the sustainable management of the natural and physical resources”. Sustainable management is defined under the Act as:

managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while:

- a. *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations, and;*
- b. *safeguarding the life-supporting capacity of air, water, soil and ecosystems, and;*
- c. *avoiding, remedying or mitigating any adverse effects of activities on the environment.*

The Tasman Resource Management Plan was developed under the RMA and gives effect to the purpose. The Council is required to ensure that all proposed changes to the TRMP will also result in outcomes that will achieve the purpose of the Act.

After considering the material received to date and submissions and discussions in this report, I consider the Plan Change, with amendments, will enable the use of a natural resource in a way that enables people and communities to provide for their social, economic and cultural wellbeing. The site is a nationally important source of mussel spat and if spat from this site was not able to be collected, then there would be significant social, cultural and economic impacts. The impacts on the community nearest to the farms arising from the farms are acknowledged.

After considering the assessment of effects in the application and material presented in the submissions I consider the activity proposed will enable the natural resources to be sustained to meet the needs of future generations. The evidence presented shows a limited effect on the resource, with the exception of landscape and natural character, and no permanent effect should the activity cease.

The Plan Change proposes a number of stringent and specific conditions on the activity, which I consider on the whole will mitigate and remedy most of the adverse effects arising from the activity.

I consider the Plan Change, with the proposed amendments detailed in this report, meet the purpose of Section 5 of the Act.

4.2.2 Section 6 – Matters of National Importance

Section 6 sets out a number of matters to be recognised and provided for in the TRMP. The following are considered relevant or have been raised in submissions.

In achieving the purpose of this Act, all persons ... shall recognize and provide for the following matters of national importance:

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.*
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.*
- (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*

- (f) *The protection of historic heritage from inappropriate subdivision, use, and development.*

Sections (a), (b) and (f) are discussed in detail in sections 5.3 and 5.4 of this report.

Section 6(d) - Public Access

The farms in Wainui Bay have been in place since the late 1980s. The Harbourmaster has not identified any navigational safety issues associated with the farms. While the farms may impede some recreational uses, the farms are considered unlikely to have a significant effect on public access in general. At the time of the site visit, the service vessel I was on, as well as a passing kayak, had problems passing through the farms. The proposed Plan Change is considered to be not inconsistent with Section 6(d).

Section 6(e) - Relationship of Maori and their Culture and Traditions

Consultation with iwi was undertaken by the applicant which resulted in a letter in support from Ngati Tama ki Te Waipounanu Trust and its subsidiary Tama Asset Holding Company Limited. Following public notification, no specific submissions were received either in support or opposition from iwi. The proposed Plan Change is considered to be not inconsistent with Section 6(e).

For the reasons given in this section and further detailed in sections 5.3 and 5.4 of this report, I consider the Plan Change sufficiently recognises and provides for the matters of national importance in Section 6.

4.2.3 Section 7 - Other Matters

Section 7 of the Act sets out a number of matters which Council shall have particular regard to. Of these, I consider the following are most relevant.

In achieving the purpose of this Act, all persons... shall have particular regard to—

- (b) *the **efficient use** and development of natural and physical resources*
- (c) *the maintenance and enhancement of **amenity** values*
- (f) *the maintenance and enhancement of the **quality of the environment***
- (i) *the effects of **climate change***

Section 7(b) - Efficient Use of Natural Resources

The spat catching farms at Wainui Bay are highly productive for the amount of space the take up in the Coastal Marine Area. In the Plan Change application, A Strang states:

Wainui Bay is the highest contributing Spat Catching Site in New Zealand. Weekly monitoring over several decades clearly show that Wainui consistently provides the best spat catching potential of all monitored sites. That is Wainui Bay has the longest catch season, highest potential spat catch/metre of catch rope and invariably the highest spat catch per metre every week of all catch sites.³

Several submitters suggest that mussel spat can be obtained from other locations and these sites could replace the Wainui Bay farms. This is correct, however the Wainui Bay farms appear to be the most efficient sites for spat catching and more spat is caught in these farms than is provided in the expansive off-shore farms (hectare for hectare). If the farms were not used, then a significantly larger area in the coastal marine area would be required to achieve

³Wainui Spat Catching Group (2015). Private Plan Change Request, Volume 2, Appendix JK

the same yield. The Plan Change proposes to prohibit all other forms of aquaculture at the site, ensuring that the most efficient use is made of the unique site. I consider the proposed Plan Change is not inconsistent with Section 7(b).

Section 7(c) - Maintenance and Enhancement of Amenity Values

The Plan Change provides for an existing activity which has been occurring for nearly 35 years. The Plan Change proposes a number of stringent and specific conditions on the activity which should maintain and potentially enhance the existing amenity of the area. I consider the proposed Plan Change is not inconsistent with Section 7(c).

Section 7(f) - Maintenance and Enhancement of the Quality of the Environment

The farms have been on that site for a number of years. NIWI have undertaken an environmental assessment of the farms and found:

- Deposition of faecal material was modelled to be low and restricted in area.
- No significant increase in organic material beneath the farms.
- Assemblage of animals within the sediment is similar within and outside of the farms.
- Continuation of the farms is not expected to lead to any additional effects.

The Plan Change also enables a number of specific and stringent conditions to be placed on the operation of the farm. I consider the proposed Plan Change is not inconsistent with Section 7(f).

Section 7(i) -Climate Change

This is discussed in Section 5.5. In accordance with that discussion, I consider the proposed Plan Change is not inconsistent with Section 7(i).

Overall, I believe the Plan Change has given regard to the relevant matters raised in Section 7.

4.2.4 Section 8 - Treaty of Waitangi and Section 66(2A)

Section 8 of the RMA requires the Council to take into account the principles of the Treaty of Waitangi. The principles of the Treaty of Waitangi include the duty of the Crown and Māori to act reasonably and in good faith and the duty of the Crown to actively protect Māori interests and make informed decisions. When extended to Council and decisions made under the RMA, the principles are primarily given effect to through consultation, participation and consideration of Iwi resource management documents.

Through the statutory acknowledgements all eight iwi in Tasman have identified an interest in the coastal marine area. The applicant has consulted with all eight iwi, with a formal written response received from Ngati Tama Ki Te Waipounamu Trust. During the notification process, all eight iwi, and the Maori reserve landowners in Wainui Bay, were sent a copy of the public notice. No specific submissions or further submissions were received from iwi.

Section 66(2A) also requires Council to consider iwi documents when making a decision. There are no iwi management documents considered relevant to this Plan Change.

I am not aware of any other relevant iwi planning documents.

4.2.5 Section 32 – Consideration of Appropriateness

Section 32 of the Act requires an evaluation of the proposed change and a decision made to the extent to which each objective is necessary and the most appropriate way to achieve the purpose of the Act, and whether having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives of the Plan. Further evaluation is also required regarding any changes made to the Plan Change under Section 32AA, before decisions are made under clause 29(4) of Schedule 1.

Sections 32(c) and 32AA(1)(c) requires that the level of detail provided in the Section 32 report should be at a level that corresponds to the scale and significance of the environment and the economic, social, and cultural effects that are anticipated from implementation of the Plan Change.

Council is also required to make its own Section 32 assessment on private plan changes before making any changes to the TRMP. In considering the level of detail that is required for this Section 32 report, I have considered the following:

- The applicant has provided a very detailed Section 32 assessment as part of the application. I am in general agreement with that assessment.
- The farms were in operation prior to the enactment of the RMA and when policy was being formulated for the TRMP (under the RMA), the social-economic benefits and adverse visual effects of the farms were identified and discussed. While the farms were initially omitted from the TRMP, following submissions and a hearing, Council made the decision to provide for the farms in the TRMP. This decision was not appealed.
- The Plan Change seeks to change the provisions for an existing activity; it does not introduce a new activity or location.
- The rule framework proposed for the activity e.g. AMA's is not new and is the same framework used in the TRMP for other aquaculture. The framework proposed has been robustly assessed in the Environment Court.
- All eight farms currently hold resource consents issued under the TRMP. If the Plan Change was declined, then there would be no effect on the activity (in the short term).

For the reasons stated above, I consider that proposed changes to the framework are appropriate, consistent, and necessary to achieve the purpose of the Act.

There are however, a number of matters in the Plan Change which require further consideration under Section 32. These are as follows:

- Changes to the activity status of the farms.
- Restrictions on the activities that can be undertaken.
- Conditions on the activity.

These matters are discussed in detail in Section 5 of this report. I have made a number of recommendations and provided reasons for those recommendations in the relevant sections. Taking into account the recommendations in Section 5 of this report, I consider that the proposed policy and rules in the Plan Change are the most efficient and effective, and therefore the most appropriate means to achieve the purpose of the Plan Change and subsequently the purpose of the Act under Section 32.

4.3 Other Relevant Documents

4.3.1 New Zealand Coastal Policy Statement

Section 67(3) of the RMA requires that a regional plan must give effect to the New Zealand Coastal Policy Statement 2010 (NZCPS). This is a mandatory requirement. The NZCPS sets out policies which help decision-makers achieve the purpose of the Act in relation to the coastal environment.

A detailed analysis of the consistency of the Plan Change against the NZCPS is provided in Volume 1, Schedule 2 of the application. I generally agree with that analysis.

I consider the most relevant provisions of the NZCPS are Policy 13: Preservation of Natural Character and Policy 15: Natural Features and Natural Landscapes. These two policies are discussed in detail in Section 5.3.

In assessing the Plan Change against the NZCPS, I acknowledge the impact of the activity on landscape and natural character, but do not consider that the proposed Plan Change is inconsistent with the policies of the NZCPS.

4.3.2 Tasman Regional Policy Statement

The TRMP and any plan change to it must give effect to the Tasman Regional Policy Statement (TRPS). The purpose of the TRPS is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management.

The applicant has provided a detailed assessment of the consistency of the Plan Change against the TRPS. I generally agree with that analysis. The current provisions in the TRMP providing for the farms in Wainui Bay were prepared in accordance with the TRPS. I consider the proposed Plan Change is not inconsistent with the TRPS.

4.3.3 Tasman Resource Management Plan

The applicant has provided a detailed assessment of the consistency of the proposed Plan Change with the TRMP. I generally agree with that assessment.

