

**IN THE MATTER OF**

The Resource Management Act 1991

**AND**

**IN THE MATTER OF**

An application by Pigeon Bay Aquaculture Limited for a coastal permit to occupy the coastal marine area with structures, disturb the seabed, and deposit marine debris (shell and organic matter) and to discharge contaminants associated with marine farming into the coastal marine area at Big Bay, Banks Peninsula.

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**REPORT AND DECISION OF HEARING COMMISSIONER**

**Sharon McGarry**

**20 May 2019**

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Heard on the 28 March 2019  
Waimakariri Room in the offices of the Canterbury Regional Council,  
200 Tuam Street, Christchurch.

## Representations and Appearances

### Applicant:

**Mr D. Clark**, Counsel (Wisehart Macnab & Partners)

**Mr S. Acton-Adams**, Director, Pigeon Bay Aquaculture Limited

**Mr E. Aitken**, Director, Pigeon Bay Aquaculture Limited

**Mr S. Glass**, Owner/Operator of Ikana New Zealand Limited

**Dr S. Handley**, Marine Ecologist (National Institute of Water and Atmosphere)

**Mr P. Rough**, Landscape Architect (Rough & Milne Landscape Architects Limited)

**Mr D. Chrystal**, Planning and Resource Management Consultant (Planz Consultants)

### Submitters:

**Mr M. Beijemin**

#### Earthsea Double Bay Limited ('Earthsea')

- **Ms P. Steven**, Queens Counsel, Canterbury Chambers
- **Mr B. Espie**, Landscape Architect (Vivian and Espie Limited)
- **Mr S. Stanley**, Director and Trustee of Earthsea Double Bay Limited

**Mr F. Sauer**, landowner, Earthsea Double Bay Limited

### Section 42A Reporting Officers:

**Mr R. Klopper**, Consents Planner (Canterbury Regional Council)

- **Mr J. Bentley**, Landscape Architect (Boffa Miskell)
- **Mr R. Purdon**, Principal Consents Planner (Canterbury Regional Council)

It is the decision of the Canterbury Regional Council, pursuant to sections 104, 104B, 105 and 107, and subject to Part 2 of the Resource Management Act 1991, to **GRANT** Coastal Permit CRC175136 to occupy the coastal marine area with structures, disturb the seabed, and deposit marine debris (shell and organic matter) and to discharge contaminants associated with marine farming into the coastal marine area at Big Bay, Banks Peninsula.

## BACKGROUND AND PROCEDURAL MATTERS

1. This is the report and decision of independent Hearing Commissioner Sharon McGarry. I was appointed by the Canterbury Regional Council (**CRC** or 'the Council') to hear and decide an application by Pigeon Bay Aquaculture Limited (**PBAL** or 'the Applicant') pursuant to the Resource Management Act 1991 (**RMA** or 'the Act') for a resource consent to extend and operate a marine farm at Big Bay, Banks Peninsula.
2. The application was lodged on 18 March 2017.
3. Prior to the hearing, a report was produced pursuant to section 42A of the Act by CRC's Reporting Officer, Mr Rhett Klopper. This 's42A Report' included technical reviews of the applications by - Dr Lesley Bolton-Ritchie, Senior Scientist, Coastal Water Quality and Ecology for CRC; Mr Ian Fox, Regional Harbourmaster for CRC; Mr Guy Harris, Regional Harbourmaster for CRC; and Mr Bruce Gabites, Senior Scientist, Environmental Science and Hazards for CRC.
4. The s42A Report provided an analysis of the matters requiring consideration and stated that the application should be declined on the grounds it poses a threat to the protection and maintenance of natural character within Big Bay.
5. The s42A Report, the Applicant's evidence and submitter expert evidence were pre-circulated prior to the hearing in accordance with section 103B of the Act. This evidence was pre-read prior to the hearing and was 'taken as read' at the hearing.
6. The hearing commenced at 9.30am on Thursday 28 March 2019 and was adjourned at 6pm the same day.
7. The hearing was adjourned on 28 March 2019 to enable the provision of a revised site layout plan and the Applicant's right of reply.
8. I undertook a site visit by land on 9 April 2019, as part of my consideration of the application.
9. The Applicant's written right of reply was provided on 24 April 2019.
10. I closed the hearing on 30 April 2019.

## THE APPLICATION

11. This application documentation stated resource consent is sought to undertake the activity of marine farming for the purposes of growing green shell mussels (*Perna canaliculus*) and blue mussels (*Mytilus galloprovincialis*), including occupation of the coastal marine area (CMA), disturbance of the seabed, the erection and placement of structures, and the associated deposition of shell material and other natural material associated with marine farming. A consent duration of 35 years is sought.
12. The Applicant holds resource consents CRC011429 and CRC063319.1 which authorise the establishment and operation of an existing 6.16 hectare (ha) marine farm site at Big Bay. These consents were granted by consent order by the Environment Court on 17 June 2003.
13. The s42A Report stated that these consents expired in September 2018. However, the Applicant stated the consents continue to be exercised in pursuant to section 124 and section 165ZH (occupation) given the application was lodged for the same activity and some of the same space, and was lodged at least six months prior to expiry.
14. The application stated that upon installation of the marine farm structures in 2004, it was discovered that due to a mismatch between Land Information New Zealand (LINZ) survey data on the title boundaries and the coastline, it was not physically possible to establish some of the authorised longlines, as they were too close to the shoreline. It noted that therefore, only five longlines were installed on the northern block and three longlines were installed on the southern block.
15. I accept that under section 124(3) and Section 165ZH(2) the existing marine farm can continue to operate until this application has been granted or declined, and all appeals are determined.
16. The consent application stated that the application is to:
  - (a) Renew the current activity carried out pursuant to CRC011429 and CR063319.1;
  - (b) Extend seaward the area of occupation while surrendering the inside area to enable the farm to physically occupy the area originally intended for it to occupy, but which was prevented as a result of survey anomalies; and
  - (c) Extend the marine farm with an additional block of lines to the south west.
17. The s42A Report stated that the original application applied for a total area of 11.32 ha, with a visible extent of 6.5 ha. It stated that the revised layout presented during a site visit amended the layout to reduce potential visual effects on the landowner at the head of Big Bay. The Report stated that the amended layout, as notified, was 13.17 ha, with 7.54 ha visible.
18. The opening submissions for the Applicant confirmed the amended application site comprised three blocks of longlines - two blocks of six longlines (twelve in total) and one block of eight longlines. The Applicant noted that due to concerns raised during the Council's peer review the layout had been amended to remove two longlines from the two northern blocks, to shorten the lines of the most northern block, and to remove the two outer longlines of the most southern block. This was shown in the 'Amended Layout' plan appended as 'Document 2' to the Applicant's opening legal submissions.
19. Following the adjournment of the hearing, the Applicant provided a further amended proposed layout (Attachment 2 of closing submissions on behalf of the Applicant) addressing concerns raised by me during the hearing that the application site should reflect the maximum area required to undertake the proposed activity. This amended application reduced the proposed application site to reflect the removed and shortened longlines and to provide a 5m buffer from the longlines, giving a total area of 7.858 ha.

20. The application and Assessment of Environmental Effects (AEE) included a locality map, a proposed layout plan, an aerial photograph of the existing longlines, and photographs of the receiving environment. Appended were copies of the following reports:
- (a) *'Benthic Survey for a marine farm renewal and extension: Big Bay, Banks Peninsula'* by NIWA prepared for Pigeon Bay Aquaculture Ltd dated October 2015;
  - (b) *'Chlorophyll data analysis'* by NIWA prepared for Pigeon Bay Aquaculture Ltd dated October 2013;
  - (c) *'Marine Farm, Big Bay, Banks Peninsula – A landscape assessment in regard to an application for resource consent for renewal and extension'* prepared by Rough and Milne Landscape Architects for Pigeon Bay Aquaculture Ltd dated October 2017 (**'Landscape Assessment 2017'**);
  - (d) *'Marine Farm, Big Bay, Banks Peninsula – Response to a peer review of a landscape assessment in regard to an application for resource consent for renewal and extension'* prepared by Rough and Milne Landscape Architects for Pigeon Bay Aquaculture Ltd dated February 2018 (**'Peer Review Response 2018'**); and
  - (e) *'Marine Farm, Big Bay, Banks Peninsula – Supplementary landscape assessment relating to a proposed layout option in regard to an application for resource consent for renewal and extension'* prepared by Rough and Milne Landscape Architects for Pigeon Bay Aquaculture Ltd dated April 2018 (**'Supplementary Landscape Assessment 2018'**).
21. In response to a section 92 request for further information, the Applicant clarified two points, and provided an amended proposed layout plan reflecting the recommendations of the Council's peer review of landscape effects (dated 7 May 2018) and a document titled *'Benthic Survey for an extension to a marine farm in Big Bay, Banks Peninsula'* by NIWA prepared for Pigeon Bay Aquaculture Ltd dated November 2017.
22. The AEE and s42A Report included a description of the proposed activity and the affected environment. For the purposes of my consideration, I adopt the description of the affected environment contained in the s42A Report pages 6-10<sup>1</sup>.

## NOTIFICATION AND SUBMISSIONS

23. The application was publicly notified on 31 March 2017 and a number of parties were directly served a copy of the application.
24. Five submissions were received. One submission was neutral and four submissions were in opposition to the application. All submissions received indicated they wished to be heard.
25. I have read all the submission received.
26. The s42A Report accurately summarised the submissions. I adopt the summary and do not repeat it in this decision.

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<sup>1</sup> In accordance with section 113 of the RMA.

## THE HEARING

### Applicant's Case

27. **Mr David Clark**, Counsel, conducted the Applicant's case by presenting opening legal submissions and calling six witnesses. Mr Clark's legal submissions addressed the amendments to the application since lodged, the history of marine farming on Banks Peninsula, the activity status, assessment on renewal, relevant Environment Court cases, the receiving environment, affected person approvals, potential effects (benthic, water quality, phytoplankton depletion effects, biosecurity, coastal processes and hazards, recreational values and navigational safety, and Tangata Whenua and cultural values), consideration of alternatives, landscape, natural character and amenity values, positive effects, section 104(2A) of the RMA, cumulative effects, the New Zealand Coastal Policy Statement 2010 (NZCPS), and relevant policies and objectives. He concluded that the key matter related to landscape, natural character and visual effects and that the evidence of Mr Rough and Mr Bentley should be preferred. He submitted that the application should be granted and that Environment Court's reasons for granting the existing consents still exist, as little has changed in the intervening period.
28. **Mr Simon Acton-Adams**, a director and shareholder of PBAL, provided a written statement of evidence outlining the history of the existing marine farm, productivity, employment, the proposed extension, the structures, and the new farm layout. Mr Acton-Adams noted that the existing site supplied 200 tonnes of premium green mussels annually and that the new configuration would double this production with a minimal increase in occupation. He highlighted the exceptional quality and quantity of the shellfish grown and the unlimited demand for the quality mussels. He noted the direct employment of six people working on Banks Peninsula farms operating from the Port of Lyttelton and anticipated this application would produce a further four full time job equivalents. He noted the farm had only be developed to 75 percent due to the survey inaccuracies and that moving the farm seaward would rectify this.
29. **Mr Edward Aitken**, a director and shareholder of PBAL, provided a written statement of evidence addressing the background to the marine farm, farming land use on Bank Peninsula, marine farming in Banks Peninsula, the history of Big Bay, selection of the site, landscape, the view from the house, affected person approval, recreation and fishing, dolphin and penguins, submissions and cumulative effects. Mr Aitken owns a 1,100 ha sheep and cattle farm that runs from Pigeon Bay through to Big Bay, which is adjacent to the application site. He highlighted the importance of marine farming in diversifying their farming activity and the development of the existing marine farm site in Big Bay and other sites in Pigeon Bay. He noted there is no public access to Big Bay and that the house owned by Earthsea Double Bay Limited ('Earthsea'), which is used as a bach by the current owners, is the old farm house. He noted that the application site is surrounded by farmland and is a 'working landscape'. He said recreational use of the area is very low and that he considered recreational activity is the 'odd man out' in Big Bay.
30. **Mr Stephen Glass**, owner and operator of Ikana New Zealand Limited, provided a statement of evidence outlining his mussel processing business and the export of live mussels. Mr Glass noted the importance of Banks Peninsula marine farms to their supply and is of high quality. He valued the sustainability of the product and support the expansion of the marine farm.
31. **Dr Sean Handley**, a Marine Ecologist with NIWA, provided a written statement of evidence addressing the marine ecological features of the application site and a rocky reef approximately 150 m to the east of the application site. Dr Handley concluded the faunal assemblages sampled at the site were common and widespread in the soft sediment habitats of Big Bay and Banks Peninsula; and

that monitoring surveys showed mussel farming had not caused any significant detrimental effects. He considered the extended site was likely to have no more than minor ecological effects.

