

RESOURCE MANAGEMENT ACT 1991**Decision of Marlborough District Council**

RESOURCE CONSENT: U180173

APPLICANT: Sanford Limited

LOCATION: Forsyth Bay, Marlborough Sounds

THIS IS THE DECISION ON THE APPLICATION FOR RESOURCE CONSENT:

Coastal permit (replacing MFL438, MFL439, U021124 and MPE759) to reposition, reconfigure and operate a 12.05 hectare marine farm (site 8116) in Forsyth Bay, using conventional surface longline techniques.

DECISION: **Granted**

RESOURCE CONSENT ISSUED:

Coastal Permit

Certificate of Resource Consent

Consent Holder: Sanford Limited

Consent Type: Coastal Permit

Consent Number: U180173

Marine Farm Site No.: 8116

Lapse Date: 1 February 2022

Expiry Date: 1 February 2039

Pursuant to sections 34A(1) and 104B and after having regard to Part 2 matters and sections 104 and 104D of the Resource Management Act 1991, the Marlborough District Council **grants** the application for a coastal permit (replacing MFL438, MFL439, U021124 and MPE759) to reposition, reconfigure and operate a 12.05 hectare marine farm (site 8116) in Forsyth Bay, using conventional surface longline techniques, subject to the following conditions imposed under section 108 of the Resource Management Act 1991.

Conditions

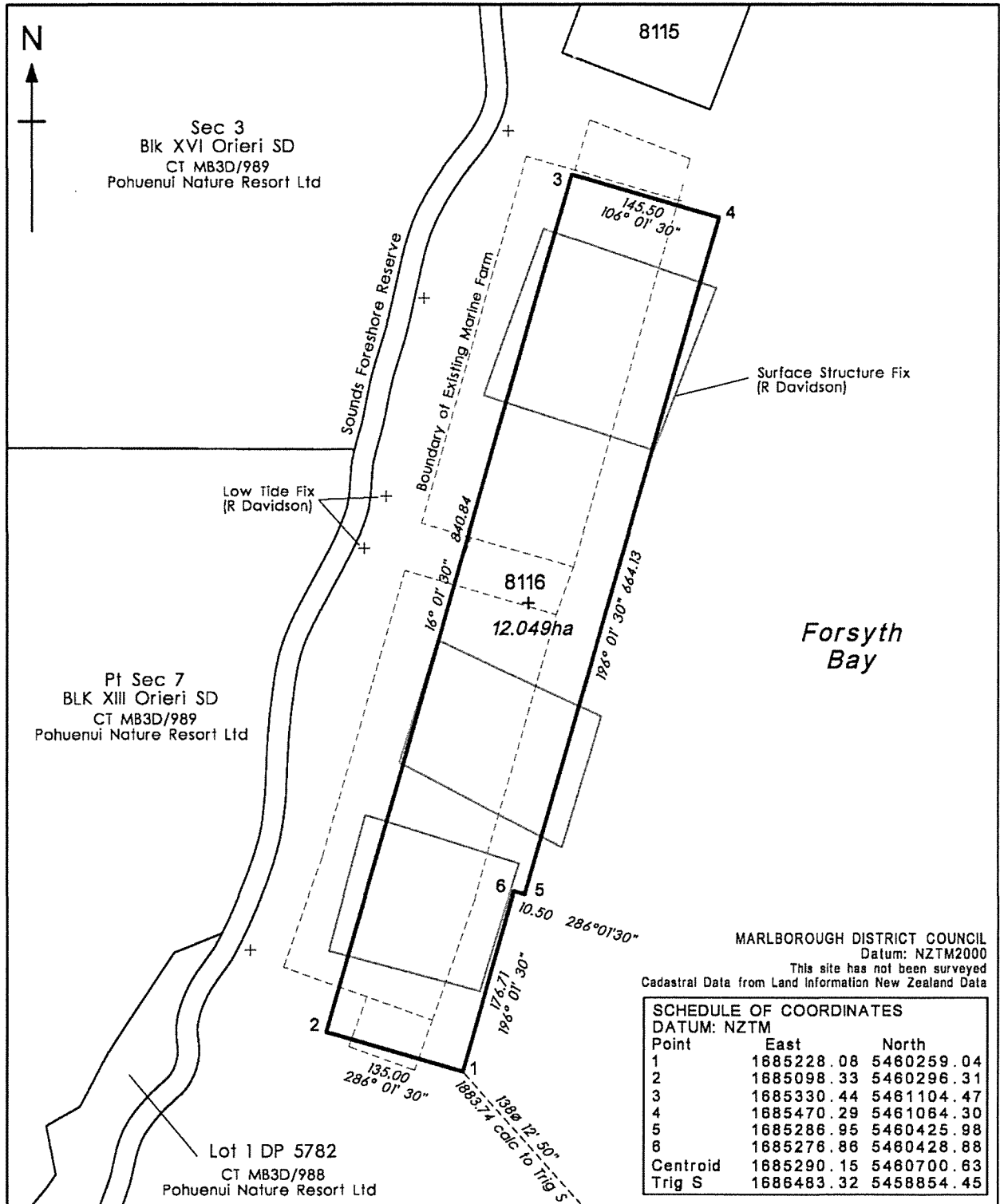
1. This resource consent must not be implemented concurrently with consents MFL438 and/or MFL439. In the event that this consent U180173 is implemented, the consent holder must within one month thereafter provide written notice of such implementation to the Compliance Manager, Marlborough District Council. [Note: Any surrender of consents MFL438 and/or MFL439 must accord with section 138 of the Resource Management Act 1991.]
2. Only any one or more of the following species may be farmed at the site:
 - a) Greenshell mussel (*Perna canaliculus*)
 - b) Blue mussel (*Mytilus galloprovincialis*)
and/or the following seaweeds:
 - c) *Macrocystis pyrifera*
 - d) *Ecklonia radiata*
 - e) *Gracilaria spp*
 - f) *Pterocladia lucida*
3. Without restricting the consent holder from reasonably undertaking the activities authorised by this resource consent, the consent holder shall not undertake the activities in such a way that would effectively exclude the public from the permit area.
4. There shall be no feed artificially introduced into the marine farm unless a specific coastal permit for discharge is firstly obtained.
5. The structures authorised by this consent must be wholly within the 12.05 hectare area identified in Appendix A to this consent and must be laid out in a manner that conforms with Appendix B to this consent.