4.3.4 National Direction for Aquaculture

The Government is currently drafting a nationally-consistent framework for the management of aquaculture space⁴. A key component will be providing for an efficient re-consenting process for existing marine farms and may include a specified activity status for marine farms located in appropriate areas. Greater certainty regarding re-consenting of marine farms adjacent to outstanding areas may also be included. This work is proposed to be completed later this year, and once completed and given legal effect, it may override the provisions in the TRMP, where inconsistent. The potential impact of the national direction is acknowledged, but the work is in the early stages and is not considered further in this assessment.

⁴Ministry for Primary Industries (15 September 2015) National Direction for Aquaculture. Retrieved from <http://www.fish.govt.nz/en/nz/Commercial/Aquaculture/Marine-based+Aquaculture/National+direction+for+aquaculture.htm>

5. Issues Raised

5.1 General - Plan Change 61

5.1.1 Introduction

PC61 is a private plan change application from the Wainui Spat Catching Group. The Wainui Spat Catching Group is requesting a change to the TRMP to enable the continuation of existing mussel spat-catching and -holding activities in Wainui Bay. A summary of the changes proposed can be found in Section 2.1 and a full list of the changes can be found in the Schedule of Amendments in the application.

Sixteen submissions and three further submissions were received. Two submissions were in support of the proposed Plan Change. Two submissions were neutral. The majority of the submissions opposed the proposed changes and most considered that the current Plan provisions better provided for the activity. One submission sought that the farms be relocated elsewhere.

This section considers whether Council should approve the Plan Change with or without modifications or retain the current provisions.

5.1.2 Discussion

When the TRMP was notified in 1996 the Plan did not specifically provide for aquaculture in zones, but instead included objectives, policies and rules which identified where aquaculture was to be excluded. A number of submissions were received regarding the notified provisions and following the hearings, a number of changes were made to the proposed TRMP.

In the decision version of the TRMP (1998), the Wainui Bay farms were located within an aquaculture exclusion area but were specifically provided for as a restricted discretionary activity. The Wainui Bay farm provisions were not appealed and became “in effect” operative. However, there were a number of appeals on the other aquaculture provisions and following an extensive Environment Court hearing, significant changes were made to the management framework for aquaculture in the TRMP.

During the drafting of the Environment Court provisions for aquaculture, a number of consequential changes were made to the Wainui Bay farm provisions. The changes included:

- A new policy specific to the Wainui Bay farms
- A new discretionary activity rule for Wainui Bay

In 2011, there were additional changes made to the provisions in the TRMP for aquaculture. These legislative changes further eroded the fabric supporting the provisions for Wainui Bay.

Since the TRMP was notified in 1996 the provisions providing for aquaculture in Wainui Bay have largely been left behind. The effect of this is that there is little guidance in the Plan as to how the provisions should be applied. The Plan currently provides for “mussel farming” (no longer defined) in Wainui Bay as an exception to a prohibition rule. The exception to the prohibition is not explained. The current policy for the farms provides no guidance. The current provisions are inconsistent with the other provisions in the TRMP. I agree with the

applicant that the current provisions provide little certainty to the industry or the community.

In terms of good planning practice, I believe it is difficult to recommend the retention of the existing provisions simply because the provisions are outdated and ambiguous. For this reason, I recommend that the requests for the current provisions to be retained are declined.

Overall, I consider the proposed Plan Change, with amendments, better meets the requirement of Section 32 of the Act than the status quo.

5.1.3 Recommendation

That the proposed Plan Change be approved, with the amendments specified in Sections 5.2 to 5.9 of this report.

5.1.4 Plan Amendments

No changes arise from this recommendation.

5.2 Activity Status

5.2.1 Introduction

A number of submissions opposed the activity status proposed in the Plan Change and requested the status quo remain. Mussel farming in Wainui Bay is currently provided for in the TRMP as a discretionary activity. The Plan Change proposes that mussel spat-catching and -holding in Wainui Bay becomes a controlled activity and, where the activity does not meet the conditions, then the activity becomes a restricted discretionary activity. All other forms of aquaculture in Wainui Bay will become prohibited.

Eleven submissions were received which supported or opposed the proposed activity status in the Plan Change. Three further submissions were received which supported the retention of the current activity status. These are as follows:

Golden Bay Marine Famers Consortium Ltd (C61.327.2), **Wallace, William (Bill)** (C61.4131.2) and **Tui Community** (C61.4130.1) supported the proposal to make spat catching at the site a controlled activity.

Friends of Nelson Haven & Tasman Bay (Inc.) (C61.1050.1,2,3), **Forest & Bird (Golden Bay branch)** (C61.1421.2), **Friends of Golden Bay** (C61.1328.1,2), **Anatimo Trust (Anna Wright)** (C61.4125.1), **Foxwell, Jillian** (C61.4126.1), **Whitehead, Beryl** (C61.4132.1), **Reed, Denis** (C61.4129.1), **Royal Forest & Bird Protection Society (Golden Bay)** (C61.1421.2) all opposed the controlled activity status or requested the activity remain as a discretionary activity/status quo. **James A Beard** (C61.840.5) requested the farms be relocated elsewhere.

Golden Bay Community Board (C61.3592.1) were unable to agree whether the Wainui Bay spat catching site should be granted as a controlled AMA or whether it should continue as a discretionary activity. The submitters sought that the activity continue to be consented.

5.2.2 Discussion

Eight submitters have requested that the activity remains discretionary or the status quo is retained. Three further submitters support these requests. There appears to be a central theme in the opposing submissions with submitters wishing things to remain as they are. I believe it is useful to consider in more detail what is provided for under the current provisions and under the proposed Plan Change, before considering the most appropriate activity status.

A. What do the current provisions in the TRMP provide for?

The TRMP currently provides for *mussel farming* at the existing Wainui Bay sites as a discretionary activity (see TRMP 25.1.4.4). *Mussel farming* prior to 2011 was defined in the TRMP as:

Mussel Farming - means the obtaining or retention of mussel spat and its on-growing to harvestable size and harvesting thereof.

Legislative changes in 2011⁵ removed the definition for *mussel farming* from the TRMP and references to *mussel farming* in the TRMP were largely replaced by the term *aquaculture* (defined). There is also a definition for *marine farming* in the TRMP which also provides some guidance as to the activities that can be currently applied for in Wainui Bay. From these three definitions and the rule wording in 25.1.4.4 *Discretionary Activities (Mussel Farming at Wainui Bay)*, the following is considered to be currently provided for in the TRMP as a Discretionary Activity:

- Occupation and disturbance by mussel farming structures.
- Use of the mussel farming structures.
- Mussel farming – which includes mussel spat catching, on-growing and harvest

The farms at Wainui Bay are currently consented for mussel spat catching, however applicants could also apply for consent to on-grow and harvest mussels from these sites. Any such applications could be granted with conditions or declined, subject to the assessment criteria in the TRMP. The assessment would include the effects of the proposal on ecological matters and natural character, as well as other matters in the TRMP.

B. What does the proposed Plan Change allow to happen?

The following is proposed as a controlled activity (see PC61 25.1.3.1A):

- Occupation and disturbance by spat catching and holding structures
- Use of the mussel spat catching and holding structures
- The catching and holding of mussel spat between 0-60 millimetres in length.

The controlled activity status is subject to the activity meeting the following conditions:

- Use of surface or subsurface lines
- Rubbish collection
- Hours of operation
- Noise standards, including music
- Lighting.

⁵ New Zealand Government (2011). Resource Management Amendment Act (No 2) 2011, Schedule 1 Amendments to Tasman Regional Coastal Plan.

In addition, conditions can be imposed on the following.

- Ecological effects, including monitoring
- Type, scale, location, density and integrity of structures
- Navigation
- Duration of the permit
- Financial contributions, bonds, administrative charges
- Timing and purpose of reviews of any or all conditions
- Standard requirement to maintain the structure for navigational reasons
- Standard requirement to remove any unnecessary equipment
- Standard requirements regarding transfers of consent.

If the activity does not meet the above conditions, then the activity becomes restricted discretionary (PC61 25.1.3.2). Any such applications could be granted with conditions or declined. The matters in which Council is able to decline consent is limited to (among others):

- structures
- ecological matters
- management of refuse
- hours of operation
- noise
- light spill
- attendance at a community liaison meeting.

Any activity not meeting the controlled or discretionary rule would be prohibited (PC61 25.1.3.3)

C. What is the difference between the current situation and that proposed by the Plan Change?

The following table compares the current regime with the proposed regime.

Table 1

	PC61 (Controlled)	PC61 (Restricted Discretionary)	Current TRMP Provisions (Discretionary)	Current Coastal Permit Conditions (RM071049 & RM060292)
Can be declined	No, subject to meeting conditions	Yes (limited grounds)	Yes	Accepted with conditions
Notification	May or may not be notified	May or may not be notified	May or may not be notified	The 2 outer consents were notified, the inner 4 were not
Area and Location	Fixed to existing area and location	Fixed to existing area and location	Fixed to existing area and location	Fixed to existing area and location
Species	Mussel Spat (0-60mm)	Mussel Spat (0-60mm)	Mussels (0 to harvest)	Mussel Spat to 40 or 60mm
Structure	Limited to surface or subsurface longlines or structures, incorporating surface buoys	Limited to surface or subsurface longlines or structures, incorporating surface buoys	Limited to longline structures, incorporating surface buoys	Restricted to approved structure plan, structure changes require approval
Lines	A condition can be imposed for type, scale, location, density of structures, including number of lines	A condition can be imposed for type, scale, location, density of structures, including number of lines	A condition can be imposed for type, scale, location, density of structures, including number of lines	Conditions imposed
Navigation Lighting	A condition can be imposed	A condition can be imposed	A condition can be imposed	Conditions imposed
Term/Duration	A condition can be imposed	A condition can be imposed	A condition can be imposed	Condition imposed
Monitoring	A condition can be imposed	A condition can be imposed	A condition can be imposed	Required.
Biosecurity	A condition can be imposed	A condition can be imposed	A condition can be imposed	Required.
Rubbish	All refuse from the spat-catching activity is collected and either reused or disposed of on land at a facility that is authorised to accept such material; (PC61 25.1.3.1A(i))	A condition can be imposed Standard conditions regarding loose and obsolete structures etc.	Standard conditions regarding loose and obsolete structures etc.	Works and Maintenance program. Conditions regarding loose and obsolete structures. No specific condition regarding rubbish.