32. **Mr Peter Rough**, a Landscape Architect with Rough & Milne Landscape Architects Limited, provided a written statement of evidence addressing the existing marine farm, the proposed marine farm, the landscape context, natural character effects, landscape and seascape effects, visual amenity effects, service vessel effects, cumulative effects, the statutory documents, submissions and the s42A Report. Mr Rough noted that the coastal environment and the Big Bay application site are unmodified when viewed from the land or sea; and considered that the terrestrial landscape of Big Bay and Blind Bay is predominantly and obviously a working landscape, with a surface cover highly modified by human activity. He considered the western side of Double Bay (Blind Bay) is high in natural character and the eastern side (Big Bay) has moderate natural character. He concluded the proposal would not reduce the natural character of Big Bay below moderate. He considered there are no outstanding natural landscapes (ONL) or outstanding natural features in Double Bay or the vicinity and that there would be no adverse effects on identified important ridgelines. He therefore concluded that any adverse effect on natural features and the landscape/seascape of Big/Double bays would be moderate. He considered that visual amenity effects are limited to the land owned by Earthsea and is limited to the spur separating Big Bay and Blind Bay. He concluded any effect on visual amenity from the spur would be slight to moderate. He noted the viewing distance from publicly accessible roads is 4.5 km and the effect on visual amenity would be negligible. He considered some buoys would be readily noticeable from the house in Big Bay, but would not have a marked effect on the overall quality of the scene and their effect on visual amenity would be slight. He considered the effect of the navigation lights would be slight to moderate. From the beach hut he considered the effect on visual amenity would be slight to moderate during the day and moderate at night. From vessels passing by (500 m away), he considered the effect on visual amenity would be slight to moderate; and for vessels within 150 m the visual amenity effects would be significant. He noted the service vessels would have ephemeral effects on natural character, landscape/seascape and visual amenity, but that this is an occasional feature and a low effect. Overall, he considered the s42A Report had 'somewhat overstated the effects' on the basis of Mr Bentley's assessment. Appended to his evidence was a Graphic Supplement containing location maps, site layouts (proposed and amended), a map showing the locations of other marine farms on the north side of Banks Peninsula, photographs of the receiving environment, and aerial photographs showing the sightlines. A replacement of Sheet 2 of the Graphic Supplement was provided with the written right of reply.
33. **Mr Dean Chrystal**, a Planning and Resource Management Consultant with Planz Consultants Limited, provided a written statement of evidence addressing background to the application, consultation and written approvals, the existing environment, submissions, the assessment of effects, the statutory context, the policy framework, other matters and conditions. He concluded that the effects arising from the proposal can be addressed by conditions of consent; and that the proposal is relatively consistent with the overall objective and policy framework. He highlighted that the proposal had been reduced in scale to generally align with what Mr Bentley considered was acceptable from a landscape, natural character and visual perspective. He considered that in taking into account the location of the site, the benefits accruing from the proposal and the range of conditions proposed, the development is able to meet the sustainable management purpose of the RMA. Mr Chrystal also tabled copies of Chapter 12 – Landscape of the Canterbury Regional Policy Statement (**RPS**), Planning Map R2C – Natural and Cultural Heritage of the Christchurch District Plan, Decision 38 - Chapter 9: Natural and Cultural Heritage (Part) – Topic 9.2 of the Independent Hearings Panel Replacement District Plan (pages 11-12), and Policy 8.3 of the RPS. He said these documents make it clear the application site is not within an ONL area.

## Submitters

34. **Mr Mark Beijemin**, attended the hearing and read a statement in opposition to the application. He and his wife have been visiting Double Bay with their family for 14 years. He outlined the importance of Double Bay to his family and their enjoyment of the natural environment. He expressed concern that the existing marine farm is diminishing the natural character of Blind Bay through pollution of the shoreline with detached buoys and floats. He considered Condition (6) of CRC011429 has clearly not been complied with over the 14 years or enforced by the CRC, despite formal complaints. He stated that even after lodging his submission, the pollution had not been addressed and that it is clear the marine farm has not been over designed, as claimed in the Environment Court decision. He considered it was clear the Applicant cannot avoid the discharge of buoys and that this will continue to occur without remedy. He noted that when driving to Double Bay their first view includes the marine farm and that this has a significant impact on the look and feel of the bay. Appended to his statement were photographs showing of a number of detached buoys on the shoreline in Blind Bay taken in March, October and November 2018, and in January 2019; a photograph showing what Blind Bay would look like with the buoys removed; and an email (dated 19 May 2015) to the CRC from Mr Stanley asking for 16 buoys on the shoreline in Big Bay and Blind Bay to be removed.
35. **Earthsea Double Bay Limited ('Earthsea')** were represented at the hearing by **Ms Prudence Steven**, QC, who presented legal submissions in opposition to the application and called two witnesses. Ms Steven's submissions addressed the statutory framework, the Environment Court's 2003 '*Pigeon Bay decision*'<sup>2</sup>, and the assessment of landscape and natural character values. She outlined Earthsea own 140 ha in Big Bay, which contains a dwelling on the seaward end of the spur between Big Bay and Blind Bay. She noted Earthsea consider the adverse effects on occupiers of their land will be at least 'moderate to high' on the basis of the evidence of Mr Espie. She noted Earthsea consider the proposal will be intrusive, too large for the bay and is inappropriate development in this location. She submitted the proposal offends all relevant provisions of the NZCPS, the RPS and the RCEP in relation to natural character and ONL; and fails to recognise and provide for matters in section 6(b) of the RMA and therefore should not be granted.
36. **Mr Stewart Stanley**, who is one of the Directors of Earthsea and a Trustee of the Trust that holds 50 percent of the ownership of the property in Double Bay, read a written statement in opposition to the application. Mr Stanley shared a brief history of the property, and the house and woolshed. He said the property had never been intensively farmed due to its isolation. He noted they had acquired the property in the early 1990s and had constructed fencing to exclude grazing. He said excluding grazing and implantation of a planting programme had encourage vegetation regeneration and biodiversity. He considered these actions had resulted in the high natural character the land exhibits. He considered any man-made structure in the water of any size would seriously compromise Big Bays natural character. He acknowledged the proverb that 'beauty is in the eye of the beholder', but considered they experienced the natural beauty first hand and it is 'outstanding'. He shared a short video of the Big Bay and Blind Bay coastline taken by drone camera and put together by his daughter.
37. **Mr Benjamin Espie**, a Landscape Architect with Vivian and Espie Limited, provided a written statement of evidence addressing the landscape and visual assessment work done by Mr Rough and Mr Bentley; the statutory documents; the Banks Peninsula Landscape Study 2007; public land and public access; the existing natural character, landscape character and visual amenity; the effects of the proposed activities on natural character and landscape character; effects on views and visual amenity; cumulative effects; and describing the degree of an effect. He concluded the proposed marine farm would considerably change the character and visual amenity that is currently present in bay; and would reduce the naturalness within an identified area of ONL. He considered the activity

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<sup>2</sup> *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* [2003] Decision No. C179/2003

does not sit well with the landscape-related outcomes sought by the statutory documents, as the proposal does not preserve and protect natural character, does not avoid adverse effects on the ONL, and is at odds with the NZCPS. Appended to his statement were two context plans and a series of photographs.

38. **Mr Fedrick Sauer**, who owns a share in the ownership of the Earthsea land, read a statement in opposition to the application. Mr Sauer noted the proliferation of marine farms in the unique coastal waters of Banks Peninsula. He said he represented the public that missed the single public notice. He outlined the previous consent process and appeal to the Environment Court, the difficulties faced and flaws with the process. He considered the wording of the public notification indicated a 'roll over' of the existing consent, but noted the consents had expired and there were no provisions for renewal or extension. He considered the proposed marine farm was too large to consider it 'finely balanced' like the Environment Court had previously concluded. He noted there would be no loss to the Applicant if the structures are removed. He considered the effects of the proposal had not been considered as if no marine farm exists and all the documents (application, assessments, public notice, s42A Report and statements of evidence) are 'contaminated' by the view it is an extension and not a new activity. He questioned the review by Dr Bolton-Ritchie and the adequacy of the monitoring undertaken. He said the application site is within the eastern waters of Big Bay and should be assessed in this context, as a 13-17 ha site is more than 40 percent of the eastern coastal waters of Big Bay. He considered there had been too much focus on terrestrial elements and a failure to consider seabed underwater characteristic. He questioned the estimated further jobs and noted pollution of the beach with buoys. He considered the use of 'Double Bay' is a construct of Mr Aitken and that this is clear from reference to any map. He noted the most affected persons are the public through derogation of a pristine area, alienation of public space and resource, and loss of recreation close to Lyttelton and Christchurch. He said the dominant activity in Big Bay and Blind Bay should be recreation. Appended to his statement was a photograph of buoys and rubbish on area adjacent to the foreshore at Blind Bay.

### Section 42A Report

39. **Mr Rhett Klopper**, a Consents Planner for CRC, tabled his s42A Report and provided a number of documents responding to questions raised during the hearing. He provided a table summary of the resource consents held for marine farms on the north west side of Banks Peninsula, a compliance monitoring report for CRC011429 (dated 9 February 2017) and Schedule 5.13 of the Regional Coastal Environment Plan (**RCEP**). He said it was a condition of the existing consent that the buoys are identifiable. However, he later provided a written clarification (on 4 April 2019) that this is not a requirement of CRC011429, but had been proposed in the recommended conditions for CRC175136. He said the requirement to keep a record of marine mammal sightings was originally requested by the Department of Conservation and are a standard condition on all marine farm consents located within the Marine Mammal Sanctuary. Due to a misunderstanding regarding Mr Bentley's assessment table on page 3 of his report (10 May 2018) used for the determination of where 'minor' sits on his seven-point scale, Mr Klopper requested his s42A Report be amended to change the words 'significant' to 'more than minor' (see S42A Report paragraphs 304, 322, 323, 338, 351, 360, 362, 400, 416 and 418). In response to questions, he considered the application should be refused on the basis there would be more than minor adverse effects on the natural character and landscape values of the coastal environment.
40. **Mr James Bentley**, a Landscape Architect with Boffa Miskell, provided a peer review of the Applicant's landscape assessment (dated April 2018) and a memorandum (dated 10 May 2018). He noted that the original peer review was based on the revised layout (provided during the site visit) to reduce visual effects from the private landowner at the head of Big Bay, but that there had been

further amendments and changes since this time. At the hearing, he noted the New Zealand Institute of Landscape Architects (**NZILA**) Best Practice Note<sup>3</sup> recommended a seven-point scale for assessing the scale of effects and that his table tried to align with this to give guide on planning terms such as ‘minor’ and ‘significant’. He said there was confusion between natural character and landscape values. He clarified that the language he used in his paragraph 7.2 of his evidence, that the consent could be approved, was unfortunate and that the amendments made were to mitigate visual effects. He remained of the view the effects on landscape, natural character and visual amenity were within the ‘minor’ and ‘more than minor’ categories, not were not ‘significant’.

### **Applicant’s Right of Reply**

41. Mr Clark provided a written right of reply on behalf of the Applicant and a revised site plan on 24 April 2019. The right of reply addressed the amended (reduced) site layout; surface occupation calculations; the receiving environment of Double Bay; whether Double Bay is an ONL or not; landscape, natural character and amenity effects; consideration of alternatives; Part 2 considerations; consistency of decision making; and compliance issues. In conclusion, Mr Clark highlighted the consensus that all adverse environmental effects would be minor, except on landscape, natural character and amenity, which would not be significant. He submitted that in weighing up the adverse effects against the positive effects the application should be granted. Appended to the closing submissions were Attachments 1-3 showing the amended layouts and an email (dated 16 February 2017) from Mr Acton-Adams to the Council regarding the non-compliance report tabled by Mr Klopper.

### **ASSESSMENT**

42. In assessing the application, I have considered the application documentation and assessment of environmental effects (**AEE**), the s42A Report and technical reviews, expert evidence, all submissions received and the all evidence provided during and after the hearing adjournment. I have summarised this evidence above. I record I have considered all the issues raised in making my determination.
43. I have assessed the application based on the final amendments made in the Applicant’s closing submissions. I accept these are within the scope of the application as notified given the amendments reduce the application site area.

### **Status of the Application**

44. The starting point for my assessment of the application is to determine the status of the activities under the statutory planning provisions.
45. There was agreement that the activities are classified as discretionary activities pursuant to Rule 7.2 (discharges), Rule 8.2 (structures), Rule 8.7 (disturbance), Rule 8.11 and 8.12 (deposition), and Rule 8.23 (occupation) of the Regional Coastal Environment Plan (**RCEP**); and that it is appropriate to bundle these activities and consider the application as a discretionary activity.
46. I agree that associated marine farming activities should be bundled and the application considered as a **discretionary activity**.

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<sup>3</sup> New Zealand Institute of Landscape Architects, Best Practice Note 10.1 ‘Landscape Assessment and Sustainable Management’

## Statutory Considerations

47. In terms of my responsibility for giving consideration to the application, I am required to have regard to the matters listed in sections 104, 104B, 105 and 107 of the Act.
48. Pursuant to section 104(1), and subject to Part 2 of the Act, which contains the Act's purpose and principles, I must have regard to-
- (a) *Any actual and potential effects on the environment of allowing the activity;*
  - (ab) *Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;*
  - (b) *Any relevant provisions of a national environmental standard, other regulations, a national policy statement, a New Zealand coastal policy statement, a regional policy statement or a proposed regional policy statement, a plan or proposed plan; and*
  - (c) *Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*
49. Section 104(2) states that when forming an opinion for the purposes of section 104(1)(a), I may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect. This is referred to as consideration of the 'permitted baseline'.
50. Section 104(2A) states that when considering an application under section 124 or section 165ZH(1)(c), I am required to have regard to the value of the investment of the existing consent holder.
51. Section 104(3)(a)(ii) states that when considering the application, I must not have regard to any effect on a person that has given written approval to the application.
52. In terms of section 104B for a discretionary activity, I may grant or refuse the application, and if granted, may impose conditions under section 108.
53. In terms of section 105, when considering section 15 (discharge) matters, I must, in addition to section 104(1), have regard to-
- (a) *The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
  - (b) *The applicant's reason for the proposed choice; and*
  - (c) *Any possible alternative methods of discharge, including discharge to any other receiving environment.*
54. In terms of section 107(1), I am prevented from granting consent allowing any discharge into a receiving environment which would, after reasonable mixing, give rise to all or any of the following effects, unless the exceptions in section 107(2) apply<sup>4</sup> -
- (c) *The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended material;*
  - (d) *Any conspicuous change in the colour or visual clarity;*

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<sup>4</sup> The exceptions being:  
(a) that exceptional circumstances justify the granting of the permit; or  
(b) that the discharge is of a temporary nature; or  
(c) that the discharge is associated with necessary maintenance work—  
and that it is consistent with the purpose of this Act to do so.

- (e) Any emission of objectionable odour:
- (f) The rendering of fresh water unsuitable for consumption by farm animals:
- (g) Any significant adverse effects on aquatic life.