6. The structures shall be limited to the anchors, ropes, droppers, cages, racks, floats and lights associated with the farming of the approved species within the boundaries of the consent area. The number of lines shall be at the discretion of the consent holder but shall not exceed the number and length shown in Appendix B, the separation distances between lines must be no less than as shown, other distances must be as shown and lines must be oriented as shown. No growing structures may be placed to the west of the identified growing structure exclusion line shown in Appendix B.
7. Within two years of the implementation of this consent, the consent holder must provide documentary evidence to the Compliance Manager, Marlborough District Council, which demonstrates that all of the marine farm structures are physically positioned within the consented boundaries identified in Appendix A.
8. The type, design, functionality and placement of marine farm lighting and marking shall be as approved by the Harbour Master under his or her Maritime Delegation from the Director of Maritime New Zealand pursuant to Sections 200, 444(2) and 444(4) of the Maritime Transport Act 1994.
9. Each end of the most landward and most seaward longlines must carry the marine farm site number and be displayed in bold, clear letters in such a manner that they can be clearly read from a distance of at least 10 metres.
10. Except as required by the Harbour Master in the lighting and marking plan, all buoys used on the farm must be black in colour.
11. All farm structures and parts thereof must be designed, constructed, installed and maintained in a manner which ensures that they are restrained, secure and in working order at all times.
12. The consent holder must take whatever steps are reasonably necessary to retrieve any non-biodegradable debris lost in or from the permit area.
13. Upon the expiration, forfeiture or surrender of the coastal permit the consent holder must remove all structures including buoys, longlines, blocks and all associated equipment from the site, and restore the area as far as is practicable to its original condition to the reasonable satisfaction of Council. If the consent holder fails to do this Council may arrange compliance on the consent holder's behalf and expense.
14. In accordance with section 128 of the Resource Management Act 1991, the Marlborough District Council may, during the months of January to December (inclusive) in any year for the duration of this consent, serve notice of its intention to review the conditions of this consent for any of the following purposes:
 - a) To deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or
 - b) To modify the lighting and marking plan; or
 - c) To modify the type, number and extent of structures, longlines and backbones; or
 - d) To ensure that adverse effects on ecological values, maritime safety, public access and amenity values are adequately avoided, remedied or mitigated; or
 - e) To incorporate best management practice guidelines developed to address the cumulative effects of marine farming; or
 - f) To protect the extent and/or health of king shag habitat.