	PC61 (Controlled)	PC61 (Restricted Discretionary)	Current TRMP Provisions (Discretionary)	Current Coastal Permit Conditions (RM071049 & RM060292)									
	Standard conditions regarding loose and obsolete structures etc.												
Hours of operation	All operational activities on site occur between the hours of 6:00am to 8:00pm each day (the “operating hours”). Work is only to occur outside the operating hours in exceptional circumstances. In any year, there are to be no more than five occasions when work occurs outside of these operating hours. Each instance when the operating hours need to be exceeded, together with the exceptional reasons for exceeding the limits, is to be reported in advance to the Council’s Co-ordinator Compliance Monitoring. (PC61 25.1.3.1A(ii))	A condition can be imposed	Not specifically listed	All operational activities on the farm sites are restricted to occurring between the hours of 6.00am to 8.00pm each day (the “operating hours”). Work is only to occur outside the operating hours in exceptional circumstances. During any one year from the granting of consent, there are to be no more than five (5) occasions when work occurs outside these operating hours. Each instance when the operating hours have been exceeded, together with the exceptional reasons for exceeding the limits, is to be reported to the Council’s Co-ordinator Compliance Monitoring within 24 hours of the event occurring.									
Noise	All activities related to the site meet the following noise standards as measured and assessed in accordance with the provisions of NZS 6801:2008, Acoustics - Measurement of Environmental Sound and NZS 6802:2008 Acoustics –	A condition can be imposed	Not specifically listed	All activities to this site shall meet the following noise standards as measured in accordance with NZS6801:1999 and NZS6802:1999, at any point on land above MHWS. <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th>Day</th> <th>Night</th> </tr> </thead> <tbody> <tr> <td>L₁₀</td> <td>50 dBA</td> <td>40 dBA</td> </tr> <tr> <td>L_{max}</td> <td>70dBA</td> <td></td> </tr> </tbody> </table>		Day	Night	L ₁₀	50 dBA	40 dBA	L _{max}	70dBA	
	Day	Night											
L ₁₀	50 dBA	40 dBA											
L _{max}	70dBA												

	PC61 (Controlled)	PC61 (Restricted Discretionary)	Current TRMP Provisions (Discretionary)	Current Coastal Permit Conditions (RM071049 & RM060292)						
	Environmental Noise at any point on land above MHWS. <table style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">Day</td> <td style="text-align: center;">Night</td> </tr> <tr> <td style="text-align: center;">LAeq (15 mins) 50 dBA</td> <td style="text-align: center;">40 dBA</td> </tr> <tr> <td style="text-align: center;">Lmax 70dBA</td> <td></td> </tr> </table>	Day	Night	LAeq (15 mins) 50 dBA	40 dBA	Lmax 70dBA				
Day	Night									
LAeq (15 mins) 50 dBA	40 dBA									
Lmax 70dBA										
Noise	No broadcast radio station or digital or analogue recorded noise (including CDs, cassette tapes, MP3s or other digital formats) from activities on the vessels occurs while working on site;	A condition can be imposed	Not specifically listed	No broadcast radio station or digital r analogue recorded noise (including CDs, cassette tapes, MP3 or other digital formats) is to occur at ...						
Lights	Lights from vessels working at the site do not shine onto land where those lights may cause a nuisance.	A condition can be imposed	Not specifically listed	No						
Community Liaison	A condition could be imposed	A condition can be imposed.	Not specifically listed	Condition imposed						
Bond	A condition could be imposed	A condition can be imposed	Condition could be imposed	Condition imposed						
Review of Conditions	A condition could be imposed	A condition can be imposed	Condition could be imposed	Condition imposed						

The main differences under the Plan Change are as follows:

1. Activity status – change from Discretionary to Controlled/Restricted Discretionary
2. Restrictions on mussel farming
3. Changes to the conditions

D. Controlled Activity Status or Discretionary Activity Status?

A controlled activity is an activity which cannot be declined subject to the activity complying with the conditions and matters which Council has control over. Controlled activity status is usually used where the effects of the activity are well understood, but Council wishes to retain some flexibility over what conditions are placed on the activity to mitigate the known effects.

An application for a restricted discretionary activity can be declined or granted (with or without conditions). A restricted discretionary activity rule will list the matters over which the council has restricted its discretion. The matters of discretion are those matters the council can consider when determining to either decline or to grant an application and when imposing conditions. A council can consider RMA Part 2 matters in granting a restricted discretionary consent. Restricted discretionary status is usually used where the effects of an activity are generally well known. However, there may be instances where the known effects could be significant enough to lead to the application being declined.

An application for discretionary activity can be declined or granted (with or without conditions). Discretionary activity status is often used where the activity is not suitable in all locations within a zone or where the effects of the activity are so variable that it is not possible to prescribe standards to control them in advance. Applications are assessed on a case-by-case basis and a broad range of conditions can be imposed to address the specific effects of the activity at that location.

Mussel spat catching and holding has been undertaken at the site since the late 1980s. There is a detailed assessment of environmental effects (AEE) submitted with the application. The matters raised in the AEE and consistently raised in the minutes of the community liaison meetings are addressed in the application. The proposed provisions restrict the activity to that which is currently undertaken and has been assessed in the application.

The more matters Council requires to be assessed in an application directly impacts on the amount of time and money needed to gain consent. Where the activity is an existing activity and the effects are well known, then it is an inefficient use of resources to require a higher level of assessment than is needed. Given the high level of certainty around the effects of the proposed activity, I consider it appropriate for mussel spat-catching and -holding within Wainui Bay to be a controlled activity, subject to conditions to avoid, remedy or mitigate particular effects. Similarly, I also consider it appropriate for activities which do not meet the conditions of the controlled activity rule, to be assessed as a restricted discretionary activity.

A controlled activity/restricted discretionary activity status for spat catching in Wainui Bay is consistent with the TRMP provisions regarding spat catching in other parts of the district. It is acknowledged that these provisions were written for offshore farms.

Among those submitters who oppose the proposed Plan Change there are a number who do so through a desire for the current management practices to be continued. I consider that the proposed Plan Change provisions better provide for these submitters than the status quo because the proposed Plan Change places very specific, stringent and limiting conditions

on the activity. The current provisions provide a lesser level of certainty for the community as there can be no guarantee the same conditions will be applied to future consents.

5.2.3 Recommendation

That no changes be made to the activity status proposed in the Plan Change.

5.2.4 Plan Amendments

No changes arise from this recommendation.

5.3 Outstanding Natural Landscape and Features etc.

5.3.1 Introduction

A number of submitters make reference to the proximity of the Abel Tasman National Park and the importance of the landscape, natural character and features in the area. The submitters specifically seek the following.

James A Beard (C61.840.4) and **De Lambert Family Trust** (C61.1531.2) believe that the artificial/ industrial nature of the farms is inconsistent or incompatible with the special character of the area and that the proposed Plan Change should be declined (or tightly controlled) or the farms located elsewhere. **Foxwell, Jillian** (C61.4126.3) similarly identifies the activity as an unwelcome industrial activity, an eyesore and opposes the proposed Plan Change.

Friends of Nelson Haven and Tasman Bay (C61.1050.1) raises the importance (under the RMA and NZCPS) placed on the preservation or protection of natural character and outstanding natural landscapes and features. Several submitters raise the findings of previous landscape studies and an Environment Court case which variously found that Wainui Bay has special values.

Golden Bay Community Board (C61.3592.3), **Friends of Nelson Haven and Tasman Bay** (C61.1050.1) and **Friends of Golden Bay** (C61.1328.2) discuss the current landscape project underway by Council to identify Outstanding Natural Landscapes and the current and future provisions in the TRMP which may affect the activity. **Friends of Nelson Haven** are concerned that Council has not assessed areas of natural character nor identified areas of ONL/ONF and does not have appropriate rules controlling activities in the TRMP. It believes the proposed Plan Change is pre-empting the Council process. **Friends of Golden Bay** also believe it is inappropriate to be altering the designation [in TRMP?] while the process is underway. Conversely, **Golden Bay Community Board** have identified there is fear in the community that the consequences of policies and rules associated with ONLs and ONFs now or in the future may interfere with the management and ongoing ability of land and marine-based farming activities. For this reason, they see that some security is being sought with the proposed Plan Change.

Friends of Nelson Haven and Tasman Bay (C61.1050.1), **Friends of Golden Bay** (C61.1328.2), **Vaughan, Alan** (C61.1377.2), **Forest & Bird (Golden Bay branch)** (C61.1421.5), **De Lambert Family Trust** (C61.1531.2), **Foxwell, Jillian** (C61.4126.3), **Reed, Denis** (C61.4129.2), **Whitehead, Beryl** (C61.4132.2) generally seek to retain the activity as a discretionary activity/status quo so that matters, such as the effect on landscape, can be considered at the time of the resource consent application.

5.3.2 Discussion

The impact of the mussel spat-catching and -holding farms in Wainui Bay on the landscape and natural character has been consistently raised as a significant issue. The RMA and the NZCPS provide strong guidance on where activities in the CMA can be provided for. This discussion assesses the proposed Plan Change against the provisions of the RMA and the NZCPS. In addition, a number of submitters refer to the findings of the Environment Court in 2001, regarding Wainui Bay. The findings of the Environment Court are discussed at the end of this section.

A. RMA and NZCPS

The RMA requires that the Council, before changing the TRMP, recognise and provide for the following matters of national importance:

s.(6)(a) the preservation of natural character of the coastal environment...and the protection of them from inappropriate subdivision, use and development:

s.(6)(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.

The NZCPS contains objectives and policies regarding how the above matters are to be achieved in the coastal marine area. While a number of policies in the NZCPS are relevant and some balancing is required, in relation to natural character and landscape, policies 13 and 15 are the most important:

Policy 13 requires Council to preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use and development. To achieve this, Council is required to:

13(1)(a) avoid adverse effects activities on the natural character in areas of the coastal environment with outstanding natural character;

13(1)(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment.

Policy 15 requires Council to protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use and development. To achieve this, Council is required to:

15(a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and

15(b) avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment.

In assessing the proposed Plan Change under these policies, the following matters need to be determined:

- Is Wainui Bay an outstanding natural landscape/feature or does it have outstanding natural character?
- What are the effects of the proposed Plan Change on the natural character/landscape/features of Wainui Bay?
- Is mussel spat-catching and -holding an “inappropriate use” in Wainui Bay?