55. I consider each of these sections of the RMA separately below.

## SECTION 104(1)(a) - ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

### The Existing Environment

56. In making my assessment, I am required to consider the actual and potential effects of the activities on the existing environment. The existing environment is that which exists at the time this determination is made and includes lawful existing activities, permitted activities and activities authorised by existing resource consents.
57. There was agreement between the Mr Clark, Mr Chrystal, Ms Steven and Mr Klopper that approach taken by the Environment Court in *Port Gore Marine Farms Ltd v Marlborough District Council*<sup>5</sup> (and accepted by the High Court<sup>6</sup>) requires the assessment of the application for the purposes of section 104(1)(a) to be undertaken as if the existing marine farm is not actually part of the existing environment.
58. I accept this approach and confirm I have assessed the application as if the existing marine farming structures are not part of the existing environment.
59. However, I also accept the submission of Mr Clark that the Environment Court's decision in *Friends of Nelson Haven and Tasman Bay Inc. v Tasman District Council* indicates that the existence of the marine farming structures have relevance in informing the evidence on effects; and that its actual modification can be used as a measure rather than relying on notional devices such as photo simulations. I also acknowledge that the monitoring undertake for the existing consents has informed the assessment of effects, particularly with regard to water quality and benthic ecology effects.
60. I also accept the submission of Mr Clark that the Environment Court's decision in *Clearwater Mussels Limited v Marlborough District Council*<sup>7</sup> indicates that assessment of natural character is not made on the basis that the marine farming activity has not been present within the environment in terms of effects such as impacts on benthos. I acknowledge adverse effects on the benthic environment can impact on natural character and that the site is not pristine given the existing marine farm. I accept that any existing impacts on the benthic environment are part of the existing environment for the purposes of this assessment.
61. I have considered Mr Sauer's view that all of the documentation has been 'contaminated' by the incorrect approach that the application is for a renewal or an extension to the existing consent. I find, on my careful examination of the documentation, there is no basis for this view, with the exception of the Applicant's landscape assessment and the evidence of Mr Rough. In particular, the s42A Report clearly states in paragraph 81 that the application has been processed as a new activity and as if the existing consents have been 'discontinued'. The Council's peer review considered two scenarios which included assessing the effects with no existing marine farm. I deal with the

<sup>5</sup> [2012] NZEnvC 72 at paragraph 140.

<sup>6</sup> *Ngati Rangi Trust v Manawatu Whanganui Regional Council* [2016] NZHC 2948 at paragraph 64.

<sup>7</sup> Decision No. [2018] NZEnvC 88 at paragraph 122

landscape assessment approach taken by Mr Rough in my assessment of the effects on natural character, landscape and visual amenity below. Furthermore, I record that there are no separate provisions for the consideration of a consent renewal and all applications are subject to the same considered under section 104 of the RMA.

62. I have been provided with copies of written approvals from Mr Edward Aitken on behalf of the Craigforth Trust (as the adjoining landowner), Mr Christopher Chamberlain (as a Blind Bay landowner), and Mr Charles Crofts (on behalf of the Port Levy Rūnunga). I have disregarded any effects of the application on these people in accordance with section 104(3)(a)(ii).
63. I do not consider the application of a permitted baseline in accordance with section 104(2) is helpful in this case.

### **Actual and Potential Environmental Effects**

64. The s42A Report considered the potential effects on:
- (a) The benthic environment, water quality and ecosystems;
  - (b) Coastal processes and hazards;
  - (c) Public access, recreational activities and navigational safety; and
  - (d) Natural character, visual, landscape and seascape.
65. The s42A Report concluded that there were unlikely to be any significant adverse effects on the benthic environment, water quality and ecosystems; and that any adverse effects on coastal process and hazards, public access, recreational activities and navigational safety were likely to be minor.
66. I note that the application site is with the Banks Peninsula Marine Mammal Sanctuary and I have had particular regard to any actual or potential adverse effects on the habitat of the endangered Hector's dolphin. Overall, I accept the s42A Report conclusion that any potential adverse effects on marine mammals and seabird is likely to be less than minor.
67. I accept the submissions of Mr Clark that the environmental effects of marine farming in New Zealand water are reasonably well studied and understood. On the basis of the evidence presented, I accept that potential and actual adverse effects on water quality, the benthic environment and aquatic ecosystems from marine farming at the existing marine farm site are minor and localised. I note the Applicant's AEE has been peer reviewed by Dr Bolton-Ritchie (Senior Scientist, Coastal Water Quality and Ecology for CRC), and that the assessment and conclusions are informed by actual data and measurements collected through investigations and monitoring. I accept the Applicants ecological and water quality assessment, and monitoring undertaken for the existing marine farm, are adequate on the basis of the technical review of Dr Bolton-Ritchie. Overall, I accept that any adverse effects on water quality, the benthic environment and aquatic ecosystems can be sufficiently avoided, remedied and mitigated by the imposition of appropriate consent conditions.
68. I have considered concerns raised regarding pollution of the foreshore by detached buoys from marine farming activity. I note the photographs provided by Mr Beijemin and Mr Saur show general rubbish and buoys which have washed up as flotsam and jetsam in Blind Bay. While I agree that this is unacceptable, I consider it not possible to directly link the general debris with marine farming activity. I agree the buoys are likely to be from the existing marine farming activity and consider this can be addressed by the imposition of conditions and enforcement of these conditions. I consider any matters of non-compliance are relevant to my consideration of appropriate consent conditions.

69. On the basis of the AEE and the advice of Mr Gabites (Senior Scientist, Environmental Science and Hazards for CRC), I accept any adverse effects on coastal processes and hazards are likely to be no more than minor.
70. I accept that issues relating to matters of biosecurity can be addressed by the imposition of consent conditions and compliance with the appropriate industry codes of good practice.
71. On the basis of the AEE and the evidence of Mr Fox (Regional Harbourmaster for CRC), Mr Harris (Regional Harbourmaster for CRC) and Mr Aitken, I accept that any adverse effects on navigational safety and recreational values are likely to be less than minor. I also acknowledge the submission by Mr May on behalf of the Canterbury Yachting Association, that Big Bay is not a favoured recreational boating area. I accept there is a low level of recreational use due to the relative isolation of the site and the predominant weather conditions. While I have considered concerns raised regarding adverse impacts on the use of small boats and kayaks, I find any adverse effect will be minor given relatively small scale of the site in the context of Double Bay and the fact that marine farming structures do not prevent access through the site or along the coastline.
72. I accept there is no public access to Big Bay or Blind Bay by road. The public will still be able to access the beach and coast by boat. I therefore do not consider the application will have any adverse effects on public access to and along the CMA. I accept the evidence of Mr Aitken that public access along the shoreline adjacent to the site is currently limited and would be dangerous without crossing his land. I acknowledge Mr Espie's comments that walking access to the headland adjacent to the site is relatively easy. I disagree and consider any 'track' is likely to be at times on private land. Mr Espie acknowledged he has no evidence on public use, but considered it to be low. I find there will be no adverse effect on public access to and along the CMA.
73. I acknowledge that any potential adverse effects on Tangata Whenua and cultural values is closely related to my findings in relation to effects on ecological values, water quality, recreation and access to the CMA. I have no evidence to suggest that the application will adversely affect Tangata Whenua and cultural values. I note the evidence of Mr Chrystal that Ngāi Tahu have Statutory Acknowledgement over Te Tai o Mahaanui (the Selwyn – Banks Peninsula CMA) and that the Applicant has consulted with the local rūnunga. I note the written approval of Mr Crofts on behalf of the Port Levy Rūnunga.
74. On the basis of the evidence presented and the conclusions of the s42A Report, I consider that with the imposition of consent conditions, the actual and potential adverse effects are primarily restricted to landscape, natural character and visual amenity. I therefore focus my assessment on these matters. I consider concerns regarding cumulative effects primarily relate to landscape, natural character and visual amenity effects and I therefore consider any potential cumulative effects in relation to these values. I acknowledge that public access, water quality, recreation use, navigational safety and quality of the environment all contribute to the overall amenity of the area, and that these values overlap with natural character and landscape values. However, on the basis of the evidence present and my findings above, I have focused on visual amenity effects. Similarly, I acknowledge ecological values and biodiversity inform natural character and landscape values.

## Natural Character, Landscape and Amenity Effects

75. Submitters in opposition have raised concerns that the proposed marine farm will have significant adverse effects on natural character, landscape and amenity values. Submitters emphasised the outstanding natural beauty and remoteness of the bay, and its outstanding natural character values.
76. The Applicant's Landscape Assessment 2017 stated the eastern side of Double Bay has moderate natural character and moderate sensitivity to change due to the presence of the existing marine farm and grazing of the pasture covered headland. It stated the proposal would result in a further diminution of the natural character of the eastern side of Double Bay, but is not extensive enough to reduce it from moderate. It noted there were no outstanding natural features or landscapes in Double Bay, Big Bay or Blind Bay or in the vicinity of these bays. It stated that the visual amenity of Double Bay is high, and that the existing marine farm somewhat disrupts the visual amenity when viewed at relatively close quarters. It concluded the visual effects of the marine farm would be: slight to moderate when viewed from farmland; negligible when viewed from public roads; slight (during daytime) to moderate (during night time) when viewed from the dwelling; and slight (during daytime) to moderate (during night time) when viewed from the beach hut. It concluded that from the water visual effects would be dependent on viewing distance ranging from negligible at more than 900m, to slight to moderate at more than 500m, and significant at less than 150m. It concluded the extension would not give rise to any additional cumulative visual effects.
77. The Applicant's Peer Review Response 2018 addressed matters raised in the Council's review of the landscape assessment by Mr Bentley. It set out the landscape assessment methodology, the level of analysis, sensitivity of the underwater marine environment, landscape, seascape and the statutory framework.
78. The Applicant's Supplementary Landscape Assessment 2018 was prepared to address the amendments made to reduce the southern end and northern ends of the proposed site and the number and length longlines to the west. It concluded the changes would reduce the marine farm's visibility from the head of Big Bay, including from the dwelling and beach hut; and would also lessen effects on natural character, seascape, and visual amenity.
79. Mr Clark submitted that the assessment of landscape, natural character and amenity has been well scrutinized by the Environment Court. He considered that Mr Espie had not considered the application within the whole context of Double Bay. He submitted that the 'public viewing spaces' considered by Mr Espie (where the effects were assessed as 'high') are rarely visited by the public and are inaccessible without crossing private land.
80. Mr Aitken considered the appearance of Big Bay is that of a 'working landscape' and that its natural state is suppressed by farming activities. He noted the block of commercial forestry, the house, the woolshed and the beach hut/bar, and old jetty. He considered these features, combined with more weed species, gave the landscape a 'more exotic appearance' than when the Environment Court visited in 2003. He noted the farm land continued to be developed by 'conservation tillage' and drill planting new pasture, which changes the visual appearance of the land. He considered the working land of Big Bay is far from natural.

81. Mr Aitken noted that the house is 1.2 km from the closest marine farm buoy and 1 km from the beach hut/bar and considered this to be distant and in no way intrusive given the separation distances.
82. Mr Rough noted the visual portion of the marine farm represented a small percentage (4 percent) of the 122 ha of Double Bay. He highlighted the landscape context of Banks Peninsula, the dramatic changes to the landscape overtime and the long and intricate coastline. He noted the prominent headlands consist of modified grassland, few native trees and small pine plantations. He acknowledged that while the landscape in terms of its vegetative cover has been transformed, there are few man-made structures present. He considered the general coastal environment in the vicinity of the site to be unmodified, but that the surface of the terrestrial landscape has been highly modified by human activity. He noted western side of Double Bay (Blind Bay) has moderate to high natural character and is somewhat sensitive to change; whereas the eastern side (Big Bay) has moderate natural character and has a moderate sensitivity to change. He considered results of the benthic survey indicated that the sensitivity of the underwater marine environment in the vicinity of the application site is medium to low and that the magnitude of change caused by the marine farm would be medium to low. He concluded that overall, the effects of the marine farm on natural character would be moderate.
83. In relation to landscape and seascape effects, Mr Rough concluded the magnitude of change would be medium to low; and that overall the adverse effect would be moderate and would not give rise to a significant diminution of the landscape and seascape.
84. Mr Rough noted that overall Double Bay has a generally high visual amenity value. He considered that the existing marine farm somewhat disrupts the visual amenity of the seascape, but that this disruption only occurs when viewed at relatively close quarters. In response to questions, he clarified that 'close quarters' would be from a vessel within 300 m of the application site. In his assessment, he considered the visual effect from farmland (excluding that owned by people who had provided written approval), public roads, the habitable area of Big Bay, and from the water. He concluded that the overall any change in visual effect would be 'slight to moderate' and would not generate 'moderate to significant' or 'significant' adverse visual effects. His assessment also included the visual effect of six navigational lights and concluded the effect would range at the four locations assessed from not discernible (from the water more than 1 km way), to slight (from the water more than 500 m and from farmland on the spur), to slight to moderate (at the dwelling), to moderate (at the beach hut). He considered there would be no effect on the darkness of the sky.
85. In response to questions regarding his assessment and whether he had incorrectly considered the existing farm to be part of the existing environment and had considered the magnitude of change rather than the effects of the proposal, Mr Rough stated that he had used the existing farm to assess the magnitude actual effects. In his view, he considered the existing marine farm had not significantly diminished the natural character and landscape values of Big Bay and that the proposed marine farm would be only slightly larger. He also considered the existing marine farm had slight to moderate adverse visual effects and that the proposed marine farm would result in similar visual effects. He pointed out that paragraph 142 of his statement of evidence addressed this matter and confirmed his approach.
86. Mr Rough considered the service vessel effects using the purpose built 23 m 'St George', which currently services the marine farms around Bank Peninsula. He concluded that the 'relatively low

profile, its bulk and quiet hum' and its ephemeral nature would mean there would be a low effect on natural character, landscape/seascape and visual amenity of the outer Big Bay and eastern side of Double Bay.