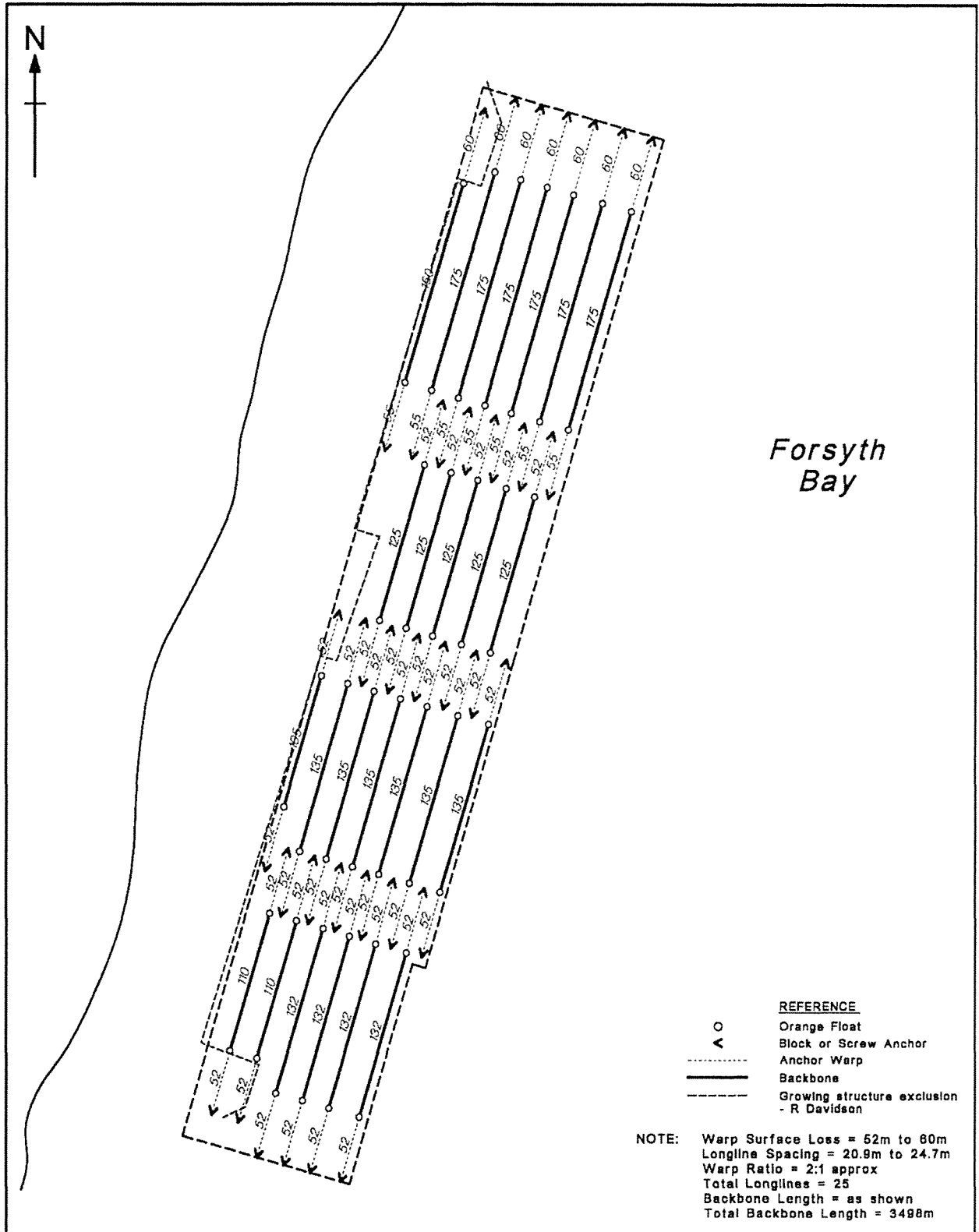
Advice Notes

1. Pursuant to section 36 of the Resource Management Act 1991 and the Marlborough District Council's schedule of fees, the consent holder will be responsible for all actual and reasonable costs associated with the administration and monitoring of this resource consent.
2. The consent holder will in the future be required to pay coastal occupation charges if they are imposed through Council's resource management plans.
3. Pursuant to section 114(4)(c)(ii) of the Resource Management Act 1991, the Marlborough District Council is required to request an aquaculture decision from the Ministry for Primary Industries (MPI) after the appeal period is completed or all appeals are determined for this consent. The MPI will undertake an assessment of the undue adverse effects on customary, recreational and non-quota commercial fisheries resources. Depending on the MPI's decision, the consent holder may be able to establish the marine farm as granted, or Council may have to modify or reverse this decision.

U180173 – Appendix A



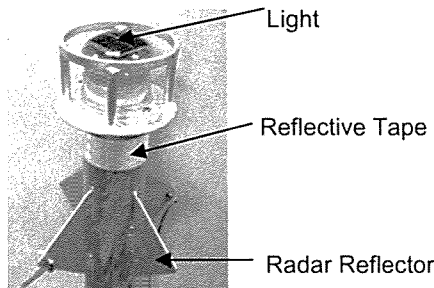
U180173 – Appendix B



Marine Farm Lighting and Marking Plan – U180173 (Site no.8116)

I, Luke Grogan, Harbourmaster of Marlborough District Council, hereby approve, under Maritime Delegation from the Director of Maritime New Zealand, the lighting and marking associated with coastal permit U180173, (Site no.8116), located in Forsyth Bay, Outer Pelorus/Te Hoiere, as follows:

1. That each end of each longline display an orange buoy, as shall the middle of each of the seawardmost and landwardmost longlines.
2. That a yellow flashing light, radar reflector and reflective material be displayed in the positions marked 'A' on the attached structures plan.



3. That the flash characteristics of the light meet the specifications of the Harbourmaster.
4. That radar reflectors and reflective material be displayed in the positions marked 'B' on the attached structures plan.
5. That reflective material be displayed in the positions marked 'C' on the attached structures plan.

Interpretation:

Light – Every light shall be of a design enabling the flash characteristics of the light to be adjusted on site and capable of operating at least 99% of the time during the hours of darkness.

A flashing light shall have a minimum flash length not less than 0.5 seconds and a nominal range of at least 1 nautical mile.

A light must be positioned at a height of not less than 1 metre above the water and in such a manner as to be visible from all directions.

The flash characteristics of a light must meet the specifications of the Harbourmaster as published in the relevant Harbourmasters Notice.

Radar reflector – Radar reflectors shall be of such a design so as to be visible on vessels radar at a range of at least 500 metres in any navigable direction.

Reflective material – must be of a design and reflectivity sufficient to ensure visibility by torchlight from at least 50 metres in any navigable direction. Reflective tape, where utilised, shall be at least 50 mm in width.

Hours of Darkness – the time between sunset and sunrise on any given day as listed in the New Zealand Nautical Almanac.