B. Is Wainui Bay an outstanding natural landscape/feature or does it have outstanding natural character?

The TRMP does not currently contain information regarding landscape or natural character for Wainui Bay. However, in 2008 Council commenced a study to investigate and identify areas of outstanding natural landscape/features/natural character within the Golden Bay. This study ⁶(the “Small Group report”) has been completed and is currently being used by Council staff to draft new provisions for the TRMP and to give effect to policies 13 and 15 of the NZCPS. Council has also commissioned work from Vicky Froude using the QUINNCE methodology to evaluate natural character⁷ for the District. In addition to these Council

⁶ Small Group (2015) Golden Bay/Mohua Landscape Project – Final Report of the Small Group following feedback.

⁷ Froude V.A (2013) Tasman District Coastal Environment Inland Boundary and Natural Character Mapping: Methodology and Summary Results

studies, the applicant commissioned an expert panel workshop which specifically considered the effects of the farms on natural character and landscape in Wainui Bay. Attendees at the expert panel workshop included five highly regarded landscape architects, Council staff, the Department of Conservation and local operators from the mussel industry. The findings from these three studies have been used in the following discussion.

C. Natural Character

The expert panel segmented those parts of Wainui Bay within the coastal environment into a number of terrestrial and marine areas, which were assessed separately in accordance with agreed criteria on a scale of very low to very high⁸. The workshop concluded that the eastern side of the bay had high natural character and the western side mostly moderate/high natural character. The nearby tip of Abel Tasman headland and the Tata Islands were rated as “very high”. Overall the expert panel found that Wainui Bay has high coastal natural character, but does not have “outstanding natural character”.⁹ The expert panel further found that although the existing marine farms affected the marine component of the Bay’s natural character rating, land-based modifications (including the road, houses and dairy farming), commercial forestry and presence of exotic flora were more obvious detractors to the naturalness of the Bay.

Vicky Froude’s findings for Wainui Bay was reasonably consistent with the expert panel, although she rated the seaward side of the sandspit within the Abel Tasman Foreshore Reserve (as well as the Tata Islands) as outstanding¹⁰.

In summary: The Froude and expert panel studies found that the site of the Plan Change was not an area of outstanding natural character.

D. Landscapes and Features

The expert panel limited its evaluation to the visual catchment of Wainui Bay and concluded that the Bay itself is not a landscape, but rather a feature. The feature¹¹ is adjacent to the Abel Tasman National Park which is accepted in the report as an outstanding natural landscape (ONL). The feature includes the bay, sandspit and the land on both sides of the bay north of the sandspit. The evaluation concluded that the biophysical values are high, perceptual values are high and associative values are very high.

The expert panel could not decide whether the Wainui Bay coastal landscape was an ONF or not, because of lack of knowledge of the contextual information on landscape values within Golden Bay and the wider Tasman District.

The Small Group report arrived at a different conclusion. In the view of the Small Group, Wainui Bay is both an ONL (as part of the wider Golden Bay marine landscape), and an ONF¹². The area delineated as ONF by the Small Group is much smaller than the area suggested as a feature in the expert panel report. It includes the sandspit and the Abel Tasman headland, but not the spat catching farms.

⁸ Wainui Spat Catching Group (2015). Private Plan Change Request, Volume 1, Appendix L, Appendix 2 Wainui Bay Maps- map two

⁹ Wainui Spat Catching Group (2015). Private Plan Change Request, Volume 2, Appendix L, pg 13

¹⁰ Froude V.A (2013) Tasman District Coastal Environment Inland Boundary and Natural Character Mapping: Methodology and Summary Results, Appendix 3, pg 135-8

¹¹ Wainui Spat Catching Group (2015). Private Plan Change Request, Volume 2, Appendix L, Appendix 2 Wainui Bay Maps- map three

¹² Small Group (2015) Golden Bay/Mohua Landscape Project – Final Report of the Small Group following feedback.

In summary: The two studies considered Wainui Bay (as a specific location) to be a feature rather than a landscape. The Small Group found the Plan Change site was not an outstanding natural feature and the expert panel could not decide whether the Wainui Bay coastal landscape was an ONF or not, due to a lack of knowledge of the wider context. Both studies acknowledged the broader Golden Bay marine landscape as an outstanding natural landscape.

E. What are the effects of the proposed Plan Change on the natural character/ landscape/features of Wainui Bay?

In determining the overall rating for natural character, the expert panel determined that although the existing marine farm affected the marine component of the Bay's natural character rating, land based modifications (including the road, houses and the dairy farm), commercial forestry and the presence of exotic flora were more obvious detractors to the naturalness of the Bay¹³. All of these land uses are provided for in the TRMP and are anticipated uses within Wainui Bay.

With regard to landscape and natural features, the expert panel found that Wainui Bay has strong natural values, even though the natural ecological patterns and sequencing have been disturbed. They also found the valley floor and east facing slopes showed distinct signs of human development in the form of the road and prominent dwellings sited high on the hillside above the bay, and the coastal erosion works distort the edge of the sandspit. In considering the effects of the spat farms in Wainui Bay, it was found that the farms had a low impact on the biophysical values (e.g. geology, hydrology, soil vegetation, ecology and cultural values like roading, settlements and land use). It was also found that the spat-catching farms had a low effect on the associative values (historical, cultural, recreation etc) and could have positive connotations.

The expert panel concluded that the "effects of the spat farms are largely perceptual and included visual effects, night light and noise from boats working the spat lines". The expert panel believed the visual effects were localised, and were most pronounced in views from the road over Wainui Hill looking down into the bay. This view was considered valued by residents who lived along the road. However, the expert panel found that there were limited opportunities for drivers to actually pull over from the road to enjoy the view. This finding is consistent with my experience where there were few places on the road to pull over safely, and the farms were only obvious from a few of those locations. Often where the farms could be seen, the eye was drawn to the broader vista of the Bay and they were only "seen" when explicitly looked for.

The expert panel agreed that the presence of mussel spat farm was influential but was not the deciding factor whether Wainui Bay was an outstanding natural feature or not."¹⁴

In summary the effects of the spat catching arms are considered to largely be perceptual including visual effects, night lights and noise. While the spat catching farms effected the natural character/landscape/feature, other human development within the bay had a greater effect.

¹³ Wainui Spat Catching Group (2015). Private Plan Change Request, Volume 2, Appendix L, pgs13-14

¹⁴ Wainui Spat Catching Group (2015). Private Plan Change Request, Volume 2, Appendix L, pgs15-17

F. Is spat catching an “inappropriate use” in Wainui Bay?

NZCPS *Policy 6: Activities in the coastal environment* states specific principles about the location and scale of activities in the coastal environment. Priority is given to activities with a functional need to locate and operate in the coastal marine area, and providing for those activities in appropriate places. The policy also encourages consideration of certain coastal values, including built character, headlands and ridgelines, natural character, open space, public access, amenity, public access, indigenous biodiversity and historic heritage.¹⁵

I consider the most relevant parts of Policy 6 for the proposed Plan Change are as follows.

Policy 6(1)(h) consider how adverse visual impacts of development can be avoided in areas sensitive to such effects, such as headlands and prominent ridgelines, and as far as practicable and reasonable apply controls or conditions to avoid those effects;

G. Have the adverse visual effects been avoided as far as practical and reasonable?

The expert panel have identified that the effects are largely perceptual and this includes visual effects, night lighting and noise. The expert panel also found that the visual effects were localised, occurring mainly in views looking down into the Bay and are most pronounced from the road over Wainui Hill. The localised visual effect of the spat catching farms cannot be totally avoided other than through the relocation of the farms as sought by **James A Beard** (C61.840.4).

The provisions proposed in the Plan Change include a number of conditions to control the perceptual effects identified by the expert. These include restrictions on the type of structures used (PC6125.1.3.1(i)), prohibition of other forms of marine farming at the site and controls on the use of lights at night and hours of operation (PC6125.1.3.1 (ga)). The provisions also provide for the continuation of the annual community liaison meeting between the community and marine farmers. By all accounts, this meeting has proved useful in reducing the effects of the activity on the community.

H. Contributions to the social, economic and cultural wellbeing?

“Policy 6 (2)(a) recognise potential contributions to the social, economic and cultural well-being of people and communities from use and development of the coastal marine area...;”

Similarly, NZCPS Policy 8: Aquaculture requires the following:

Recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by:

- a. including in regional policy statements and regional coastal plans provision for aquaculture activities in appropriate places in the coastal environment, recognising that relevant considerations may include: ...*
- b. taking account of the social and economic benefits of aquaculture, including any available assessments of national and regional economic benefits; and...*

¹⁵ Department of Conservation. New Zealand Coastal Policy Statement 2010 - Policy statement and guidance - Policy 6 Guidance. Retrieved from <http://www.doc.govt.nz/about-us/science-publications/conservation-publications/marine-and-coastal/new-zealand-coastal-policy-statement/policy-statement-and-guidance/>

Section 1 of Volume 1 of the application provide evidence of the current social and economic and cultural wellbeing arising from spat catching at Wainui Bay and the impact if the activity is not able to continue beyond the current term. Many submitters, acknowledge the importance of the activity in some form with most seeking that the activity be provided for, albeit as a discretionary activity).

I. Does the activity need to be there?

“Policy 6(2)(c) recognises that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places;”

Several submissions and the application mention that research is currently being undertaken to cultivate mussel spat in land-based facilities. It is suggested that in the future (e.g by 2024) sufficient spat might be sourced from other locations and the Wainui Sites will be of less importance. SpatNZ is currently in the second year of a 7-year research project and has achieved some success in cultivating spat in small quantities at its land-based facilities.

Despite this small success, **Wallace, William** (C61.4131) points out that 2001 Ha of new aquaculture space in Tasman is in the final process of being approved and he identifies that the industry will require additional spat for these farms. In the future, land based cultivated mussel spat may fully or partially replace wild capture spat; however, until this occurs, spat will need to be wild capture and, functionally, this needs to occur in the coastal marine area.