87. In terms of cumulative effects, Mr Rough considered the principal consideration is from vessels travelling around the coast and concluded the impact would be low.
88. Mr Rough took issue with Mr Bentley's 'Summary of Effects' table, upon which Mr Klopper had relied on in relation to the rankings of effects and his determination of where 'minor' sits on a seven-point scale. He outlined the differences in his and Mr Bentley's assessment were few and primarily related to his conclusion that the overall effect on natural character and landscape would be moderate, whereas Mr Bentley concluded these effects would be moderate to high. He noted Mr Bentley concluded the visual effects from buildings would be moderate, whereas he concluded these would range from slight (from the dwelling) to moderate (from the beach hut). He considered the use of terms such as 'minor' and 'less than minor' are normally used by planners and overstate the effects. He disagreed with paragraph 285 of the s42A Report, as he considered the location, layout and scale of the farm adequately recognises the natural characteristics and qualities of the site and Double/Big bays. He highlighted the agreement that significant adverse effects are avoided.
89. Mr Rough disagreed with Mr Klopper's statements that the marine farm would become the dominant element in the area and considered the headlands would remain the dominant element. He considered Mr Klopper had focus on the physical structures at the head of the bay and the seascape in concluding it is a relatively unmodified environment and not the modified terrestrial environment.
90. Ms Steven submitted that the correct approach to the assessment of natural character and landscape values is what underpins the difference between the parties. She noted that it is agreed that the assessment must proceed as if the existing marine farm structures are not present and imagine a 'notional existing environment' free of the existing marine farm. She submitted that Mr Espie and Mr Bentley had clearly taken this correct approach, whereas Mr Rough's assessment continues to rely on the fact that this is a renewal of an existing farm. She submitted Mr Rough had been unable to ignore the farms existence and his evidence shows he cannot 'shake it off' throughout his assessment.
91. Mr Espie noted Mr Rough concluded that the eastern side of Double Bay has moderate natural character values because he incorrectly considered the presence of the existing marine farm; whereas Mr Bentley correctly considered there was no marine farm and concluded the marine environment has high natural character and the terrestrial environment has moderate to high natural character values. He noted that the elements of modification referred to by Mr Rough are confined to the southern part of Big Bay, except for grazing and the marine farm. He said that human modification was limited to light farming. He considered elements confined to the southern part of the bay have '*...very little influence over the character of Big Bay overall and do not sully the open, stark, high legible land that forms the eastern side of Big Bay and is headland*' (pg. 9, paragraph 27). Overall, he agreed with the conclusions of Mr Bentley regarding natural character values.
92. Mr Espie considered Mr Rough had understated the visual amenity of Big Bay and its surrounding vicinity. He stated that 'natural overwhelms the senses' and that the landscape has not been tamed by human influence. He considered that visual amenity values are particularly high and that these in

conjunction with his (and Mr Bentley's) finding on natural character, accord with the descriptions of the Banks Peninsula landscape in the RPS and RCEP.

93. Mr Espie quoted from Mr Rough's evidence and noted that in finding that the overall adverse effect on natural features and landscape/seascape would be moderate, he had again incorrectly taken into account the existing marine farm and mitigation that the proposed farm would overlay the existing site. He noted this contrasted to the finding of Mr Bentley, who had correctly ignored the existing marine farm, that adverse effects on landscape would be moderate to high. He said he largely agreed with Mr Bentley and considered the marine farm would considerably alter the natural elements of starkness, simplicity and emptiness. He said this considerable alteration to the character of the bay was a case of 'first cut is the deepest' and was a fundamental shift in character and a reduction in naturalness.
94. In relation to effects on views and visual amenity, Mr Espie noted consideration should be given to views from public land. He agreed that the visual effects from formed roads are not particularly relevant. He noted that Mr Rough had again taken into account the presence of the existing marine farm in his assessment of the visual effects of the proposal; and that his assessments were confusing and understate the visual effects in his executive summary. Mr Espie considered the visual amenity of the bay (without the existing marine farm) is characterised by openness, starkness, emptiness, exposure to the sea, sun, wind light and atmospheric conditions; and that the proposed marine farm would considerably change the type of amenity that is experienced.
95. Mr Espie noted that some parts of the existing marine farm were '*...discernible, although this is difficult*' (pg. 14, paragraph 52) from the dwelling during the day and he had not assessed the scene at night. He noted Mr Bentley generally agreed with Mr Rough's findings regarding visual effects from the dwelling and beach hut and that he did too. However, he noted:  
*'...the effect on the visual amenity of the users of these buildings will amount to a change from views of an entirely unoccupied bay to one with human elements and activity on the water's surface; a considerable change'* (pg.14, paragraph 54)
96. In relation to views from the water, Mr Espie essentially agreed with Mr Rough and Mr Bentley, but again stressed the 'substantial' visual change from a 5 ha marine farm, lights, and boat and worker activity. He concluded that for viewers immediately adjacent to the site the visual effects would be of a 'very high degree'. He noted that Mr Bentley agreed with this finding from elevated views for the adjacent farmland.
97. Mr Espie considered views and visual effects from public land. He acknowledged he had no knowledge of the degree of use the public land gets, but imagined it is low. However, said there are numerous locations where the public land is accessible by boat and its use may increase in future. He considered Mr Rough had not fully taken into account the extent of public land in the vicinity of Big Bay and provided Appendices 1 and 2 showing land owned by LINZ that is accessible to the public. He considered the broad strip of public land from Port Levy to Pigeon Bay is walkable in places and could, at some time in the future, be formed into a walking track. He referred to legal road alignments that connect the beach at Big Bay to Little Pigeon Bay Road and Putiki Road that could be linked and formed in the future. He considered that given the 35-year consent term sought, the visual effects from public land needed to be considered over a long period when Big Bay may be more used and appreciated by the public than it currently is. He said that the public land allows 'good access along the coastline'.

98. Mr Espie considered cumulative effects on natural character, landscape character and visual amenity. He posed the question – at what point will the accumulation of marine farms along the northern coast of Bank Peninsula adversely affect the characteristics that make it an ONL? He considered the accumulation of marine farms was beginning to reduce the natural character of this coastal environment.
99. Mr Espie noted that Mr Rough used a five-point scale to describe the effects on natural character and landscape character and Mr Bentley used a seven-point scale. He said that neither used the seven-point scale endorsed by the NZLI. However, he considered Mr Bentley’s seven-point scale was suitable and understandable and had therefore used his seven-point scale. He considered Mr Rough’s scale was problematic because it used the term ‘significant’, which is a term that is used in the RMA. He also made the same criticism of Mr Bentley’s attempt to associate words from the RMA with his seven-point scale for quantifying the degree of effect; and noted an effect is only deemed ‘significant’ if it is in the upper two gradations of his seven-point scale. He noted Mr Rough criticised Mr Bentley in relation to the use of ‘minor’ and that he agreed with Mr Rough.
100. The s42A Report relied on the evidence of Mr Bentley and his peer review of Mr Rough’s assessment. The Report noted that Mr Rough had considered the existing marine farm as part of the existing environment and that Mr Bentley had considered the proposal as a new activity and the existing environment as entirely void of the existing marine farm. On the basis of Mr Bentley’s review the Report concluded that the potential adverse effects of the proposal on natural character, landscape and visual amenity would be ‘more than minor’, but not ‘significant’.
101. The peer review by Mr Bentley assessed two scenarios – ‘Scenario 1’ with the existing marine farm as part of the environment; and ‘Scenario 2’ with the proposal as new. He noted it was good practice to separate the natural character of an area into terrestrial and marine areas. He concluded that the natural character of the marine environment (without the existing marine farm) is ‘high’; and the natural character of the terrestrial environment of the whole of Double Bay as ‘moderate to high’. He considered the area to be ‘moderate to highly’ sensitive to change due to the lack of structures, and exposure close to the mouth of the bay and open waters of Pegasus Bay. He agreed there would be a diminution of natural character, but that this would not be significant. He concluded there would be a high level of natural character effects within 500m of the marine farm, which would reduce with distance.
102. Mr Bentley concluded the landscape effects of the proposal would be greater than ‘moderate’ and more towards the ‘moderate to high’ category due to the fact that the farm would appear as a large structure in a reasonably small bay, which would interrupt the naturalness and legibility of the seascape in the bay. He noted the proposal extends further into Pegasus Bay and that this would amplify to some extent the level of seascape effects into the more open waters of Pegasus Bay. He considered reducing the extent into Pegasus Bay would reduce landscape effects to the ‘moderate’ category and contain the effects more to Big Bay. His recommended changes were shown in Figure 2 (pg.11) of his peer review.
103. In relation to visual effects, Mr Bentley generally agreed with the conclusions reached in the Applicant’s Landscape Assessment 2017 when viewed from farmland. However, to ameliorate effects from the dwelling and beach hut he recommended that two longlines be removed from the seaward extent of the farm and small portion removed from the northwest part of the proposed site shown in Figure 2 of his peer review. He considered these amendments would reduce the visual presence

of the farm in views from the head of Big Bay extending across the mid-waters of the bay. He agreed that when viewed from the water the viewing extent was limited to parts of the bay itself. He stated the Landscape Assessment underestimated the visual change in the open natural environment and considered the effects from boats in Big Bay would be in the 'moderate-high' category. However, with the recommended amendments, he agreed with Mr Rough that visual effects from the sea would be reduced to 'moderate'.

104. Mr Bentley considered the application would increase cumulative effects, but that these are reasonably well contained by the placement of the farm at the eastern end of Big Bay (as opposed to located offshore in Pegasus Bay) and are not characteristically out of the ordinary given the presence of other farms nearby. He concluded the cumulative effect would be moderate to low.
105. In his memorandum, addressing the amended layout, Mr Bentley confirmed his conclusions that the effects on natural character would be reduced to 'moderate-high'; the effects on landscape would be reduced but remained 'moderate-high'; the visual effects from private farmland would be reduced to 'moderate'; the visual effects from buildings would be reduced to 'moderate'; the visual effects from the water within 500m would be reduced to 'moderate to high'; and cumulative effects would remain 'moderate-low'. Overall, he considered the landscape, natural character and visual effects were within the 'minor' and 'less than minor' categories, and not 'significant'
106. In reply, Mr Clark submitted that any consideration of the effect of the occupation of space must be made within the context of Double Bay and not Big Bay. He noted this is consistent with the Environment Court's *Pigeon Bay* decision and the fact there is no clear definition of Big Bay. In line with this, he advised the amended site layout (seabed footprint) was 6.44 percent of Double Bay and the surface occupation (visible structures) was approximately 4.2 percent of Double Bay.
107. Mr Clark noted there was a lot of common ground between Mr Rough and Mr Bentley; and submitted that by the conclusion of the hearing, the three experts agreed that any adverse effect on natural character and amenity would not be significant.

### **Findings**

108. The Applicant's Landscape Assessment 2017 of the effects on natural character, landscape and visual amenity were based on the original proposal for a marine farm application site area of 13.17 ha, with a visible extent of 7.54 ha. The final proposal shown in the revised layout (Attachment 2 of the Applicant's Closing Submissions) is for a marine farm application site of 7.858 ha (including 5 m buffer from the longlines), with a visible extent of 5.102 ha (Attachment 3 of the Applicant's closing submissions) based on the recommendations of Mr Bentley. I accept the reduction in the size and form of the application site have been made to mitigate reduce the adverse effects on natural character, landscape and visual amenity.
109. I consider the evidence of Mr Rough contains a number of references to the presence of the existing marine farm and indicate his assessments may have been affected by an incorrect approach to the existing environment. However, I questioned him on each reference made in evidence during the hearing and he assured me he had not taken the existing marine farm into account in reaching his overall conclusions. While I remain somewhat unconvinced that Mr Rough consistently applied the correct approach, I have given significant weight to the fact there is very little difference in the overall findings of the three experts. I have ignored 'Scenario 1' of Mr Bentley's peer review.

110. I consider it is significant that there is agreement between the experts that any overall any adverse on natural character and landscape will be no more than ‘moderate to high’ and that based on the seven-point scale used by Mr Bentley (and accept by Mr Rough and Mr Espie), this would not equate to a significant adverse effect in planning terms. I have considered the concerns raised by Mr Espie regarding the table used by Mr Bentley to translate the landscape assessment seven-point scale into planning terms such as ‘minor’ and ‘significant’, but find Mr Bentley’s table is helpful. I accept that it seems appropriate that the top two points – ‘high’ and ‘very high’ – would equate to a significant effect.
111. I confirm I have made my assessment of effects on the basis that the existing marine farm does not form part of the existing environment. However, I consider the existing farm has helped inform my assessment of the likely actual effects, without the need to rely on tools such as photomontages. I have been mindful that the existing farm is smaller in scale, and different in form and location; and that the proposed marine farm will extend further seaward to the north and west, and to the south.
112. I accept that the natural character of the application site within the wider context is ‘moderate to high’. I find that the proposal will not result in a significant diminution of the existing natural character. I agree with Mr Rough that the existing marine farm has not significantly diminished the overall natural character of the bay. I do not agree with Mr Espie that the proposal will considerably alter the natural elements that contribute to the existing natural character. Overall, I consider the natural elements of landscape and seascape will continue to dominate application site and the wider bay.
113. I consider a change in landscape character is not in itself an adverse effect on landscape and visual amenity. To find that the proposed farm will be visible from certain views if not necessarily adverse. I consider the Applicant has made a number of significant amendments to the form and extent of the proposed site to reduce landscape and visual effects. In particular, the layout has reduced the northern extent to avoid extending into Pegasus Bay past the headland and to reduce the southern and north-west extent to reduce the visual extent across the mouth of the bay. In my view, this has reduced the landscape and visual effects to a moderate level.
114. It is agreed that the visual amenity of Double Bay/Big Bay is high. It is also agreed that visual amenity effects of the amended layout will generally range from slight to moderate when viewed from the land and buildings owned by Earthsea. It is agreed that visual amenity effects will only be significant when viewed from the water within close proximity to the marine farm (within 150 m). It is clear from the evidence that most vessels in the area are transiting around the coastline at a much greater distance; and that the predominant weather conditions and relative isolation of the area result in low levels of recreational use. I acknowledge that small boats and kayaks may be used within the bay itself, but that this is seasonal, intermittent and infrequent. I consider visible marine farm structures (buoys) are not incongruous in the marine environment when viewed from the water and will not dominate the visual amenity given the scale of the headlands and rock cliffs. I consider the terrestrial landscape and rocky cliffs, and the open and natural characteristics of the seascape will continue to dominate the visual amenity when viewed from the water. Overall, I find that the proposed form and location of the marine farm will maintain the high amenity environment that exists without any marine farm structures. I consider the considerable separation between private land and accessible public roads mitigates adverse visual effects from the head of Big Bay.