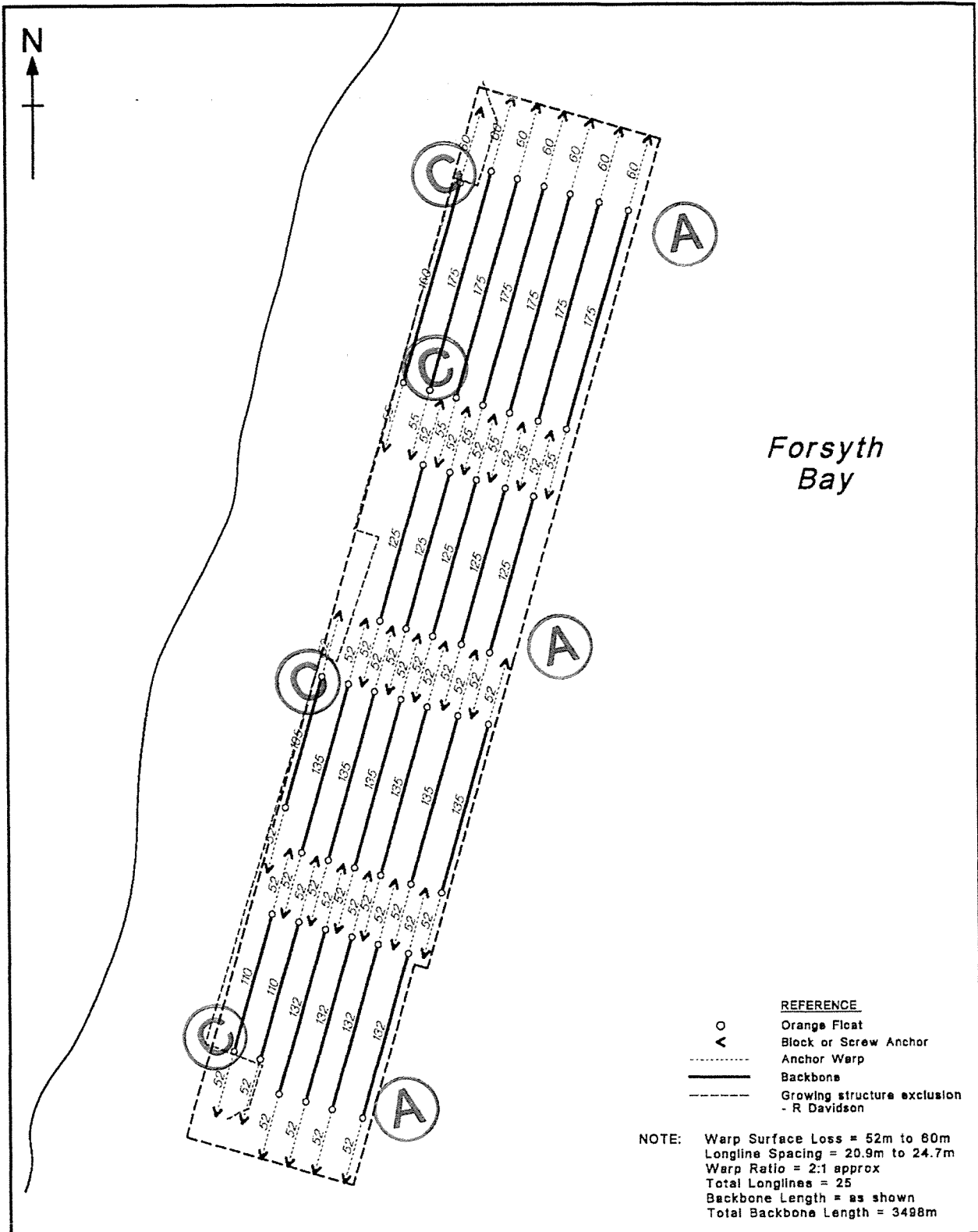
6. Each end of the most landward and most seaward longlines shall carry the name of the consent holder, and the site number issued by Marlborough District Council (e.g. #8405), displayed in bold clear letters in such a manner that they can be clearly read from a distance of 10 metres.