Spat catching is currently undertaken in other offshore areas within the District which have a lesser impact on the natural character/landscape/feature than the inshore spat catching sites at Wainui Bay. However, from the evidence presented in the application, Wainui Bay is the first ranked site in New Zealand with respect to the quality and reliability of spat fall, and similar to Ninety Mile Beach in terms of the quantity of spat fall¹⁶. Despite significant areas being devoted in AMAs 1, 2 and 3 to spat catching, the 16 hectares at Wainui contributes to roughly half of the spat used to grow mussels in the top of the South Island.

It appears at this point in time that there is a functional need for mussel spat catching and holding to continue at Wainui Bay and within the CMA. It is acknowledged that this may change in the future if land-based facilities are able to produce quality spat in sufficient quantities to replace wild capture.

J. Is the activity appropriate?

The Small Group specifically found that the mussel spat farms at Wainui Bay were an appropriate activity within the Golden Bay/Mohua Coastal Marine ONL¹⁷. The expert panel also concluded that the continuing presence of marine farming in Wainui Bay was appropriate.

Through the submissions there appears to be a level of community acceptance of the existing spat catching activity in Wainui Bay, with submissions largely seeking controls to be placed/ remain on the industry. There was only one submitter who sought the farms be removed.

Finally, the TRMP currently provides for the spat catching farms as a discretionary activity. The provisions in the TRMP were introduced following a submission and a hearing and were

¹⁶ Wainui Spat Catching Group (2015). Private Plan Change Request, Volume 1, Appendix 2, pg 13

¹⁷ Small Group (2015) Golden Bay/Mohua Landscape Project – Final Report of the Small Group following feedback. pg.27

not appealed to the Environment Court. The TRMP currently considers the farms appropriate, at some level.

Given the national importance of the spat to the economic and social wellbeing of communities and the functional need for the activity to occur in the CMA, I considered that mussel spat catching and holding in Wainui Bay is an appropriate activity in terms of Policy 6, 8 13 and 15 of the NZCPS.

K. Environment Court Findings

Friends of Nelson Haven & Tasman Bay (Inc.), Friends of Golden Bay, Vaughan, Alan and Forest and Bird (Golden Bay Branch) variously mention the findings of the Environment Court regarding aquaculture in Tasman. The court case arose from decisions on the notified version of the TRMP where Council extended the aquaculture exclusion area three nautical miles off shore to preserve the natural landscapes and amenity values. The purpose of the exclusion was to avoid aquaculture affecting the natural character of the coastal area. At the time the provisions were written, there was an absence of information in the TRMP regarding landscape values. The decision by Council was subsequently appealed to the Environment Court.

In *Golden Bay Marine Farmers v Tasman District Council W042/2001* the whole of Golden Bay was recognized by the Environment Court as an outstanding natural landscape, that it was of national importance. Golden Bay was also identified as having natural character values which were of national importance. In addition, the Court found that:

- The Wainui site has a major adverse effect on natural character and visual landscape amenity values but because no-one has sought its deletion in a submission or reference its right to remain in that location continues for the duration of the permit.
- The Wainui site is not to be located in an AMA but accorded discretionary activity status because of its sensitive location¹⁸
- The Wainui farm is to be retained for the life of the plan outside AMA(1) with discretionary activity status¹⁹.

These findings are quite curious by themselves, however when read in conjunction with the evaluation paragraph [707], the meaning is clearer:

We note that no party, either in submission or reference, sought the deletion of the Wainui spat catching site from the CMA of Golden Bay or its inclusion in an AEA [Aquaculture Exclusion Area]. Therefore, for the term of the proposed plan it remains at its present site unless its permit is not renewed by the TDC. We generally agree from our site visit that it is a significant adverse effect on the natural character of the CMA of Golden Bay. But we cannot take the matter any further on these references²⁰.

I acknowledge the hard work and involvement of the submitters to this Plan Change who were also part of the court case. However, when those findings and paragraph [707] are considered against the current proposed Plan Change, I believe the following is correct:

¹⁸ Environment Court (2001). *Golden Bay Marine Farmers v Tasman District Council W042/2001*, pg. 150.

¹⁹ Environment Court (2001). *Golden Bay Marine Farmers v Tasman District Council W042/2001*, pg. 208.

²⁰ Environment Court (2001). *Golden Bay Marine Farmers v Tasman District Council W042/2001*, para 707.

- 1) The Wainui farms were discussed at the Court hearing with regard to the visual impact that inshore mussel farms can have on natural character and landscape. While evidence was presented for the Wainui Bay farms the provisions were not subject to the appeal.
- 2) The court finding that the “*Wainui site is not to be located in an AMA but accorded discretionary activity status*” is correct. The Environment Court was legally unable to include them in the AMA’s because they were not part of the appeals.

I do not disregard the interim findings of the Environment Court, however those findings arose from the evidence that was presented at the time and in a different context to this Plan Change. Since those findings, the second NZCPS has come into effect and key court cases and changes in the process of landscape assessment have occurred. I subsequently place greater weight on the contemporary assessments, which are both current and specific to the Plan Change.

5.3.3 Conclusion

The NZCPS requires Council to preserve and protect natural character and natural features and landscapes from inappropriate uses and development. The NZCPS does not specifically identify what is inappropriate in the coastal environment, however guidance is given by other policies in the NZCPS, particularly policies 6 and 8. I consider that under these policies the activity proposed in the Plan Change is appropriate. The appropriateness of the activity is supported to some extent by the provision for the activity in the TRMP and the level of acceptance/tolerance to the activity by the community as expressed through the submissions.

The site of the Plan Change has high natural values, however neither the TRMP nor the studies by Vicky Froude and the expert panel identify the site of the farms as an area of outstanding natural character.

The TRMP, the expert panel and small group have not identified the site of the farms as an outstanding natural landscape/feature.

Policies 13(1)(b) and 15(1)(b) of the NZCPS encourage the addressing of the effects where the locations do not have outstanding values. The Plan Change includes conditions on the consent which set standards for noise, night lighting and structures to reduce the effects of the activity.

I consider that the proposed Plan Change, with amendments is consistent with Polices 13 and 15 of the NZCPS.

5.3.4 Recommendation

- 1) That no changes be made to the Plan Change with regard to matters of natural character, natural landscape and features.
- 2) That future reviews of the landscape provisions in the TRMP continue to assess the appropriateness of the spat catching farms at Wainui Bay.

5.3.5 Plan Amendments

No changes arise from this recommendation.

5.4 Heritage

5.4.1 Introduction

Wainui Bay and the surrounding area has a rich cultural history extending more than 600 years. Archaeological evidence shows most occupation was seasonal, with iwi living along the coast, gathering kaimoana (food from the sea) and growing kumara on suitable sites²¹²². Two Pa sites (Taupo and Wari Wa Rangi) are recorded by the New Zealand Archaeology Association NW of the spat-catching farms and five occupation sites (Takapou, Anatimo, Uarau and Uarou) and a urupa are recorded in and around Wainui Bay. Pits and a possible burial site have been identified on the ridges adjoining the spat catching farms²³.

Golden Bay is also attributed as being the site of the first contact between Maori and Europeans. On 18 December 1642 it is thought Tasman and his crew anchored about 5 km off shore in Wharawharangi Bay²⁴ North east of Taupo Point and the Wainui Inlet. It was in Wharawharangi Bay that Tasman is thought to have had his first encounter with Maori (Ngāti Tūmatakōkiri). The initial contact was peaceful, however the following day violence erupted with lives lost on both sides. The resident Maori at the time were Ngāti Tumatakokiri who most likely were residing in the neighboring Taupo Pa.²⁵ Tasman left the area soon after without ever setting foot on New Zealand soil.

Three submitters mention the historical and cultural importance of the area in their submissions. **James A Beard** (C61.840.6) states that the area includes Abel Tasman anchorage, Maori habitations, pah, kiangas, middens, tapu land, tracks significance. The remedy sought is for the farms to be relocated elsewhere. **Friends of Nelson Haven and Tasman Bay** (C61.1050.3) and **Forest & Bird (Golden Bay branch)** similarly, state there is a growing awareness of the significance of Wainui Bay for tangata whenua and as a site of the first recorded interaction between Europeans and tangata whenua. The remedy sought is for the existing provisions in the plan to remain with **Friends of Nelson Haven and Tasman Bay** (C61.1050.3) additionally seeking restrictions on species/structures/activities and area.

5.4.2 Discussion

Heritage and cultural values are important under the RMA and specific policy is included in the New Zealand Coastal Policy Statement (NZCPS). Policy 2 requires that the principles of the Treaty of Waitangi and kaitiakitanga are taken into account in relation to the coastal environment. The applicant consulted with iwi prior to lodging of the application and received a letter of support from Ngāti Tama ki Te Waipounamu Trust and its subsidiary Tama Asset Holding Company Limited. All eight iwi received a copy of the public notice and were invited to write a submission. The Trustees of the Maori reservation land in Wainui Bay were also contacted. No submissions were received from iwi regarding the proposed Plan Change and no matters were specifically raised by iwi regarding heritage. The sites above the ridge are not identified in the Mitchell J and Mitchell H (2008) report on culturally significant sites. Heritage New Zealand has no listed sites in the area.

²¹ <http://www.janszoon.org/the-park/history/>

²² Department of Conservation (1997) Abel Tasman Area History. pg 9. Department of Conservation, Nelson.

²³ ArchSite <https://nzaa.eaglelegis.co.nz/NZAA/Site/?id=N25/14>

²⁴ Abel Tasman <http://www.nzhistory.net.nz/people/abel-tasman>, (Ministry for Culture and Heritage), updated 21-Dec-2015

²⁵ Mitchell H and J (2008). Cultural Significance of Maori Archaeological Sites and Waahi Tapu in the Tasman District. Report prepared for TDC and Tiakina Te Taiao, Nelson

Objective 6 and Policy 17 of the NZCPS also requires Council to protect historic heritage in the coastal environment from inappropriate subdivision, use and development.

Literature and historical research supports that the area is rich with archeological sites and that the adjoining Wharawharangi Bay is important as the site of the first recorded contact between Maori and Europeans. However, mussel spat-catching and -holding in Wainui Bay is unlikely to have an impact on the archaeological sites on the adjoining ridge or the recorded occupation sites and Pa in the vicinity.