115. I accept the evidence of Mr Aitken that public access along the coastline adjacent to the application site is difficult without crossing private land. I consider existing public use, as far as out as the application site, is likely to be extremely limited due to the steep slope of the headland and rocky cliff, and no formed public access to Big Bay and foreshore. I accept that access to the headland itself is by permission of the landowner. I do not accept that the existence of a paper road along the shoreline means public access is physically possible. It is not appropriate to speculate as to whether public access may be provided in the future or that public access will increase, although it seems unlikely given the terrain.
116. I confirm I have made my assessment on natural character and landscape within the context of Big Bay and the wider Double Bay because the proposed marine farm is located within the mouth of both bays. I note Mr Sauer's concern that maps do not refer to 'Double Bay' and that this is a construct of Mr Aitken. However, I consider the use of the name Double Bay does not change the location of the marine farm, the physical form of the shared mouth, or my consideration of the application within the receiving environment. It is agreed that the natural character of Blind Bay is higher than Big Bay, so I see no valid argument that to confine my assessment to the context of Big Bay.
117. In terms of the occupation of space, I accept the wider Double Bay is the appropriate context given the location of the proposed site. Overall, I find the application site is a small proportion of the open space of the bay.
118. Given the separation of the proposed marine farm from any other existing marine farms and the limited number of other consented sites (eight), I find any cumulative effect on natural character, landscape or visual amenity will be low.

#### **SECTION 104(1)(ab) – POSITIVE EFFECTS TO OFFSET OR COMPENSATE FOR ADVERSE EFFECTS**

119. The s42A Report noted that there is no doubt that the proposed marine farm would have positive economic effects and would provide employment opportunities. It acknowledged these socio-economic benefits would be for the Applicant and those related to the mussel farming industry in Banks Peninsula.
120. Mr Clark noted there are unquestionable positive effects for the Applicant and the people the Applicant employs. He highlighted the evidence of Mr Glass that confirms an industry has grown up based on Banks Peninsula mussel farming and the further employment provided by the activity in addition to the direct provision of jobs.
121. The evidence of Mr Acton-Adams outlined the positive social and economic effects of the existing marine farm, and the expected doubling of production from the proposal and an expected increase of four full-time equivalent jobs.
122. Mr Aitken emphasised the importance of marine farming in diversifying and increasing their farm income.
123. Mr Chrystal highlighted the indirect contribution to employment opportunities through the provision of infrastructure, equipment, testing and labour associated with the installation and maintenance of the marine farm. He also noted the contribution to providing foreign exchange to the New Zealand economy through export of the product.

## **Findings**

124. On the basis of the evidence presented, I find the application will result in positive socio-economic effects for the Applicant and those involved in the marine farming industry. I note that based on the amended layout and the reduced extent, these are likely to be somewhat less than estimated by the Applicant. However, based on the current operation, I accept these are not insignificant at a local level. I have had regard to these in making my overall determination.

## **SECTION 104(1)(b) - RELEVANT PLANNING PROVISIONS**

### ***Is the application site located within an area identified as an Outstanding Natural Landscape (ONL)?***

125. Mr Clark submitted that Mr Espie had considered the application site to be within an area of ONL and that this was not legally valid. He submitted there is simply no provision in the RCEP which identifies either Double Bay or Big Bay as being part of an ONL, and there is no doubt that the application site is not within an area of ONL.
126. Mr Chrystal provided copies of Objective 12.2 and Policy 12.3 of the RPS to support the view that the RPS provides the context for a broad identification and protection of ONL and outstanding natural features, while enabling specific boundaries to be included in plans determined through detailed assessments. He highlighted the RPS<sup>8</sup> stated that the preparation of the RPS included the Canterbury Regional Landscape Study Review 2010 (**'2010 Landscape Study'**) which was undertaken to identify values of outstanding natural features and landscapes at a broad regional level; and that due to the broadness and scale of the landscape study it is acknowledged that local authorities will need to undertake detailed, collaborative studies at the appropriate scale and context to ensure outstanding landscapes and features are identified in both district and regional plans.
127. Mr Chrystal highlighted Policy 8.3.1 (Chapter 8 – The Coastal Environment) of the RPS states that knowledge and understanding of the coastal environment will be improved by the CRC developing a regional coastal strategy and regional plans; and by gathering information, including by identification and mapping of areas of high and outstanding natural character and outstanding natural features and landscape. He also provided Planning Map RC2 of the Christchurch District Plan (**'District Plan'**) which shows that the coastal environment (land) on the eastern side of Double Bay and the head of the bay is not identified as an 'Area of at least High Natural Character in the Coastal Environment'; and that the headland on the western side of Double Bay (excluding Blind Bay) is shown 'Area of at least High Natural Character in the Coastal Environment'.
128. Ms Steven submitted that there is not consensus that the application site is not within an ONL. She said it is Mr Espie's evidence that the area is identified as an ONL in the RPS and the RCEP, and that the classification in these instruments should prevail over the District Plan. She submitted that the classification of the land and identification of ONL in the District Plan is completely irrelevant to the application and that the CMA of Banks Peninsula is part of an ONL, as identified in the RPS. She said the District Plan must be put to one side and cannot inform the decision, not even under section 104(1)(c). She submitted Mr Bentley had not considered the provisions of the regional instruments that relate to ONL values, and that the classification of the whole of Banks Peninsula as an ONL has been incorporated in the RCEP provisions. She noted Mr Bentley had not provided an explanation

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<sup>8</sup> Chapter 12 – Landscape, pg. 3-4

for ignoring the ONL recognition in those documents in favour of the District Plan. She said it is 'curious' that the Banks Peninsula Landscape Study 2007 (commissioned by the Christchurch City Council) predates the regional study and that the Applicant and Mr Bentley seem to prefer the District Plan study. She considered it was 2010 Landscape Study that informs the RCEP. She submitted that if it is accepted that the application site has ONL status there is no basis upon which the application is able to be granted.

129. Mr Espie noted the activities require consent in relation to the Regional planning documents. He therefore disagreed with Mr Rough that District Plan and maps are relevant. He considered the proposed activities are expressly within the identified ONL of Banks Peninsula in the RPS and were derived from the 2010 Landscape Study. He noted the characteristics of this ONL are set out in the RPS (particularly Appendix 4) and the RCEP. In response to questions, he considered this classification included all of the CMA surrounding Banks Peninsula. He therefore concluded NZCPS Objective 2 and Policy 15 '*...leaves very little room for any degree of adverse effect on the natural character or landscape character of Banks Peninsula*' (pg. 6, paragraph 18).
130. Mr Espie commented on Mr Rough and Mr Bentley's reference to the 2007 Landscape Study. He considered it is of some significance that this pre-dated the 2010 Landscape Study and that the 2010 Landscape Study still identified all of Banks Peninsula as an ONL. He considered the District Plan maps and notations referred to are not of central relevance in this case, whereas the Regional documents are of central relevance and clearly identify the site of the proposed activities as being within an ONL.
131. The s42A Report noted that the area is not listed as an area of Significant Natural Value in Schedule 1 of the RCEP.
132. Mr Bentley considered the landscape to be impressive, but not outstanding at a district scale and that NZCPS Policy 15(a) does not apply.
133. In reply, Mr Clark submitted that the argument that the application site is within an ONL is the same as put forward and rejected by the Environment Court in the *Pigeon Bay* decision. He noted that it was acknowledged by Ms Steven in response to questions that this decision is binding on the parties.

### **Findings**

134. The key matter of disagreement was whether the application site should be considered to be within an area identified as an ONL and therefore whether section 6(b) of the RMA applies.
135. The RPS identifies the whole of Bank Peninsula and the Port Hills as an area of ONL in Appendix 4. Objective 12.2 and Policy 12.3 of the RPS to support the view that the RPS provides the broad context for a coarse scale identification and protection of ONL and outstanding natural features, while enabling specific boundaries to be included in plans determined through detailed assessments. The RPS provisions clearly anticipate that local authorities will undertake detailed, collaborative studies at the appropriate scale and context to ensure outstanding landscapes and features are identified at a finer scale in both district and regional plans. This has been undertaken at a district level through the 2007 Landscape Study for the District Plan; and at a regional level through the 2010 Landscape Study.
136. The RCEP is the regional instrument to give effect to the broader provisions of the RPS. The RCEP identifies particular areas on Bank Peninsula which are to be protected because they are Areas of Significant Natural Value (Schedule 1), areas of High Natural, Physical, Heritage or Cultural Value

(Schedule 2), or areas of value to Tangata Whenua (Schedule 3). It also identifies area of Banks Peninsula to be maintained in their present natural states free of additional structures (under Rule 8.5(c) and Rule 8.6) in Schedule 5.13. The application site is not within any of these identified areas. The s42A Report also confirmed there are no 'Protected Recreational, Cultural or Historic sites' in the area.

137. I do not accept that every element of the Banks Peninsula landscape, including the CMA (extending from mean high water springs to 12 nautical miles offshore), is part of the Banks Peninsula ONL, as identified in Appendix 4 of the RPS. To come to such a finding would mean that the provisions of the RCEP are inconsistent with the RPS and I do not accept this is the case. I accept that the provisions of the RPS make it clear that it is anticipated that regional and district plans will identify areas of ONL and specific areas that contribute to these landscape elements at a finer scale and provide appropriate protection.
138. I consider the RCEP identifies parts of the CMA in Banks Peninsula that have significant natural value and that require preservation in terms of section 6(a) and protection in terms of the section 6(b) of the RMA. I consider the provisions of the RCEP provide guidance as to where around Banks Peninsula additional structures are considered to be inappropriate use and development by deeming these to be non-complying activities in identified areas (Schedule 5.13). I accept that CMA of Big Bay/Double Bay is not one of these areas and that the application site is not within an Area of Significant Natural Value.
139. While I accept the provisions of the Christchurch District Plan are not relevant in terms of objectives and policies, given the application site is within the CMA, section 6(a) specifically refers to the coastal environment, which comprises the land and sea interface. The District Plan identifies the western side of Double Bay/Blind Bay as 'High Natural Character in the Coastal Environment' and the remainder of Blind Bay and all of Big Bay as 'Natural Character in the Coastal Environment'. There are no areas identified as 'Area of Outstanding Natural Character in the Coastal Environment' or 'Outstanding Natural Features (ONF) or Outstanding Natural Landscape (ONL)'. I consider these classifications are relevant to the terrestrial part of the coastal environment and that they accord with the expert evidence that the natural character of the western side of Blind Bay/Double Bay is 'high' and the natural character of the eastern side of Blind Bay/Double Bay is 'moderate-high'.
140. On the basis of the evidence, I find the application site and the wider receiving environment of Big Bay/Blind Bay/Double Bay is not within an area identified as an ONL and therefore section 6(b) of the RMA does not apply.

#### **Relevant Objectives and Policies**

141. An analysis of the relevant provisions of the NZCPS, RPS and RCEP was provided in the s42A Report by Mr Klopper, by Mr Chrystal (for the Applicant) and Ms Steven (for Earthsea).
142. I note the Objectives 1, 2, 3, 4 and 6, and Policies 2, 3, 6, 8, 11, 12, 13, 15, 21, 22 and 23 of the NZCPS; Objective 8.2.2, 8.2.4, 8.2.5, 8.2.6, 12.2.1 and 12.2.2, and Policies 8.3.1, 8.3.2, 8.3.3 and 8.3.4, and 12.3.1 of the RPS; and Objective 6.1, 6.2 and 8.1, and Policies 6.1, 7.6, 7.7, 7.8, 8.3 and 8.5 of the RCEP, were identified as relevant to my consideration of the application. I have considered all of these provisions in making my assessment.
143. The s42A Report stated that the application is able to meet the policies of the NZCPS relating to Tangata Whenua values, coastal water quality, discharges to the CMA and recreation, navigational safety, benthic ecosystems, and social, economic and cultural wellbeing of people and communities.