Given under my hand this 18 day of APRIL 2019

P/P *mlucan*

LUKE GROGAN

U180173



Reasons

Proposal

1. The applicant seeks resource consent to reposition and reconfigure existing marine farm site 8116 in Forsyth Bay. The proposed farm would comprise four blocks of between five and seven conventional longlines with backbone lengths varying from 110 to 175 metres. The total backbone length would be 3498 metres. This is 852 fewer backbone metres than the previously approved 4350 backbone metres (approximately) for the site. The overall area of the farm would be 12.05 hectares. This is a small reduction from the 12.69 hectares previously approved for the site. The key change arising from the proposal would be the repositioning of the farm approximately 50 metres to the east, further from shore.
2. Only any one or more of the following species are proposed to be farmed at the site:
 - a) Greenshell mussel (*Perna canaliculus*)
 - b) Blue mussel (*Mytilus galloprovincialis*)and/or the following seaweeds:
 - c) *Macrocystis pyrifera*
 - d) *Ecklonia radiata*
 - e) *Gracilaria spp*
 - f) *Pterocladia lucida*
3. The activity of operating a marine farm inherently includes occupying the seabed and water column with anchoring devices and growing and support structures; the seeding, cultivating and harvesting of the farmed species; and the taking and discharge of coastal water and discharge of biodegradable and organic waste matter during harvesting. The application seeks a term of 20 years.

Background

4. The subject marine farm site was initially established as two separate farms under marine farm licences (MFL) 438 and 439. MFL438 was granted on 11 April 1990 and comprised 10 longlines each having a backbone length of 180 metres, evenly spaced across a 5.93 hectare area. MFL439 was granted on 11 April 1990 and comprised 10 longlines each having a backbone length of 220 metres, evenly spaced across a 5.4 hectare area.
5. The farms were subsequently extended to the north and south by a combined area of 1.27 hectares following the approval of resource consent U990627 on 8 December 1999. The effect of those extensions was to create one contiguous farming area covering 12.69 hectares. U990627 was replaced by U021124 granted 30 March 2004 and the associated marine farming permit MPE759 granted 13 December 2005.
6. MFL438 and MFL439 are due to expire on 31 December 2024. Consents U021124 and MPE759 expired on 30 April 2018.

Description of Receiving Environment

7. The application site is located on the western side of Forsyth Bay in the outer Marlborough Sounds. Resource uses in the locality include rural land reverting to a shrub/forest land cover, some pastoral agriculture, marine farming and scattered residential and associated development. The nearest neighbouring marine farm (site 8115) is located about 100 metres to the north of the subject farm.

Activity Status

8. The application site is zoned 'Coastal Marine 2' within the Marlborough Sounds Resource Management Plan (Sounds Plan). Parts of the farm are located beyond 200 metres of the mean low water mark and therefore the proposal constitutes a non-complying activity under Rule 35.5 of the Sounds Plan.

Notification

9. Given the nature and effects of the activity and the particular receiving environment, Council publicly notified the application. The two opposing submissions received were subsequently resolved by reductions to the area of the farm and the intensity of the backbones therein. It is that reduced proposal which is approved by this decision.

Assessment of Effects

10. In terms of the considerations required by sections 104(1)(a) and 104D of the Resource Management Act 1991 (RMA), subject to conditions the proposed marine farm and all associated activities are concluded to be likely to have acceptable adverse effects on the existing ecological values, natural character, landscape values, amenity values, recreation values, cultural values and navigational safety of the locality. In reaching this conclusion it is assessed that the proposed marine farm is broadly consistent with the established character and amenity of the area and is located so as to avoid significant adverse effects on sensitive seabed habitat and other users of the area.
11. With regard to public access and maritime safety, consent conditions are imposed to ensure the structures are marked and lit to promote safe navigation past or through the farm, and are constructed and maintained in a secure and functioning condition.
12. With regard to ecological values, aquaculture of bivalve species generally results in increased sedimentation rates and modification of benthic communities beneath and adjacent to marine farms. Bivalve aquaculture also has effects on the water column and associated food webs by depleting phytoplankton and zooplankton. In this case, the ecological effects of the proposed farm have been addressed in the benthic survey report of December 2017 and the king shag advice of December 2018. The benthic survey found rocky substratum inshore of the proposed farm and the farm boundaries and layout have been appropriately adjusted to account for this. The king shag advice states that, while it is not possible to say with certainty how mussel farms affect the king shag population, based on the historic absence of effect from operation of the farm, it is unlikely that the proposal would have an adverse effect on the Duffers Reef king shag population. It is noted here that scientific studies presently underway should, if continued, enable any effects of the farm on king shag to be defined with greater certainty and responded to if necessary through a review of conditions or upon reassessment in 20 years' time.
13. With regard to adverse effects on natural character, landscape values and amenity values, the proposal will continue the existing adverse biophysical and sensory effects, including cumulative adverse effects which exist in conjunction with the other marine farms in the area. However, within the particular receiving environment as it currently exists, the adverse biophysical and sensory effects of the farm are assessed as being not significant and are concluded to be acceptable.