In the TRMP, Policy 8.2.3.21 requires Council to protect historic cultural sites in the coastal environment. The TRMP lists the archeological sites in the Schedule of Cultural Heritage Sites (16.13.C) and places restrictions on land uses, where the land use occurs on the same part of the land (Ch.16.13.6). The anchorage site is not listed in the TRMP. The activities proposed in the Plan Change are not likely to affect the cultural or heritage values in the area.

It is considered that the proposed Plan Change is not inconsistent with the heritage objectives and policies in the RMA, NZCPS and TRMP.

5.4.3 Recommendation:

- 1) No changes be made to the proposed Plan Change regarding heritage matters.
- 2) That the importance of Wharawharangi Bay/Abel Tasman's anchorage be acknowledged by Council and future consideration be given to include the site in the TRMP as a site of cultural importance.

5.4.4 Plan Amendments

No changes arise from this recommendation.

5.5 Climate Change

5.5.1 Introduction

Friends of Nelson Haven and Tasman Bay (C61.1050.2) request Council decline the Plan Change and retain the status of spat sites as a discretionary activity. The effects of climate change is raised as one reason for the decision requested.

5.5.2 Discussion

No information was provided in the application, or requested by Council regarding the impacts of climate change. The RMA requires regard to be had to the effects of climate change (s7(i)) and the New Zealand Coastal Policy Statement sets out policies as to how this is to be achieved in the coastal marine area.

A. New Zealand Coastal Policy Statement

Policy 3 of the New Zealand Coastal Policy Statement 2010 promotes a precautionary approach to managing activities in the coastal environment when the effects of those activities are uncertain but potentially significantly adverse. The policy particularly directs a precautionary approach where the use and management of coastal resources that are potentially vulnerable to effects from climate change.²⁶

B. Should Council adopt a precautionary approach?

Policy 3(1) requires councils to adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse. The reason for this policy is that there remain knowledge gaps in relation to coastal information and a relative lack of understanding about coastal processes and the actual and potential effects of activities and developments on coastal processes.

The effects of the mussel spat catching and holding at the proposed site are relatively well known and have been monitored for a number of years. NIWA has prepared two ecological reports (2008, 2015)²⁷ regarding the effects of the activity at the site and no significant adverse effects were found from this type of aquaculture. The effects identified by NIWA are considered reversible upon the removal of the marine farms. For these reasons, I do not consider that the precautionary approach is required in this instance.

Policy 3 (2) requires councils, in particular, to adopt a precautionary approach to the use and management of coastal resources potentially vulnerable to effects from climate change, so that:

- (a) avoidable social and economic loss and harm to communities does not occur;
- (b) natural adjustments for coastal processes, natural defences, ecosystem, habitat and species are allowed to occur; and
- (c) Tnatural character, public access, amenity and other values of the coastal environment meet the needs of future generations.

The submitter suggests that climate change could affect the economic viability of the activity and that climate change will place pressure on the natural coastal processes, habitats and

²⁶Department of Conservation. Policy 3 Guidance, Retrieved from <http://www.doc.govt.nz/about-us/science-publications/conservation-publications/marine-and-coastal/new-zealand-coastal-policy-statement/policy-statement-and-guidance/> pg. 2

²⁷ Wainui Spat Catching Group (2015). Private Plan Change Request, Volume 2, Appendices G and H

ecosystems of Wainui Bay. The submitter also suggests that in the absence of knowledge of the effects of climate change, a precautionary approach should be used.

There is no evidence provided by either the submitter or applicant regarding this. Any significant departure from existing practice in response to climate change will either require a change to the conditions of consent or assessment for a new consent. Through this process there should be sufficient opportunity to place responsive conditions on the activity. Should the site prove uneconomical for spat catching then redundant structures are required to be removed and no ongoing environmental effects are anticipated. The TRMP is not a static document and if unanticipated effects do occur then Council is able to undertake a further Plan Change.

It is considered that the proposed Plan Change is not inconsistent with the RMA and the NZCPS regarding climate change.

5.5.2 Recommendation:

No change be made to the proposed Plan Change regarding climate change.

5.5.3 Plan Amendments

No changes arise from this recommendation.

5.6 Conditions on the Activity

5.6.1 Introduction

It is clear from the application, submissions and minutes from the Wainui Bay Consent Holders Community Liaison meetings that a number of adverse effects have been consistently identified with regard to the mussel spat-catching and -holding farms in Wainui Bay. The Plan Change proposed a planning framework and stringent conditions to mitigate or reduce those effects. The proposed conditions are largely based on the conditions which are currently in place on the coastal permits for the farms. These conditions arose from renewal applications considered by independent commissioners in 2007 on the outer farms. Council is required to assess the efficiency and effectiveness of the proposed conditions in addressing the adverse effects.

A number of submitters supported or opposed the proposed conditions. **Forest & Bird (Golden Bay branch)** (C61. 1421.4), and **Foxwell, Jillian** (C61. 4126.2) requested the current TRMP provisions continue. **Foxwell, Jillian** (C61. 4126.2) requested the Wainui Bay Spat Catching Group remain accountable for their activity. **De Lambert Family Trust** (C61. 1531.1) requested the Plan Change be declined but, in the alternative, suggested new conditions of consent. **Golden Bay Community Board** (C61. 3592.2) supported the continuation of the community liaison meeting as a condition of consent. **Tui Community** (C61.4130.1) supported the changes considering it important for the controls to continue.

Golden Bay Community Board (C61. 3592.2) requested the annual meetings between residents and the Wainui marine farmers be a condition of the continued use. The meetings were considered essential for residents to voice concerns regarding on shore effects of the spat catching activity. The submitter suggests that loud noise from boats from radios, especially in the mornings and shouting on board between boats has now been minimised. However, the submitter was concerned the problem will re-emerge with new crews and different boats.

Foxwell, Jillian (C61. 4126.2) requested the Wainui site be left as a discretionary activity. The submitter would like the Wainui Bay Spat Catching Group to remain accountable for their activity due to the hours of operation, ongoing noise, light pollution and rubbish issues that are a continual problem. The submitter considers that it is by no means an ordinary operation and therefore needs keeping an eye on.

Friends of Nelson Haven & Tasman Bay (inc.) (C61.1050.3) requested that there be no changes to species/structures/activities (including mussel farming) or extensions in area allowed.

Tui Community (C61.4130.1) support the retention of the Plan Change and consider it important that the provisions for noise restrictions and controlled hours of operation remain as they are. They also seek that the area of operation is not increased.

5.6.2 Discussion

James A Beard (C61.840.5) discussed the effects of the activity in some detail in his submission. The issues raised are summarised as follows:

- Hours of operation interfere with the weekly, daily, nightly calmness of the bay, including visitors and tourists to the national park. Intrusion of the visual, aural,

kinaesthetic, odour and senses are considerable. The pattern of the farms contrast with the curvaceous nature of the estuary.

- The noise of ship motors, mechanical gear clanking, shouting, dogs barking, radio and communications have a great impact on the aural qualities. Excessive factory noise drowns out birdsong and affects the natural tranquillity of Wainui estuary.
- The odours of diesel engines is intrusive.
- The movement of gear is inconsistent with nature's kinesthetics. Busy movements contrast with natural kinesthetics.
- The glare of lamps at night from the factories destroys the magic of the rippling water.

The information supplied in the application and from other submitters generally support the evidence of **James A Beard** with the following environmental effects consistently identified.

- Noise from boat engines and the noise from the operation itself (talking, music, clanking of equipment etc).
- Light spill when the boats are operating at night (including spot lights panning the land).
- Hours of operation and the industrial nature of the operation.
- Visual effects.

In 2007 and 2015 new conditions were included on the coastal permits for the eight farms in Wainui Bay. The conditions include restrictions on hours of operation, noise and the requirement for an annual community liaison meeting to be held (among others). From the minutes from the Wainui Consent Holders Community Liaison Meeting²⁸ (2013, 2014, 2015) the residents report a noticeable decrease in adverse effects from the activity, despite the conditions only legally applying to two of the farms at the time the minutes were recorded. This decrease in effects is supported by TDC's complaints database which records no formal complaints received regarding the farms since 2011. The reduction in adverse effects following the introduction of the new conditions has also been noted by several submitters with **De Lambert Family Trust** (C61. 1531), **Friends of Golden Bay**(C61.1328), **Vaughan, Alan** (C61.1377), **Forest & Bird (Golden Bay branch)** (C61. 1421) and **Golden Bay Community Board** (C61. 3592) indicating a level of acceptance of the current conditions of operation. A number of submitters were concerned that the problem could re-emerge if not controlled or new crews arrived. Eight submitters requested that the discretionary status remain so the control over conditions of operation would remain. There was also support from **Golden Bay Community Board** (C61. 3592.2) and **De Lambert Family Trust** (C61. 1531.1) for the continued use of the Wainui Consent Holders' Community Liaison meeting so that residents could voice concerns regarding onshore effects of the spat-catching activity.

The proposed provisions in the Plan Change largely adopt the conditions of the current coastal permits (see Table 1 for a comparison). These conditions appear largely appropriate based on community feedback through the Wainui Consent Holders Community Liaison meeting and submissions. The proposed Plan Change also proposes additional conditions which address the matter of rubbish and light spill which have previously been raised in the

²⁸ Wainui Spat Catching Group (2015). Private Plan Change Request, Volume 2, Appendices S, T, UV

minutes of the Wainui Consent Holders' Community Liaison meetings and are raised in the **De Lambert Family Trust** (C61. 1531.1) submission.

There is one matter raised in the Wainui Consent Holders' Community Liaison meeting that is not currently addressed through the proposed Plan Change and that is the cumulative effect of noise. **De Lambert Family Trust** (C61. 1531.1) has also requested a number of changes to the conditions. These matters are discussed below.

A. Cumulative Effects

The cumulative effects of noise from multiple service boats (up to nine) working at the same time, in the same area, before 6:30am, was raised at the last community meeting. From the discussion that followed, industry representatives explained that the harvesting of spat undergoes peaks and troughs with times of intensive harvesting on all eight farms when the spat is accumulating. Other times there is limited or no harvesting. The conditions proposed in the Plan Change and included on the current coastal permits acknowledge these "boom" times by providing for the consent holders to work beyond the ordinary hours of operation, with the requirement that the consent holder report the exceedances (no more than 5 per year) to Council and the exceptional reasons for the exceedance.

Is there anything that can be done to reduce the cumulative effects of noise?

Restrictions on the number of vessels?