144. However, the s42A Report stated that the application does not give adequate recognition of the natural characteristics and qualities of the site. It noted that NZCPS Objective 6 provides for appropriate places and forms of development within appropriate limits. It stated that the scale and location of the site is not appropriate given the values identified in Mr Bentley’s review and therefore the proposal compromises NZCPS Objective 2. It concluded that the proposal would be inconsistent with NZCPS Policies 13 and 15 because it will not avoid or mitigate adverse effects on natural character and landscapes, as the adverse effects would be more than minor.
145. In relation to the RCEP, the s42A Report concluded the proposal is inconsistent with Objective 6.1 and Policies 6.1, 6.2, 8.1(1)(b) and 8.5. The Report stated that although the site is ‘*not regionally significant in terms of landscape values*’, it has ‘*high natural values*’(pg.44) and these values would not be protected or preserved by the proposal. Overall, the Report concluded that the application would be inconsistent with these policies because there would be more than minor adverse effects on natural character, landscape and amenity values.
146. In response to questions, Mr Klopper said that significant weight should be given to the objectives and policies of the RCEP, as it gives effect to the NZCPS.
147. Mr Clark noted there are eight existing mussel farms on Bank Peninsula and that no new mussel farms have been granted consent for more than 10 years. He submitted that the RCEP identifies a number of bays on Banks Peninsula (Schedule 5.13) where additional structures would be a non-complying activity. He highlighted that Big Bay is not one of these bays. He submitted this provided guidance that additional structures are inappropriate in the bays included in Schedule 5.13.
148. Mr Clark submitted that RCEP Policy 8.5(g) requires the Applicant to have regard to available alternative sites and that there are limited alternatives available on Banks Peninsula.
149. Mr Chrystal set out the relevant provisions of the NZCPS, RPS and RCEP, and noted where he concurred with Mr Klopper’s assessment and where he disagreed. He also referred to a number of additional provisions that he considered relevant and considered NZCPS Objective 12.2.1 to be irrelevant. He agreed RPS Objective 12.2.2 is relevant and noted to be considered a moderate change to a working landscape is not sufficient to render the proposal inappropriate, particularly when that change emphasises the working character of the bay. He concluded the proposal is consistent with RPS Objective 12.2.2.
150. Mr Chrystal considered Mr Klopper had not considered the intricacies of the wording of NZCPS Policies 13 and 15 and had incorrectly considered them to be relevant. He highlighted the application site is not within an area of outstanding natural character and there would be no significant adverse effects. He considered the proposal is an appropriate use of the CMA, with the imposition of conditions, and recognises the contribution of aquaculture to the social, economic and cultural wellbeing of people and communities.
151. Mr Rough considered that because of the ‘*...relatively limited effects in areas of generally moderate natural character*’<sup>9</sup> the marine farm is not an inappropriate use and development.
152. Ms Steven submitted the proposal offends many NZCPS provisions, in particular Objective 2, and Policy 13(1)(a) and Policy 15(a). She noted the NZCPS provides for ranking of relative natural character, with the more protective provisions being given to ‘outstanding areas’. She said ‘protection’ and ‘avoiding’ clearly require preventing adverse effects of the development in order to

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<sup>9</sup> Statement of Evidence, pg. 26, para. 131

achieve sustainable management. She noted the NZCPS makes provision for aquaculture activities in appropriate places and that this encompasses considerations including environmental ones, such as landscape and natural character of the proposed location. She submitted the proposal is not located in an appropriate location or form for the reasons supported by Mr Espie's (and Mr Bentley's) assessments.

153. Ms Steven considered the proposal offends many of the relevant provisions of the RPS, which gives effect to the NZCPS, including Objective 8.2.4 and 12.2.1 and Policies 8.3.4 and 12.3.1. She considered the proposal also offend the operative RCEP, which gives effect to the higher order instruments, including Objective 6.1 and 6.2.
154. In reply, Mr Clark submitted RCEP Objective 6.1(g) should not be read in isolation and must be looked at in context to avoid an incorrect approach of creating a *de facto* moratorium on all development within Banks Peninsula and should be read in the context of Objective 6.2 and Policy 6.2. He noted there is no attempt by the RCEP to make Bank Peninsula as a whole an ONL which requires protection, but rather it identifies specific areas to be protected.
155. Mr Clark highlighted the agreement of Mr Klopper, on the basis of the evidence of Mr Bentley, that proposal would not have landscape, natural character and amenity effects which would be significant. He submitted this was important as there is no imperative in the NZCPS which requires avoidance or refusal.

### **Findings**

156. I have considered all the relevant provisions of the NZCPS, RPS and RCEP. I note that the RPS and RCEP have been reviewed and updated to give effect to the NZCPS 2010. I accept that the NZCPS gives effect to the provisions of the RMA in relation to the coastal environment.
157. RPS Objective 8.2.4 gives effect to section 6(a) by requiring the preservation and protection of the natural character of the coastal environment from inappropriate development. It sets out how this can be achieved by:
  1. protecting outstanding natural features and landscapes including seascapes from inappropriate occupation, subdivision, use and development;
  2. protecting and enhancing indigenous ecosystems and associated ecological processes;
  3. promoting integrated management of activities that affect natural character in the coastal environment and the coastal marine area, in particular coastal landforms and landscapes that are significant, representative or unique to the region;
  4. avoiding new development adjacent to the coastal marine area that will compromise areas of high natural character; and
  5. in appropriate situations, imposing or reviewing restoration or rehabilitation conditions on resource consents and designations.
158. A key issue is whether the proposal is an appropriate use and development of the coastal environment. The provisions of the NZCPS and RCEP give further guidance as to appropriate use and development of the coastal environment. In considering this matter, I acknowledge that marine farming can only be located within the CMA and it is clearly not appropriate in all parts of the CMA. Whether it is appropriate use and development needs to be considered holistically, as natural character of the coastal environment comprises many elements such as ecological, physical, social and cultural aspects. The evidence supports the view that the scale, form and location of the proposed site will have less than minor adverse effects on coastal processes and ecosystems, water

quality, navigational safety, recreation, public access and Tangata Whenua; will avoid significant adverse effects on landscape and visual amenity; and will sufficiently mitigate adverse effects on natural character and visual amenity. This leads me to find the proposed marine farm, as designed and located, is an appropriate use of this part of the coastal marine area.

159. I agree with Mr Chrystal and find RPS Objective 12.2.1 is not relevant to this application. I also agree with Mr Chrystal that the level change to the landscape/seascape is not sufficient to reduce the natural character from moderate-high and that the application is consistent with this objective.
160. I have focussed my assessment on the objectives and policies of the NZCPS and RCEP that the proposal was found to be inconsistent with, as identified in the s42A Report and submissions.
161. NZCPS Policy 13(1)(a) requires the avoidance of adverse effects of activities in an area of outstanding natural character. I find that this provision does not apply at the application site as it is not within an Area of Significant Natural Value or adjacent to an 'Area of Outstanding Natural Character in the Coastal Environment'.
162. NZCPS Policy 13(1)(b) requires the avoidance of significant adverse effects on the natural character of the coastal environment. On the basis of the evidence, I find the proposed activity will not create any significant adverse effects on the natural character of the coastal environment which would require avoidance or the refusal of consent.
163. NZCPS Policy 13(2) recognises that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:
  - a. natural elements, processes and patterns;
  - b. biophysical, ecological, geological and geomorphological aspects;
  - c. natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;
  - d. the natural movement of water and sediment;
  - e. the natural darkness of the night sky;
  - f. places or areas that are wild or scenic;
  - g. a range of natural character from pristine to modified; and
  - h. experiential attributes, including the sounds and smell of the sea; and their context or setting.
164. Policy 13(2) seeks to distinguish natural character from natural features and landscapes and enunciates what natural character can encompass. I find the application sufficiently avoids and mitigates adverse effects on these elements of natural character and accept that the existing natural character will continue to be dominated by these natural elements.
165. NZCPS Policy 15(a) requires avoidance of adverse effects of activities on ONL and outstanding natural features of the coastal environment. Again, I find that this provision does not apply at the application site within Big Bay/Double Bay.
166. NZCPS Policy 15(b) requires avoidance of significant adverse effects on natural landscapes (including seascape) and on the natural character of the coastal environment. Again, on the basis of the evidence, I find that the proposed activity will not create any significant adverse effects on natural landscapes and natural character which would require avoidance or the refusal of consent.
167. Policies 13 and 15 give effect to NZCPS Objective 2 to preserve the natural character of the coastal environment and the protection of natural features and landscape. On the basis of the evidence, I find that the scale, form and location of the application site is consistent with NZCPS Objective 2.

168. RCEP Objective 6.1(a)(i) requires the Council to control activities and development in the CMA to remedy or mitigate adverse effects on: coastal ecosystems and processes; the identified values of areas of significant natural value; the identified areas of high natural, physical, heritage or cultural value; and natural character in areas in the coastal environment where natural character dominates. The evidence shows that:
- (a) adverse effects on coastal ecosystems and processes can be mitigated by the imposition of consent conditions;
  - (b) the application site is not within or in close proximity to any identified Areas of Significant Natural Value (Schedule 5.13 of the RCEP);
  - (c) the application site is of high natural value from a natural character and landscape/seascape perspective, but is not regionally significant;
  - (d) the application site is not of high heritage or cultural value; and
  - (e) natural character in the coastal environment will continue to dominate given the scale, form and location of the site.
169. RCEP Objective 6.1(a)(ii) requires the Council to control activities and development in the CMA to avoid any adverse effects on: coastal ecosystems and processes; the identified values of areas of significant natural value; the identified areas of high natural, physical, heritage or cultural value; and natural character in areas in the coastal environment where natural character dominates. The evidence shows there will be no significant adverse effects on the environment from the proposal.
170. On the basis of the evidence, I therefore find the application is consistent with RCEP Objective 6.1.
171. RCEP Objective 6.2 required the Council to protect, and where appropriate enhance, natural character and amenity values of Bank Peninsula coastal environment including; volcanic and coastal landforms and features; estuarine and coastal vegetation and habitat; coastal processes and ecosystems; areas of high water quality; and areas of high visual amenity, and/or otherwise unmodified by structures or other activities, in particular outer bays and open coast. The evidence shows that the natural character and amenity values of coastal environment can be protected by the scale and location of the site. The site is not located in close proximity to any significant coastal landforms or features, areas of coastal vegetation or habitats; and is likely to have less than minor effects on coastal processes and ecosystems, water quality, recreation, navigational safety and public access. RCEP Schedule 5.13 identifies a significant number of bays in Banks Peninsula which are to be maintained in their present natural states, free of additional structures, and Double Bay/Big Bay is not one of these.
172. On the basis of the evidence, I therefore find the application is consistent with RCEP Objective 6.1.
173. RCEP Objective 8.1(1)(b) enables use of the CMA, while avoiding, remedying or mitigating adverse effects on natural character, and other (natural, ecological, amenity, Tangata Whenua, historic and cultural) values in the coastal environment. I consider the proposal has mitigated adverse effects on natural character by the scale, form and location of the proposed marine farm. I accept that the adverse effect on other values in the coastal environment has also been avoided and mitigated by the scale, form and location, and the imposition of appropriate consent conditions. I therefore find the application is consistent with RCEP Objective 8.1.
174. In terms of the occupation of space in the CMA, RCEP Policy 8.5 states in considering applications for resource consents to occupy the CMA, the Council should:
- (a) give priority to maintaining safe anchorages for vessels; and
  - (b) avoid impeding navigational channels and access to wharves, slipways and jetties; and

- (c) avoid displacing existing public recreational use of the area where there are no safe adjacent alternative areas available; and
- (d) have regard to existing commercial use of the area and any adverse effects on that activity, including recognition of the designated Port Operational Areas; and
- (e) have regard to any adverse effects on the values relating to the natural character of the coastal environment, both within and outside the immediate location; and
- (f) have regard to any adverse effects on the cultural, historic, scenic, amenity, Tāngata whenua, and natural values of the area; and
- (g) have regard to available alternative sites and the reasons for the applicant's choice of site; and
- (h) have regard to existing use and development of the area and the extent to which the natural character of the area has already been compromised; and
- (i) only provide for the period or periods of occupation that are reasonably necessary to meet the purposes for which occupation is sought.

175. The application site is not identified as a safe anchorage or navigational channel, and will not displace recreational use. I consider the Applicant has had regard to adverse effects on values relating to the natural character of the coastal environment and to effects on cultural, historic, scenic, amenity, Tāngata whenua, and natural values of the area. Applicant has considered alternative sites and I accept that these are relatively limited in Bank Peninsula due to Schedule 5.13, weather conditions, and the potential for other adverse effects such as on ecological values, navigational safety, recreation values and cumulative effects. I also acknowledge that the application site has been chosen because it adjoins land owned by people who have given written approval. I find the application is consistent with Policy 8.5.
176. The provisions of the NZCPS and RCEP require the adoption of the precautionary approach where the effects, including cumulative effects, are unknown or not well understood. I consider no precautionary approach required, as the adverse effects of marine farming generally are reasonably well studied and understood. I accept that the assessment of the effects of marine farming at this location are known on the basis of studies undertaken for the existing marine farm.
177. I find there is no support in the planning provisions for Mr Sauer's claim that the dominant activity in Big Bay and Blind Bay should be recreation.
178. Overall, I find that the proposed marine farm is almost entirely consistent with the relevant provisions of the NZCPS, RPS and RCEP that seek to enable marine farming in appropriate forms and locations, while avoiding and mitigating adverse effects on the environment.

### **SECTION 104(1)(c) - OTHER MATTERS**

179. Mr Clark noted there have been three Environment Court decisions relating to marine farming within the bays on the northern side of Banks Peninsula<sup>10</sup>. He provided excerpts from the *Pigeon Bay* decision (Decision C179/2003) and submitted the findings of the decision were germane to the present application. He stated little had changed since this time except that the RCEP is now operative, we have the benefit of the existing development to assess actual effects, and forestry plantings in the bay have grown.
180. Ms Steven submitted the 2003 *Pigeon Bay* decision does not lend support to a grant of the proposal because it is a significant increase in size; the Court recognised there would be significant visual effects

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<sup>10</sup> *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* [1999] NZEnvC 32/99  
*Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* [2003] Decision No. C179/2003  
*Southern Seas Marine Farms Ltd v Canterbury Regional Council* [2005] Decision No. C119/2005

as a result of the existing marine farm; the decision was ‘finely balanced’; it was granted for a limited term (i.e. this was seen as a positive benefit); and section 5 of the RMA was invoked to overcome findings that might otherwise militate against the grant of consent in the Court’s overall judgement.

181. Mr Clark referred to the need for consistency in decision making and Council decisions in the Menzies Bay application (granted in 2013), the Pigeon Bay renewal application CRC141982 (granted in October 2014) and the Ocean Marine Farm application CRC166115 (granted but conditions not finalised).
182. Mr Clark submitted that the compliance monitoring report (dated 9 February 2017) alleges issues of non-compliance, but this is disputed and is not of any material significance. He provided a copy of any email from Mr Acton-Adams to the Council (dated 16 February 2017) confirming six operational navigation lights and disputing any further non-compliance.
183. Mr Chrystal considered the scale of the investment by PBAL should be taken into account as under section 104(1)(c).
184. The s42A Report noted the relevant provisions of the Mahaanui Iwi Management Plan (2013) and the review of the application by Mr David Holliday, Environmental Advisor for Mahaanui Kurataiao.
185. Mr Chrystal noted he had reviewed the Mahaanui Iwi Management Plan (2013) and agreed with the comments and the review by Mr Holliday, as recorded in the s42A Report.