Relevant Statutory and Plan Provisions

14. In terms of the considerations required by sections 104(1)(b) and 104D of the RMA, Policies 6, 8, 11, 13, 14, 15 and 22 of the New Zealand Coastal Policy Statement 2010; Objectives 5.3.10, 7.1.2, 7.1.9, 7.2.7 and 8.1.2 and Policies 5.3.11, 7.1.7, 7.1.10, 7.2.8, 7.2.10, 8.1.5 and 8.1.6 of the Marlborough Regional Policy Statement; Objectives 2.2.1, 4.3.1, 5.3.1, 8.3.1, 9.2.1.1, 9.4.1.1 and 19.3.1 and Policies 2.2.1.2, 4.3.1.2, 8.3.1.2, 9.2.1.1.1, 9.2.1.1.2, 9.2.1.1.7, 9.4.1.1.1, 9.4.1.1.9 and 19.3.1.1 of the Sounds Plan; and Objectives 5.10, 6.2, 7.2, 8.1 and 13.2 and Policies 5.10.3, 6.2.7, 7.2.4, 8.3.1, 8.3.2, 8.3.5 and 13.2.6 of the proposed Marlborough Environment Plan are of relevance to an evaluation of the proposal.
15. In very broad terms the relevant provisions listed above seek the positive economic and related benefits of aquaculture while managing the adverse environmental effects to maintain indigenous biodiversity, visual values and public use of the sea. With regard to the relevant provisions, the proposed farm would be consistent with many of the identified provisions and is not assessed as being contrary to the Sounds Plan or proposed Marlborough Environment Plan.

Conduct of the Applicant

16. Section 165ZJ(1AA) of the RMA states that the consent authority must consider all relevant information available in relation to the existing coastal permit, including any available monitoring data. Subsection 165ZJ(1) states that the consent authority must also consider the applicant's conduct in relation to compliance with the relevant regional coastal plan and compliance with resource consent conditions for current or previous aquaculture activities undertaken by the applicant.
17. With regard to these matters, the relevant compliance records held by Council show that, at times, the existing farm has not had all of the navigational markings required by the Harbour Master. Such non-compliances are not so grave as to prevent a new consent being granted to the applicant. Consent Conditions 5 to 11 have been imposed to ensure the longlines are correctly positioned, marked, lit and maintained in the future.

Value of the Investment

18. Section 104(2A) of the RMA states that the consent authority must have regard to the value of the investment of the existing consent holder. Assuming in this instance a harvested mussel crop of approximately 400 tonnes per annum and a gross return of \$1,100 per tonne, the value of the investment in this case might be in the order of \$440,000. In any event this matter would only become relevant if consent were to be refused, in that it would be appropriate to allow the current crop to be harvested prior to removal of the farm.

Part 2 Resource Management Act 1991

19. Having considered the matters of national importance and other matters, including subsections 6(a), 6(b), 6(d), 6(e), 7(a), 7(b), 7(c) and 7(d), along with the relevant principles of the Treaty of Waitangi as required by Part 2 of the RMA, it is concluded that the sole purpose of the RMA would be better achieved through a grant of resource consent, subject to the specified conditions.

Consent Duration and Lapse Date

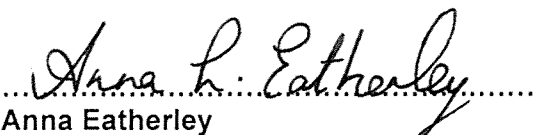
20. Section 123A(2) of the RMA requires that the consent must be for a period not less than 20 years (the term also sought by the applicant) unless "a shorter period is required to ensure that adverse effects on the environment are adequately managed". As matters presently stand, the adverse effects of the proposal are not concluded to be of a kind requiring a period shorter than 20 years. Conversely, Rule 35.2.5.2 of the Sounds Plan requires that the coastal permit does not exceed a period of 20 years. Given these provisions, a term of 20 years is imposed to give an expiry date of 1 February 2039.
21. While consents U021149 and MPE759 have already expired, they covered very small parts of the farm. The farm could continue to operate under MFL438 and MFL439 until the end of 2024. As such, a lapse period of three years has been imposed within which the consent holder can choose to uptake this new consent (subject to appropriate MPI approval) and surrender existing consents MFL438 and MFL 439.