Under Section 27 of the Marine and Coastal Area Act (2011) every person has the right to travel through, anchor, moor and remain for a short term, etc., within the CMA. Access can be restricted through other regulations like the navigation and safety bylaws, but generally the service vessels have the right to be there.

Noise restrictions?

The RMA places restrictions on noise and there are conditions proposed in the Plan Change to limit the noise generated by any one boat. However, noise in the marine environment is technically difficult to measure with a number of potential conflicting sources of noise likely at the time of measurement.

Restrictions on harvesting?

It is difficult to control the timetabling of harvest operations when the farms are separately owned/leased and managed. To restrict the harvest of spat during periods of high settlement is also likely to result in an inefficient use of the natural resource.

It appears from the Wainui Consent Holders Community Liaison meeting minutes that the issue of cumulative noise may be an intermittent, occasional problem. With no clear ability to restrict the cumulative effects beyond what is already being done, it is recommended that the cumulative effects continue to be addressed through specific conditions on the hours of operation, noise limits, and through ongoing dialogue between the industry and community.

B. Hours of Operation/Night Lighting

De Lambert Family Trust (C61. 1531.1) has requested that the proposed hours of operation be reduced from the hours of 6.00 am to 8.00 pm to 7.00 am to 7.00 pm. **De Lambert Family Trust** has also requested that no artificial lighting is used to extend the operation beyond natural light. The Plan Change proposes a new condition which requires "lights from working vessels at the site do not shine onto land where those lights may cause a nuisance". The effect of this second request from **De Lambert Family Trust**, if approved, would be to restrict

hours of operation further in the winter months. Based on Wellington sunrise and sunset data (2016)²⁹, if no night lighting was used, the hours of operation would be less than the 7.00 am-7.00 pm proposed by **De Lambert Family Trust** between the end of February to the end of September. At the winter solstice, the hours of operation would be restricted to the hours between 7.46 am to 4:58 pm or just over 9 hours. The suggested change would also need to be considered against the proposed condition (PC61 25.1.3.1 (ga)(ii)) which provides for five exceedances of the hours of operation within the year.

From the site visit undertaken, it was my general view that the number of houses closely affected by light spill would be limited as the houses were predominantly elevated well above the sites or some distance away from the farms. I consider that a well written condition on a consent should be able to limit light spill in the immediate vicinity. The proposed wording for the light spill condition is quite broad and there may also be room to clarify when lights can be used.

Without further information from the industry and residents regarding the implications or need for lighting or reduced hours of operation, I am unable to make a recommendation to the Hearing Panel at this point in time.

5.6.3 Recommendation:

1. That the conditions proposed in the Plan Change remain unchanged subject to Recommendation 2 below.
2. That **De Lambert Family Trust** (C61. 1531.1) suggested conditions in (ii) and (iii) of the submission concerning night lighting and hours of operation be considered pending further information from submitters and the applicant.

5.6.4 Plan Amendments

No changes arise from this recommendation pending further discussion.

²⁹Time and Date.com (2016). Retrieved from <http://www.timeanddate.com/sun/new-zealand/wellington?month=2&year=2016>

5.7 Biosecurity

5.7.1 Introduction

Minister of Conservation (C61.4127.4) has requested TRMP 25.1.3.1(4) and 25.1.3.2(5) be amended as follows (with new text shown underlined):

Management of biosecurity risk organisms, such as Undaria and the prevention of arrival and the movement of unwanted organisms.

The **Minister** (C61.4127.4) believes that the management of biosecurity risk must include the prevention of the arrival to the farms of unwanted organisms and their movement to other farms. Two further submitters opposed this request.

Minister of Primary Industries (C61.4128.2) has requested that Council ensure spat catching and holding operations are managed under the Plan Change with specific requirements for best practice biosecurity management. The **Minister** (C61.4128.2) believes that given the importance of the Wainui Bay spat to the mussel farming industry and the nature of its operation, it is critical that best practice biosecurity management measures are put into place to manage the adverse effects of harmful aquatic organisms and diseases on this location as a significant spat source, but also because of the potential to spread from this location to recipient mussel farming areas. Two further submitters opposed this request.

5.7.2 Discussion

Minister of Conservation

The Ministers request was discussed with Mr Paul Sheldon (Co-ordinator, Biosecurity and Biodiversity) and he agreed with the intent of this request as specific reference to Undaria was considered dated and was only one of many potential marine pest species which pose a threat to the marine farming industry. Mr Sheldon further observed that the Regional Pest Management Strategy was currently under review and the status of Undaria under that strategy would be revisited as part of that review. Mr Sheldon recommended the following changes to the wording:

(4) *Management of biosecurity risk organisms declared by a Chief Technical Officer as unwanted organisms or contained with a Regional Pest Management Plan.*

This suggestion is not inconsistent with the policies of the TRMP regarding aquaculture and biosecurity (TRMP 22.1.3.30). However, it is noted that the effect of the requested change, if accepted, could affect all spat catching activities within the district and this is beyond the scope of the Plan Change which only applies to aquaculture activities within Wainui Bay. It is therefore recommended that the following new matter of control be added to TRMP 25.1.3.1 and 25.1.3.2.

(#) *Management of biosecurity risk organisms declared by a Chief Technical Officer as unwanted organisms or contained with a Regional Pest Management Plan, within AMA 4-Wainui Bay.*

It is noted that the **Minister of Conservation** has not requested the above change be made to TRMP 25.1.3.1A – Mussel Spat Holding. It is uncertain whether this is a deliberate decision or a simple error. The **Minister** has requested further or alternative relief to same effect (C61.4127.1) and it may be possible to apply the recommended wording to TRMP 25.1.3.1A

through this request. Otherwise I suggest that Council make the decision to amend TRMP 25.1.3.1A through Clause 29 of the First Schedule.

Minister of Primary Industries

The Minister's request was also discussed with Mr Paul Sheldon (Co-ordinator Biosecurity and Biodiversity). The Minister's submission requested that best practice biosecurity control is reserved over the "prevention of arrival" of unwanted organisms. This suggestion is not inconsistent with the policies of the TRMP regarding aquaculture and biosecurity (TRMP 22.1.3.30).

In Mr Sheldon's view this is a separate issue and should be listed as a separate matter of control. The 2012 amendments to the Biosecurity Act 1993 introduced a new provision which enabled a regional council to prepare a "Regional Pathway Management Plan" (Sections 88-98). Matters related to the transfer of marine pest species between sites lend themselves to a pathway management approach. This could be achieved either formally through a Regional Pathway Management Plan or less formally through industry best practice. Mr Sheldon suggested that the following matter of control be added:

- (#) *Prevention of arrival and transfer of marine pest species including, but not limited to, those declared as unwanted organisms or as pest species contained with a Regional Pest Management Plan.*

I recommend the above wording be adopted with a further change that makes it clear that the provision only applies to Wainui Bay. The following wording is recommended for the matters of control in TRMP 25.1.3.1, 25.1.4.1A and 25.1.3.2:

- (#) *Prevention of arrival and transfer of marine pest species including, but not limited to, those declared as unwanted organisms or as pest species contained with a Regional Pest Management Plan, within AMA 4-Wainui Bay.*

5.7.3 Recommended Plan Amendments

1. Add the following to TRMP 25.1.3.1, 25.1.4.1A and 25.1.3.2 – Matters of Control:
(#) *Management of biosecurity risk organisms declared by a Chief Technical Officer as unwanted organisms or contained with a Regional Pest Management Plan, within AMA 4-Wainui Bay.*
2. Add the following to TRMP 25.1.3.1, 25.1.4.1A and 25.1.3.2 – Matters of Control
(#) *Prevention of arrival and transfer of marine pest species including, but not limited to those declared as unwanted organisms or as pest species contained with a Regional Pest Management Plan, within AMA 4- Wainui Bay.*

5.8 Minister of Conservation-Minor Amendments

5.8.1 Introduction

Minister of Conservation has proposed a number of minor amendments to the text to clarify the intent of the provision.

The Minister of Conservation (C61.4127.2) believes that the proposed wording for the Plan Change 25.1.3.1 could allow other types of spat catching to occur in AMA 4 as a controlled activity and seeks a text change to make it clearer that only mussel spat was provided for. One further submitter opposed this request.

The Minister of Conservation (C61.4127.2) also believes that the proposed wording for the Plan Change 25.1.3.3 would not encompass activities which do not comply with rule PC61 25.1.3.2 and needs to be amended. It was also identified that PC61 25.1.3.3 refers to scallop spat and needs to be changed.

Minister of Conservation (C61.4127.3) also requests that the standard conditions for the controlled activity for mussel spat holding (Rule 25.1.3.1A) should also apply for spat catching in Wainui Bay (Rule 25.1.3.1). One further submitter opposed this request.

5.8.2 Discussion

The proposed minor amendments to the wording in rule 25.1.3.1(C61.4127.2) are considered beneficial and it is recommended that the proposed changes be accepted.

The changes suggested by the Minister of Conservation in 25.1.3.1 (C61.4127.3) are accepted, however no change is required. The proposed wording is currently in the TRMP and was left out of the Schedule of Amendments when the existing text was abbreviated. The Schedule of Amendments has been amended to show this additional information.