### **Findings**

186. I record that I have assessed this application on its merits and have given little weight to previous Council decisions, which have each been considered on their merits. I have had regard to the Court decisions referred to in evidence. I have had regard to the provisions of the Mahaanui Iwi Management Plan (2013). I have not had regard to any matters of non-compliance with the existing consent in making my overall assessment, but have considered these matters in relation to determining appropriate consent conditions. I have had regard to the scale of the investment by the Applicant below.

### **SECTION 104(2A)**

187. Mr Chrystal set out the current investment value in the existing marine farm in paragraph 6.13 of his evidence, which totalled \$178,600. He noted that the Environment Court’s *Port Gore* decision also considered the net present value of stock on the lines at the expiry of the previous consents. He noted that the Applicant advised this currently sits at \$215,000.
188. Ms Steven submitted the Court has confirmed that there is nothing in the RMA, or the objectives and policies of the NZCPS or relevant plan, that direct me to protect against any loss of the investment in the existing farm. She considered the Court’s had recognised the investment in so far as it was practicable in terms of decommissioning arrangements and time to allow removal of structures.
189. I have had regard to the Applicant’s investment in the existing marine farm.

### **SECTION 105 AND 107**

190. While it was acknowledged that the proposed activities include discharges of shell debris and mussel faeces, there was very little focus on the effects of the discharge in evidence. However, the matters

relating to effects on water quality and benthic ecology effects were well traversed in the Applicant's AEE, monitoring reports and the Council's review by Dr Bolton-Ritchie.

191. The s42A Report noted that the application site is not listed within Schedule 4 of the RCEP as being within any class of Water Quality Area. The Report noted that it is not anticipated the discharge activity will not create any odour, oil or grease film, scums or foams, or any conspicuous change in water colour or visual clarity.

### **Findings**

192. I have had regard to the nature of the discharge and the sensitivity of the receiving environment to adverse effects. I accept the Applicant's AEE and the evidence of Dr Bolton-Ritchie that any impacts on water quality and benthic ecology are likely to be minor. I accept that the discharges to coastal waters associated with marine farming mussels in New Zealand waters are reasonably well studied and understood, and are likely to be localised and of minor effect on water quality and benthic ecology at this location. On the basis of the evidence presented, I find that section 107(1)(c), (d), (e) and (g) are unlikely to be breached by the discharges. Therefore, I find there is no restriction on the grant of consent.

### **PART 2 OF THE ACT**

193. The s42A Report noted the relevance of section 6(a), (d) and (e); and concluded that the proposed use and development is not appropriate and public access to the coast will not be maintained or enhanced. It noted the relevance of section 7 (a), (c), (d) and (f); and concluded that the proposal had the potential to reduce amenity values and would be inconsistent with section 7(c) and (f).
194. Mr Clark considered there was no need to undertake a Part 2 analysis, as the provisions of the RPS and RCEP have been updated to give effect to the NZCPS; and the provisions of the RCEP go into specifics that provide direct guidance for consideration of the application.
195. Mr Chrystal considered sections 6(a), 6(b), 6(c), 6(e), 7(f), 7(g), 7(h) and 8 are relevant to the application. He noted that there are no outstanding natural features or landscapes identified in the area. He noted that marine farming is not restricted within the Marine Mammal Sanctuary and that the application would protect the significant habitat of Hector's dolphins. He noted no concerns have been raised by Ngāi Tahu. He considered the proposal is an efficient use of the natural and physical resources of Banks Peninsula. He noted any effect on visual amenity would be moderate due to the distance, landform, amendments to the layout and the prevailing weather conditions. He considered the proposal has had regard to the quality of the environment and that this will be maintained through the imposition of consent conditions.
196. Ms Steven noted that the Environment Court's overall balancing approach used in the *Pigeon Bay* decision has since been considered by the Supreme Court in *Environmental Defence Society v New Zealand King Salmon Company Limited*<sup>11</sup> (**'King Salmon decision'**) to be an error of law (albeit that case was decided in a plan change context). She noted that the decision stated the purpose of the NZCPS 2010 is to state policies to achieve the RMA's purpose in relation to the coastal environment; and that the NZCPS must be approached on the basis it give substance to Part 2 provisions in relation to the coastal environment (short of invalidity, incomplete coverage or uncertainty of meaning).

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<sup>11</sup> [2014] NZSC 38

197. Ms Steven noted that in the Court of Appeal's decision in *RJ Davidson v Marlborough District Council*<sup>12</sup> (**'Davidson decision'**), the *King Salmon* decision was considered in the resource consent context and the Court of Appeal held that:
- (a) Applying the *King Salmon* invalidity, and complete coverage or uncertainty of meaning within the planning documents is not preferred for resource consents as it involves insufficient flexibility;
  - (b) RMA decision makers should usually consider Part 2 matter when making decisions of resource consents because of the implications of the words 'subject to' in section 104;
  - (c) However, where the relevant plan provisions have clearly given effect to Part 2, there may be no need to do so. as it would not add anything to the evaluative exercise; and
  - (d) It would be inconsistent with the scheme of the RMA to override those plan provisions through recourse to Part 2.
198. Ms Steven submitted that in light of the *Davidson* decision recourse to Part 2 should not occur in a section 104 context, as the Environment Court had done in coming to the 2003 *Pigeon Bay* decision.
199. In reply, Mr Clark noted that the Environment Court in its 2003 *Pigeon Bay* decision adopted an overall assessment as the basis for granting consent under Part 2. He noted that the *Davidson* decision indicates there may be some situations where the adoption of an overall assessment under Part 2 may not be appropriate, if there are strong directives that the proposal is inappropriate in the planning documents. He submitted that given there are no relevant imperatives in the NZCPS and no policy and objective in the RCEP which militate against granting consent, then the matter does fall for general assessment under the overall judgment approach required by Part 2. He considered that in weighing up the positive effects of continuing to have a marine farm, the application should be granted.

### Findings

200. I accept that based on the recent Court of Appeal's *Davidson* decision, recourse to Part 2 may be of assistance in trying to assess consistency with objectives and policies where there is conflict or tension between the policies or they pull in different directions. However, recourse to Part 2 should not render the relevant planning documents ineffective if they give effect to Part 2.
201. The key provisions of Part 2 of the Act in relation to natural character, landscape and amenity are sections 6(a), 6(b), 7(c) and 7(f). I consider the relevant objectives and policies of the NZCPS, RPS and RCEP have been developed and implemented to give effect to these provisions. I have found that the application is consistent with the relevant objectives and policies of the planning document.
202. I do not consider that reference to Part 2 would add anything to the evaluative assessment I have undertaken under section 104 of the Act.

### Overall Conclusion

203. On the basis of the evidence before me, I conclude that the environmental effects of the application will generally be no more than minor with the imposition of appropriate consent conditions. I have paid particular attention to actual and potential effects on natural character, landscape and visual amenity, and find that scale, form and location of the proposal will avoid significant adverse effects. Section 6(a) of the Act and NZCPS Policy 13 do not provide for absolute protection, but rather protect the natural character of the coastal environment from inappropriate use and development.

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<sup>12</sup> [2018] NZCA 316

204. I consider the provisions of the RCEP provide clear guidance on appropriate use and development of the CMA in relation to coastal processes, ecological values, cultural and heritage values, recreational values, navigational safety, natural character values and landscape values. From this wider perspective and guidance, I find the proposed activities are appropriate at this scale, form and location. I consider that to make any other finding based on the evidence before me would be to place too narrow focus on the amenities of the occupiers of the land at the head of Big Bay and too much weight on the protection of the natural character and landscape values at the application site.
205. Overall, I conclude that the application is consistent with the promotion of sustainable management of natural and physical resource, as define on section 5 of the RMA, and the consent should therefore be granted.

### Conditions

206. I have considered the consent conditions recommended in the s42A Report and in general find these to be appropriate, practicable and enforceable. I have made a number of small changes for clarity and consistency of terminology.
207. I consider the period of time the detached buoys located in Blind Bay have been there (as evidenced by the photographs) and the isolation of the site for communications and compliance, warrants the imposition of a specific condition requiring the Applicant to undertake an annual inspection of the foreshore at the head of Blind Bay and Big Bay to ensure any non-organic material associated with marine farming activity (such as buoys, floats or rope) is regularly removed for the duration of the consent. I have added new Condition (21) to require the Consent Holder to do this, and to keep a record of the survey and provide this the CRC on request. I consider that this conditions in conjunction with Condition (17) will address the concerns raised regarding pollution of the bays with buoys and identification of any buoys.
208. I have added Condition (2A) to require the Consent Holder to provide an updated survey plan and grid co-ordinates (similar to Attachment 1 of the Applicant's closing submissions), based on the approved layout shown in Attachment 2 of the Applicant's closing submissions and the recommended location identified in Attachment 1.
209. On the basis of the monitoring undertaken for the previous consents, Dr Bolton-Ritchie considered further chlorophyll-*a* monitoring is not required. However, she recommended that if consent for the larger farm is granted, further investigation should be undertaken to determine whether the farm is resulting in a more than 10 percent reduction in chlorophyll-*a* at sites 50m from the site, compared to 500m from the farm boundary. These recommended conditions have been imposed.
210. Dr Bolton-Ritchie considered monitoring of dissolved nutrients and organic particulates is not required given the location of the proposed marine farm and the environmental conditions.
211. Dr Bolton-Ritchie recommended benthic environment monitoring conditions (sediment and benthic fauna) based on sites 50m from the application site and 250m from the application site. These conditions have been imposed.

212. Dr Bolton-Ritchie noted that any conditions imposed need to be consistent with other recent conditions set for marine farms in Banks Peninsula. The s42A Report noted that the recommended conditions addressed this matter.
213. I explored the scientific value of the condition requiring a record of any dolphin sightings and the connection to effects of the activities. I remain unconvinced of the purpose or value of the condition. However, the Applicant accepted it was consistent with other marine farms and staff currently do this. On this basis, I have left the condition as recommended, with slight wording improvements.

### **Duration**

214. The Applicant sought a 35 year consent duration.
215. The s42A Report recommended a 20 year consent duration.
216. Mr Chrystal noted that a 20 year consent duration is the minimum provided for by section 123A(2) of the Act. He considered that given the assessment of adverse effects, and the fact that these are known on the basis of the previous consent, a 35 year consent duration should be considered.
217. I find that a 20 year consent duration is appropriate given the 10 year life of the statutory plans, level of capital investment required to establish the farm, and temporary nature of the structures.

### **DECISION**

- 218. It is the decision of the Canterbury Regional Council, pursuant to sections 104 104B, 105 and 107, and subject to Part 2 of the Resource Management Act 1991, to GRANT the application by Pigeon Bay Aquaculture Limited for Coastal Permit CRC175136 to occupy the coastal marine area with structures, disturb the seabed and deposit marine debris (shell and organic matter, and to discharge contaminants into the coastal marine area for the purpose of marine farming; subject to the conditions set out in Appendix 1 of this decision.**

Dated at Christchurch this 20<sup>th</sup> day of May 2019



**Sharon McGarry**  
**Independent Hearing Commissioner**

## Appendix 1:

### **Coastal Permit CRC17136 – To occupy the coastal marine area with structures, disturb the seabed and deposit marine debris (shell and organic matter, and to discharge contaminants into the coastal marine area for the purpose of marine farming**

#### **Conditions**

- 1 This consent authorises:
  - a. The occupation of part of the coastal marine area;
  - b. The erection and placement of structures;
  - c. The disturbance of the seabed;
  - d. The incidental deposition of shell material and other natural material as a consequence of operating the marine farm; and
  - e. The discharge of biodegradable and organic material associated with marine farming; for the purposes of the growing green shell mussels (*Perna canaliculus*) and blue shell mussels (*Mytilus galloprovincialis*).
- 2 The marine farm (the “Permit Area”) shall not occupy an area in excess of 7.9 hectares and shall be generally located within the area shown on the layout plan attached as Plans CRC175136A and CRC175136B, which form part of this consent
- 2A Within 20 days of the commencement of this consent, the Consent Holder shall provide the Canterbury Regional Council, Attention Regional Leader – Monitoring and Compliance, with a survey plan showing the location and layout of the application site and grid references for certification that it is consistent with the location and layout shown in Plans CRC175136A and CRC175136B.
- 3 The structures authorised by this consent shall be limited to anchors, chains, ropes, droppers, buoys and lights associated with marine farming in the permit area (“the structures”). The number of lines shall be at the discretion of the consent holder but shall not exceed the number set out in the layout plan, Plan CRC175136B, attached to which forms part of this consent.
- 4 The Consent Holder shall ensure that the structures authorised by this resource consent as set out in Condition (3) are restrained, secured, and maintained in good working order at all times.
- 5 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.
- 6 All marine farming operations shall follow best practice and shall be undertaken generally in accordance with the following documents:

- a. Mussel Farming Code of Practice document entitled “Greenshell™ Mussel Industry Environment Code of Practice 2007” or subsequent updates to that document, except where to do so, would be inconsistent with these conditions of consent; and
  - b. A+ New Zealand Sustainable Aquaculture “Sustainable Management Framework New Zealand Mussels” or subsequent updates to that document, except where to do so, would be inconsistent with these conditions of consent.
- 7 The Consent Holder shall not dispose or allow the disposal by a person under the Consent Holder's control, of inorganic material or debris into the marine environment.
  - 8 The Consent Holder shall ensure any non-biodegradable material lost from the structures is removed from the seabed, water column or foreshore, as soon as practicable after discovery.
  - 9 No artificial foods or antibiotics shall be added to water within the Permit Area unless authorised by resource consent.
  - 10 All the marine farming structures shall be installed within five years of the commencement of the consent within the Permit Area.

### **Farm Structures**

- 11 Before any new structures are installed, the Consent Holder shall provide to the Canterbury Regional Council:
  - a. Final detailed plans of the structures ("final design plans"); and
  - b. A certificate signed by a Marine Structural Engineer stating that the structures referred to in Condition (11)(a) have been designed for the sea conditions in the location of the Permit Area; and
  - c. Details of the qualifications and/or experience of the person who will install the marine farm structures.
- 12 The structures shall be installed and maintained by a suitably qualified or experienced person in accordance with the certified final design plans.