Recommended for approval:



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Peter Johnson
Senior Resource Management Officer

Approved:



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Anna Eatherley
Marlborough District Council Manager Resource Consents

12th February 2019.
.....
Date

Additional Important Information for Resource Consent Holders

The following information provided in this information sheet is a guide to the legal rights of applicants and submitters.

If you want to discuss matters raised in this information sheet you are welcome to contact Council. However, if you require specific advice you should contact an independent professional and refer to the relevant sections of the Resource Management Act 1991.

Commencement of a Resource Consent

Refer to section 116 of the Resource Management Act 1991

- Where no submissions were lodged or any submissions were withdrawn, a resource consent commences, (and may be actioned) on the date of the receipt of the decision.
- Where submissions were lodged to the application, and not withdrawn, the resource consent commences once the time for lodging an appeal has passed, provided no appeals have been received, or when all appeals have been resolved or withdrawn.
- If the resource consent was for activities controlled by the district plan on reclaimed land or land in the coastal marine area, or a restricted activity; then there are specific provisions regarding the commencement of resource consent. These provisions are outlined in section 116 of the Resource Management Act 1991.

Lapsing

Refer to section 125 of the Resource Management Act 1991

- If no lapse date is specified in the conditions of this consent, the consent will lapse 5 years after the decision date, unless the consent has been actioned (given effect to).

Conditions of Resource Consent

Refer to section 108 of the Resource Management Act 1991

- If conditions are imposed these will be set out in the decision document.
- Please read your consent and ensure that you fully understand any conditions.
- If you have concerns with any condition(s), in the first instance you should discuss your concerns with Council, although an option may be to lodge an appeal or objection.
- It is a legal requirement that there be **compliance with** all conditions.
- If any conditions are contravened it may be that the Council or members of the public will initiate enforcement action (outlined in Part XII of the Resource Management Act 1991).

Change or Cancellation of Conditions of Resource Consent

Refer to section 127 of the Resource Management Act 1991

- The consent holder may apply to the Council to change or cancel conditions of the consent, except a condition specifying duration.

Monitoring Fees

Refer to section 36 of the Resource Management Act 1991 and the Council's Schedule of Fees

- The consent holder will be charged for actual and reasonable costs associated with the monitoring of this consent.

Objections

Refer to section 357 of the Resource Management Act 1991

- In certain circumstances the applicant has the right to object to the Council's decision.
- Any objection shall be made in **writing** and will need to outline the reasons for the objection.
- An objection needs to be lodged with the Council within **15 working days** of the Council's decision being received by you or your agent.

Appeals

Refer to Form 16 and sections 120 and 121 of the Resource Management Act 1991

- The applicant and any submitters have the right to appeal the whole or any part of the Council's decision, however there is no right of appeal against the whole or any part of the decision to the extent that the decision relates to one or more of the following, but no other, activities:
 - a) a boundary activity, unless the boundary activity is a non-complying activity;
 - b) a subdivision, unless the subdivision is a non-complying activity;
 - c) a residential activity as defined in section 95A(6), unless the residential activity is a non-complying activity.

A submitter can only appeal to the Environment Court if their appeal is related to a matter raised in their submission and their submission, or the part of their submission to which the appeal relates, has not been struck out under section 41D of the Resource Management Act 1991.

- A notice of appeal must be lodged with the Environment Court and the Council, within **15 working days** of the Council's decision being received (or received by your agent on your behalf). A copy also needs to be served on the applicant and submitters to the application within 5 working days of the notice being lodged with the Environment Court.

Before lodging an objection or an appeal it is recommended that you seek professional advice.