5.8.3 Recommended Plan Amendments

1. Amend rule 25.1.3.3 to:
 - (a) *Scallop and mussel spat catching in subzones (a) – (k) of AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara and mussel spat catching and holding in AMA 4 Wainui that does not comply with conditions (a) – (h)(i) of rule 25.1.3.1, rule 25.1.3.1A (a) – (e), or with rule 25.1.3.2 (a) or (b) is a prohibited activity for which no resource consent application will be received or granted. For the avoidance of doubt, this does not preclude an applicant from applying for consent to catch spat across all spat-catching subzones in an AMA in successive years, subject to compliance with rule 25.1.3.1(b) and (f) in any spat-catching season.*
 - (b) *The catching of spat of species other than scallops or mussels in subzones (a) – (k) of AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara and other than mussel spat in AMA 4 Wainui is a prohibited activity for which no resource consent application will be received or granted.*
 - (c) *Aquaculture other than the catching of scallop or mussel spat in subzones (a) – (k) of AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara and catching of mussel spat and holding mussel spat in AMA 4 Wainui is a prohibited activity for which no resource consent application will be received or granted.*

2. Amend first paragraph of rule 25.1.3.1 to:
The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures, for:
- *scallop spat catching or mussel spat catching in subzone (a) AMA 1 Waikato, subzones (a) – (k) AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara and;*
 - *mussel spat catching in AMA 4 Wainui;*
is a controlled activity, if it complies with the following conditions:

Appendix 1: Recommended Decisions on Submissions

General

Submitter	Remedy	Recommendation
Golden Bay Marine Farmers Consortium Ltd. C61.327.1	Rename Wainui Bay as AMA 4 Wainui	Accept
James A Beard C61.840. 1	Relocate the six factories elsewhere.	Out of scope. The existing farms hold resource consent and have the right to remain in the current locations until 2024. Council is unable to create new locations for the farms to move to through this Plan Change.
James A Beard C61.840.2	Tasman District Council to consider the operation illegal.	Out of Scope The submitter raises matters that are covered by legislation other than the RMA and subsequently there is no ability to consider the matters raised through this process. The RMA specifically provides for aquaculture and the Plan Change is generally in accordance with those provisions. The decision sought is considered to be <i>out of scope</i> .
James A Beard C61.840.3	Oppose the continued extraction of mussel spat at Abel Tasman Point	Decline
Friends of Golden Bay C61.1328.1	Oppose Plan Change rezoning the spat sites to AMA 4 and the designation as a controlled activity	Decline
Friends of Golden Bay C61.1328.3	Request the [Plan] remain as it is until 2024 as designated by the Environment Court.	Decline
Vaughan, Alan C61.1377.1	Oppose the re-designation of the Wainui Bay spat catching sites as an AMA	Decline
Forest & Bird (Golden Bay branch) C61.1421. 1	Request the current TRMP policy to continue.	Decline
Forest & Bird (Golden Bay branch) C61.1421.3	Accept the permitted time [for farming] to extend beyond 2014 if there is no environmental or social reasons against it.	Accept in part
Minister of Conservation C61.4127.1	Make further or alternative relief to like effect to that sought in the submission.	Accept
Minister of Primary Industries C61.4128.1	Supports the intent of the Plan Change subject to requested amendments	Accept in part
Reed, Denis C61.4129.1	Retain the status quo	Decline
Wallace, William (Bill) C61.4131.1	Rename Wainui Bay as AMA 4 Wainui	Accept

Controlled Activities

Submitter	Remedy	Recommendation
Golden Bay Marine Farmers Consortium Ltd. C61.327. 2	Make mussel spat catching and holding controlled activities.	Accept
James A Beard C61.840.5	Relocate the six factories elsewhere.	Out of scope. The existing farms hold resource consent and have the right to remain in the current locations until 2024. Council is unable to create new locations for the farms to move to through this Plan Change.
Forest & Bird (Golden Bay branch) C61.1421.2	Oppose the Controlled Activity Status; retain as a Discretionary Activity.	Decline
Golden Bay Community Board C61.3592. 1	The farms continue to be consented to operate.	Accept
Anatimo Trust (Anna Wright) C61.4125. 1	Oppose the Plan Change. Request spat catching in Wainui Bay remain a discretionary activity under 25.1.4.4 of the TRMP requiring a resource consent and compliance with any conditions set by Council.	Decline
Foxwell, Jillian C61.4126.1	Leave the Wainui site as a discretionary activity	Decline
Wallace, William (Bill) C61.4131.2	Mussel spat-catching and -holding to become controlled activities.	Accept
Whitehead, Beryl C61.4132 1	Retain the status quo	Decline

Landscape

Submitter	Remedy	Recommendation
James A Beard C61.840.4	Relocate the six factories elsewhere.	Decline
Friends of Nelson Haven and Tasman Bay C61.1050.1	Decline the Plan Change and retain the status of the spat sites as discretionary with no changes to species/structures/activities (including mussel farming) or extensions in area allowed.	Decline
Friends of Golden Bay C61.1328.2	Oppose Plan Change rezoning the spat sites to AMA 4 and the designation as a controlled activity	Decline
Vaughan, Alan C61.1377.2	[Spat catching sites] should be subject to a periodically renewed resource consent.	Accept
Forest & Bird (Golden Bay branch) C61.1421.5	Request the current TRMP policy to continue.	Decline
De Lambert Family Trust C61.1531.2	Decline the Plan Change in its entirety.	Decline
Golden Bay Community Board C61.3592.3	The farms continue to be consented to operate.	Accept
Foxwell, Jillian C61. 4126.3	Leave the Wainui site as a discretionary activity.	Decline
Reed, Denis C61. 4129.2	Retain the status quo.	Decline

Submitter	Remedy	Recommendation
Whitehead, Beryl C61.4132.2	Retain the status quo	Decline

Biosecurity

Submitter	Remedy	Recommendation
Minister of Conservation C61.4127.4	Amend matter (4) to: “ <i>Management of biosecurity risk organisms such as Undaria and the prevention of arrival and the movement of unwanted organisms.</i> ”	Accept in part
Minister of Conservation C61.4127.5	Amend matter (4) to: “ <i>Management of biosecurity risk organisms such as Undaria and the prevention of arrival and the movement of unwanted organisms.</i> ”	Accept in part
Minister of Primary Industries C61.4128.2	Ensure spat catching and holding operations managed under the Plan Change contain specific requirements for best practice biosecurity management.	Accept in part

Minister of Conservation Minor Amendments.

Submitter	Remedy	Recommendation
Minister of Conservation C61.4127.6	Amend rule 25.1.3.3 to: (a) <i>Scallop and mussel spat catching in subzones (a) – (k) of AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara and mussel spat catching and holding in AMA 4 Wainui that does not comply with conditions (a) – (h)(i) of rule 25.1.3.1, rule 25.1.3.1A (a) – (e), or with rule 25.1.3.2 (a) or (b) is a prohibited activity for which no resource consent application will be received or granted. For the avoidance of doubt, this does not preclude an applicant from applying for consent to catch spat across all spat-catching subzones in an AMA in successive years, subject to compliance with rule 25.1.3.1(b) and (f) in any spat-catching season.</i> (b) <i>The catching of spat of species other than scallops or mussels in subzones (a) – (k) of AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara and other than mussel spat in AMA 4 Wainui is a prohibited activity for which no resource consent application will be received or granted.</i> (c) <i>Aquaculture other than the catching of scallop or mussel spat in subzones (a) – (k) of AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara and catching of mussel spat and holding mussel spat in AMA 4 Wainui is a prohibited activity for which no resource consent application will be received or granted.</i>	Accept
Minister of Conservation C61.4127.2	Amend first paragraph of rule 25.1.3.1 to: <i>The occupation and disturbance of any site in the coastal marine area by structures, and the use of those structures, for;</i> <ul style="list-style-type: none"> • <i>scallop spat catching or mussel spat catching in subzone (a) AMA 1 Waikato, subzones (a) – (k) AMA 2 Puramakau, and subzones (a) – (h) of AMA 3 Te Kumara; and</i> • <i>mussel spat catching in AMA 4 Wainui;</i> <i>is a controlled activity, if it complies with the following conditions:</i>	Accept

Heritage

Submitter	Decisions Requested	Recommendation
James A Beard C61.840.6	Relocate the six factories elsewhere.	Decline
Friends of Nelson Haven and Tasman Bay C61.1050.3	Decline the Plan Change and retain the status of the spat sites as discretionary with no changes to species/structures/activities (including mussel farming) or extensions in area allowed.	Decline

Submitter	Decisions Requested	Recommendation
Forest & Bird (Golden Bay branch) C61.1421.6	Request the current TRMP policy to continue.	Decline

Controlled Activities

Submitter	Remedy	Recommendation
Forest & Bird (Golden Bay branch) C61.1421.4	Request the current TRMP policy to continue.	Decline
De Lambert Family Trust C61.1531.1	Incorporate the following controlled conditions. <ul style="list-style-type: none"> • The community Liaison Group is maintained; • The hours of operation are limited (for all maintenance/operations) to after 7 am start and 7 pm finish; • No artificial lighting is allowed for extending operation beyond natural light; • Controls on noise are included, considering also the way in which noise travels over water. This should include noise from music on the boats; and • The operators should be required to undertake beach/coastal clean up to keep the beaches clean of debris from the farms. 	Accept in Part
Golden Bay Community Board C61.3592.2	Annual meetings between residents and the Wainui Marine Farmers be a condition of the continued use of Wainui Bay for the purpose of spat catching	Accept
Anna Wright for Anatimo Trust (land owner) C61.4125.1	Oppose the Plan Change. Request spat catching in Wainui Bay remain a discretionary activity under 25.1.4.4 of the TRMP requiring a resource consent and compliance with any conditions set by Council	Decline
Foxwell, Jillian C61.4126.2	Leave the Wainui site as a discretionary activity	Decline
Minister of Conservation C61.4127.3	<p>Include after matter (7) "Timing and purpose of reviews of any or all conditions":</p> <p><i>In Wainui Bay:</i></p> <p><i>In addition, the following standard conditions (to the extent that they are applicable) will be applied to any consent granted under this rule:</i></p> <p>(i) <i>Where any structure or part of a structure sinks, breaks free or otherwise causes a navigation hazard, steps are taken as soon as practicable to recover, secure, and make safe the structure. The consent holder, or site manager, whoever is first aware of the matter, is to notify the Council Harbourmaster of any such incident as soon as practicable on becoming aware of it.</i></p> <p>(ii) <i>The consent holder removes from the site any structure or material that is superfluous to the activity, including any discarded equipment.</i></p> <p>(iii) <i>The consent holder notifies Maritime New Zealand immediately prior to the placement of structures; and within 24 hours of the placement of structures notifies Land Information New Zealand, and the Council Harbourmaster.</i></p> <p>(iv) <i>The whole or any part of the interest in the coastal permit for the activity may be transferred to any other party. The transferor remains responsible for compliance with the terms and conditions of the permit until written notice of the transfer is given to the Council.</i></p>	Accept
Tui Community C61.4130.1	Support the changes so retain the Plan Change.	Accept

Climate Change

Submitter	Remedy	Recommendation
Friends of Nelson Haven and Tasman Bay C61.1050.2	Decline the Plan Change and retain the status of the spat sites as discretionary with no changes to species/structures/activities (including mussel farming) or extensions in area allowed.	Decline