Any new or replacement structures which are installed within the Permit Area shall be installed and maintained by a suitably qualified or experienced person.
- 13 Upon completion of the installation of structures referred to in Condition (3), the Consent Holder shall provide the following to the Canterbury Regional Council:
  - a. Within one week, a survey Plan (“as built”) by a registered surveyor and GPS locations that define the boundary and position of the structures; and
  - b. Within one week, a map using a marine chart and GPS survey points of the corner points of the Permit Area of the marine farm; and
  - c. Within two months, the relevant certificate from the installer confirming that the structures have been properly installed in accordance with the certified design plans.

**ADVICE NOTE:** *The Consent Holder shall provide the survey plan as prepared under Condition (13) to the hydrographic officer of Land Information New Zealand within two months of completion of the installation of any structures within the Permit Area. The Consent Holder shall advise Land Information New Zealand immediately of any subsequent changes to, or removal of, the structures.*

- 14 The structures shall be inspected annually, by 30 April each year, by a suitably qualified or experienced person to ascertain that the marine farm and its mooring systems are secure and maintained in good working order. A report shall be prepared on the security and maintenance of the structure following inspection and such report shall be submitted to the Canterbury Regional Council within one month of inspection.
- 15 The Consent Holder shall immediately advise the Canterbury Regional Council if any part (individually or collectively) of the structures (mooring structure or sea anchors) fail.
- 16 Prior to the date of expiry of this consent, the Consent Holder shall remove all structures from the Permit Area unless continuation of the activity has been authorised by resource consent or an application to continue the activity has been lodged.

### **Buoys**

- 17 All buoys used in the marine farm shall be clearly marked with the Consent Holder's initials or consent number or clearly identified as belonging to the Consent Holder. The Consent Holder shall provide the details of the identification system used to label the buoys for the site to the Canterbury Regional Council on request.
- 18 The Consent Holder shall use buoys that:
  - a. Are commonly used and acceptable in the mussel farming industry; and
  - b. Have the least visual impact; and
  - c. Are not orange unless they form part of the navigation safety system.
- 19 All buoyancy devices (flotation) shall be managed to ensure that on average no more than 30 percent of the diameter of such buoyancy devices is above the water surface at any time, provided that this condition shall not apply to flotation bearing reflectors, lights or contrivances required by navigational safety

**Advice Note:** *The Orange buoys placed at the end of each back-bone as part of the navigation safety system are required to be no more than 50% submerged.*
- 20 All buoyancy devices shall not exceed 900 millimetres by 600 millimetres in dimension, provided that this condition shall not apply to buoys bearing reflectors, lights or other contrivances as set out in condition (22) and in line with best practice.
- 21 The Consent Holder shall annually undertake a survey of the foreshore at the head of Big Bay and Blind Bay and immediately remove any non-organic materials (buoys, floats or ropes etc.) for disposal at an appropriate land-based facility. The Consent Holder shall keep

a record of the annual surveys, including time and date undertaken, the person who carried it out and details of any materials removed. This record shall be made available to the Canterbury Regional Council on request.

### **Lighting and Navigation Safety System**

- 22 The marine farm shall at all times comply with the lighting and marking requirements from the Harbourmaster and Maritime New Zealand.

**ADVICE NOTE:** *The lighting and marking requirements should be in line with “Guidelines for Providing Aids to Navigation in New Zealand, dated August 2004” (and any subsequent amendments to the publications)*

- 23 The Consent Holder shall submit a lighting design and maintenance plan prepared in accordance with Condition (22) for the farm for approval, Attention: Canterbury Regional Council Harbourmaster, at least one month prior to installation of any new marine farm structures on site.
- 24 The lighting system shall be constructed and maintained in accordance with the approved design and maintenance plans as set out in Conditions (23) and (25) at all times.
- 25 The lighting system shall be inspected every month by the Consent Holder to ensure that the lighting system is operational and is being maintained in good working order. The date of the observation and findings shall be recorded in a log and submitted to Canterbury Regional Council every six months.

### **Bond**

- 26 The Consent Holder shall enter into an enforceable agreement acceptable to Canterbury Regional Council and bond pursuant to section 108(2)(b) and 108A of the Resource Management Act 1991; to provide and to maintain for the duration of the consent or until the removal of all structures, whichever is the later in time:
- a. A bank bond acceptable to the Canterbury Regional Council to secure the performance of the obligations of the Consent Holder under the bond and conditions of this consent in the event of any default by the Consent Holder or any occurrence of any adverse effect requiring remedy; or
  - b. A cash bond based on \$2000 per longline within the Permit Area at any time and delivered up to Canterbury Regional Council at the commencement of this consent and two months prior to the installation of any new long line.
- 27 The costs of, and incidental to, the preparation of documentation to meet Condition (26) shall be met by the Consent Holder.
- 28 The Canterbury Regional Council shall release the bond upon:

- a. The removal of all structures authorised under this consent and provided that it is satisfied that there are no outstanding compliance matters and/or remaining adverse effects due to the activity; or
- b. The replacement of the bond and agreement acceptable to the Canterbury Regional Council if the consent is transferred to another party.

### **Benthic Monitoring**

- 29 The Consent Holder shall monitor benthic species composition and sediment characteristics at all benthic impact and control sites in accordance with Conditions (30) to (39).
- 30 Benthic monitoring sites shall be established as follows:
  - a. Three benthic 'control sites' shall be established at 250 metres off the boundary of the Permit Area, one each off the west, north, and east boundaries; and
  - b. Three benthic 'impact sites' shall be established at 50 metres outside the west, north and east boundaries of the Permit Area.
- 31 The location of the control and benthic impact sites will be selected before monitoring begins from a survey using GPS or equivalent technology with a precision of plus or minus 10 metres.
- 32 At each of the benthic control and impact sites specified in Condition (30), quantitative sediment samples shall be collected to a depth of 10 centimetres. At each site:
  - a. Three replicate samples shall be collected for sediment analysis; and
  - b. Three replicate samples shall be collected for benthic fauna analysis.
- 33 From each replicate sample taken for sediment analysis, the following analyses shall be undertaken:
  - a. sediment colour;
  - b. sediment smell;
  - c. redox potential;
  - d. total free sulphides;
  - e. organic matter content to a depth of 2 centimetres;
  - f. particle size distribution to a depth of 2 centimetres; and
  - g. total nitrogen and total phosphorus to a depth of 2 centimetres.
- 34 To determine infauna species composition and abundance in the benthic environment, three replicates of 130 millimetres diameter by 100 millimetres deep core samples shall be collected in accordance with Condition (32). Each replicate core sample shall be sieved through a one millimetre mesh and the biota collected identified to the lowest practicable taxonomical level and counted by trained and experienced personnel.

- 35 To determine presence or absence, and relative abundance, of large bodied epifauna and shell debris in the benthic environment, a single tow not less than 50 metre distance will be carried out at each benthic impact and control site using either a benthic sled or dredge to collect large bodied epifauna and shell debris.
- 36 Trigger points referred to in benthic monitoring conditions shall include:
- a. Occurrence of mussel shell in three infauna or benthic sled samples at test sites 50 metres outside the Permit Area boundary, but not at control sites 250 metres from the Permit Area boundaries;
  - b. Depth of the oxygenated layer in the sediment is 5 centimetres or less in three samples at test sites 50 metres outside the Permit Area boundary, but not at control sites 250 metres from the Permit Area boundaries;
  - c. Organic matter content (loss on ignition) of three samples is greater than 3.5 percent at test sites 50 metres outside the Permit Area boundary, but not at control sites 250 metres from the Permit Area boundaries;
  - d. The infauna biological community at test sites 50 metres outside the farm boundary is clearly different to that at the control sites 250 metres from the farm boundaries as shown on a multi-dimensional scaling plot (nMDS or similar); and
  - e. Sulphurous smelling sediment in three samples at the test sites but not at the control sites.

A significantly high proportion of any one target species at 50 metres outside the Permit Area boundary, but not at control sites 250 metres from the Permit Area boundaries. This applies to infauna and benthic sled samples. Target species include: dorvillid polychaetes, capitellid polychaetes, *Coscinasterias* sp. and hermit crabs.

- 37 Benthic monitoring shall be undertaken in accordance with Conditions (29) to (36), ten years after the commencement of this consent and within six months of the expiry of this consent.
- 38 Benthic sampling and analysis shall be undertaken by appropriately experienced or trained people. The results of all monitoring conducted shall be reported to the Canterbury Regional Council within three months of undertaking the monitoring.
- 39 Data analysis and reporting shall be undertaken by appropriately experienced and qualified people. Each monitoring report shall include, but not be limited to:
- a. Data from, and results of, all sampling and analysis conducted under the conditions of the consent (“results”);
  - b. Graphical presentation and statistical analysis of all results;
  - c. Identification of, and analysis for, trends in the results;
  - d. Comparison of the most recent results with past results;
  - e. An evaluation of trigger points as stipulated in Condition (36);
  - f. A list of species considered important in terms of indicating potential impacts;
  - g. Recommended changes to the monitoring requirements; and

- h. Recommended measures to avoid, remedy or mitigate any exceedance of the trigger limits described in Condition (36).

**Advice Note:** *If one or more of these triggers occurs, there must be discussions between the Canterbury Regional Council, the Consent Holder and appropriate scientists within two months of the completion of the report. The implications of the occurrence of the trigger and the management response options are to be discussed and documented with recommendations made on the best management response. The best management response must then be implemented.*

- 40 If any report shows that shell is estimated to cover more than 10 percent of the bottom outside of the Permit Area, but within 100 metres of its boundaries, then a full survey of the site shall be conducted to map the extent of shell cover within and up to 500 metres beyond the boundaries of the Permit Area. Such a survey will be completed using side-scan sonar or other appropriate methodology and the report on it shall comply in all respects with the requirements of the proceeding conditions. A copy of any such survey shall be sent to the Canterbury Regional Council, within six weeks of completion.

### **Water Column Monitoring**

- 41 Median phytoplankton biomasses, as determined from chlorophyll-*a* or a suitable proxy, at 50 metres from the Permit Area boundary shall be maintained at levels of greater than 90 percent of the concentrations observed at a comparable control site.
- 42 To determine if the Condition (41) is being met the Consent Holder shall:
  - a. Undertake a phytoplankton survey using either moored instruments or calibrated fluorescent instrument for a month and a synoptic survey of the Permit Area and surrounding area during a probable large depletion period (i.e. neap tides and calm conditions), when the site is fully established with lines and mussels within two years.
  - b. Submit to the Canterbury Regional Council the water column survey plan as required by Condition (42)(a) as soon as the marine farm is fully established. This plan shall define where the sampling sites are (within the 50 m boundary) to be located. The plan shall provide detail of the methodology to be undertaken which will be used as a basis to establish those control sites.
  - c. On completion of the surveys, provide a report with the details of the survey results to the Canterbury Regional Council within two months of the completion of the surveys. This report shall provide an assessment of the requirements specified in Condition (41).
- 43 If the phytoplankton results for a fully established Permit Area cannot comply with Condition (41), the Consent Holder shall:
  - a. Alter the spacing of the lines or the stocking density; or
  - b. Implement a farm management plan to manage line use (spat collection or growing out of stock) in a way to meet Condition (41); and
  - c. Submit to the Canterbury Regional Council a water column monitoring plan that will allow for the assessment of the mitigation actions on phytoplankton levels.

## Biosecurity

- 44 The Consent Holder shall keep records of the origin and destination of all structures and equipment to be placed within the Permit Area referred to in Condition (2), and records of any treatment of structures and equipment. Such records shall be provided to the Canterbury Regional Council upon request.
- 45 The Consent Holder shall:
- a. Maintain all vessels servicing the marine farm to prevent the growth of biofouling, the accumulation of sediment or debris, or colonisation by designated marine pests;
  - b. Ensure that spat and seed transferred from other regions is declumped and thoroughly washed, and free of any visible biofouling and sediment prior to transfer;
  - c. Ensure that marine farm service personnel are familiar with, remain vigilant for, and report new pest species or signs of disease to the relevant authorities;
  - d. Undertake all equipment cleaning within the Permit Area and dispose of any mussel farm infrastructure (e.g. ropes and floats etc.) and debris material on land with at an authorised location/facility; and
  - e. Adhere to any New Zealand Biosecurity requirements in relation to marine farming. as indicated in the “Aquaculture Biosecurity Handbook by Ministry for Primary Industries” (which can be found at <https://www.biosecurity.govt.nz/protection-and-response/readiness/aquaculture-biosecurity-readiness/>)

## Marine Mammals

- 46 A log and chart of the marine farm shall be kept on all vessels servicing the farm, to record all sightings of dolphins in or near the Permit Area. If possible, an indication of their activity shall be recorded. The log shall be prepared in a form and a manner satisfactory to the Canterbury Regional Council and shall include the following details:
- a. Farm details including:
    - i. Consent Holder;
    - ii. Consent Number;
    - iii. Consent Expiry; and
    - iv. Name of the observer;
  - b. Date and time of the observation;
  - c. Vessel location (GPS Lat/Long, closest marine farm name);
  - d. Group size (count of adults and juveniles);
  - e. Behaviour (travelling, jumping, mating, resting or feeding); and
  - f. Any comments.

A copy of the log shall be provided to the Canterbury Regional Council and Department of Conservation by 30 May each year or upon request.

47 In the event that a marine mammal becomes entangled or is found dead within the Permit Area, the consent holder or its agents shall immediately notify the Canterbury Regional Council and the Department of Conservation.

**Administration**

48 The Canterbury Regional Council may annually, on the last five working days of May or November, serve notice of its intention to review the conditions of this consent for the purposes of:

- a. Dealing with any adverse effect on the environment which may arise from the exercise of this consent; or
- b. Requiring the adoption of the best practicable option to remove or reduce any adverse effect on the environment.

49 If this consent is not exercised within five years of the commencement date, the consent shall lapse in accordance with section 125 of the Resource Management Act.