

**Further Submission on Plan Change 21
to the Marlborough Sounds Resource Management Plan
Mooring Management Areas & Marina Zone Extension, Waikawa Bay**

This further submission is by the Marlborough Berth and Mooring Association (MBMA) and relates to various submissions on Plan Change 21 as proposed by Port Marlborough Ltd (Port Marlborough).

Background

MBMA supports Plan Change 21.

MBMA is an incorporated society with over 340 fully subscribed members. Of the approximately 180 mooring owners in Waikawa Bay, 120 are members of MBMA.

Existing moorings in Waikawa Bay were authorised by previous legislation under Harbour Board Bylaws. Moorings are required to be re-validated under the Resource Management Act (RMA).

There were a number of options to validate the existing moorings under the RMA. Council decided that individual mooring holders should apply for a coastal permit under the RMA. The applications were publicly notified. Port Marlborough Ltd (Port Marlborough) submitted on mooring applications as it wanted to expand its marina facilities in Waikawa Bay. MBMA was formed around this time to represent the interests of mooring and marina berth holders in Marlborough.

A single hearing was held for all mooring applications as a bulk lot in April 2008. The case was heard by Commissioner John Maassen. The Commissioner identified fundamental legal flaws in being able to approve all the applications for existing moorings. This was mainly due to the fact that many moorings were not located in accordance with their previous authorisations and also many mooring swing circles overlapped.

The hearing was adjourned to enable the parties to discuss alternative methods to deal with the issues.

Port Marlborough and MBMA representatives have subsequently worked together to investigate alternative proposals that could provide for Port Marlborough's aspirations, provide for validation of existing moorings and that also could provide for better management of the existing moorings in the Bay. A representative from the Marlborough District Council chaired many of the meetings.

Throughout the process, MBMA has kept its members fully informed of progress and of the overview of the proposed Plan Change. The hearings Commissioner has also been kept updated as to progress. Port Marlborough in particular has liaised with others in the community.

The agreed solution was for a combined bay-wide Plan Change application that would include new Mooring Management Areas and also provide for a new marina zone on the north-west side of the Bay. This co-operative process has culminated in proposed Plan Change 21. A bylaw to manage the moorings within the proposed Mooring Management Areas is also proposed and is open for separate public submission. This bylaw in conjunction with Plan Change 21 will allow for a simple licensing system for moorings rather than requiring individual resource consents.

MBMA supports this global approach of Plan Change 21 to boat berthing and mooring in Waikawa Bay, rather than an ad-hoc piecemeal approach. The approach taken in Plan Change 21 also provides for forward planning that should give MBMA's members and the community a level of certainty for future development of the Bay.

In summary MBMA considers that Plan Change 21 combined with the Mooring Management Bylaw will provide its members with the legal formalisation they are seeking for their moorings. It will also provide for a simple licensing process and improved management of moorings in the Bay.

General

There are a number of misunderstandings in various submissions in respect to the proposals in Plan Change 21 to formalise the existing moorings. Below MBMA sets out further submissions to those original submissions, in order to clarify issues in relation to the proposed Mooring Management Areas and existing moorings in Waikawa Bay. It also sets out further submissions where it does not agree with some issues raised by submitters.

Because of the repetitive nature of submissions and also the number of them, the further submissions below have been grouped under common theme headings. The addresses of each individual submitter have not been repeated in each further submission by MBMA. The list of submitters' addresses as published in Council's summary of submissions instead has been relied upon.

Boundary Line for Waikawa Bay

Name of original submitters: M P Rothwell; J Sigmund

Number of original submitters: 35, 34

The particular parts of the submissions which MBMA oppose are: Deletion of the proposed definition of Waikawa Bay and the proposed boundary line.

The reasons for our opposition: While Wharetukura Bay and other parts of Waikawa Bay are included within the currently proposed definition of Waikawa Bay for the purposes of this proposed Plan Change, they are not included in the proposed mooring management areas.

Applications for renewals of coastal permits for existing moorings within Wharetukura Bay and those other parts of the Bay that are not within Mooring Management Areas, would still be dealt with as discretionary activities under the standard resource consent process.

It is however important that Waikawa Bay be clearly defined as a whole in order to reach a whole bay solution to moorings and boat berths in the Bay and to provide some surety of future development to the community. This includes discouragement of new moorings in the Bay by means of non-complying activity status.

We seek that the parts of the submissions relating to the definition of Waikawa Bay and the proposed boundary line be disallowed.

Increase in Intensity or Number of Swing Moorings

Name of original submitter: Arapawa Rowing Club; D K& RV Riwaka; Morris Te Whiti Love; D St Clair; J N P Hollman; L C Roberts; M La Badie Simons; M J Simons; Waikawa Marae Trustees; Te Kowhai Taakiwaiora; A J P Riwaka-Herbert; A T Riwaka; A N Gawn; A Watson; A R Burgess; A T Telford; A Lynch; A Love; A Aldridge; B A Ohia; B J Maata-Hart; C Love; C H T T Telford; C T Looms; C J Rob; D M Love; D W Kipa; D A Holder; D Huntly; D St Claire; E J Kini; E A Love; E C Fairhall; G Robertson; G Aldridge; G M Aldridge; G K K Aldridge; H C Mc Naught; H N Houra; H Love; Island Moutere Family Trust; C J Robinson; J H Love-Robb; J M Baker; J P T Holder; J N P Hollman; K A Farmer; K D Kipa; K M Fale; K Syminton-Foley; K C Holt; K Wairemana Robertson; K W Love; K R Miller; K E J Gawn; L W Sue; L Love; L MacDonald; L Ngaia; L Scott; L M Burgess; L H Martin; L Ohia; L T K Ohia; L B Robb; L P A W Matangi; L M McGrath; M W R Vardley; M L Simons; M K Love; M M H Hakopa; M T Gawn; M J Simons; M J Robb; M Watson; H Houra; N A Robb; N M Ellison; P A Little; P R Collins; PR Love; P A Gledhill; R A Sim; R K Telford; R M Burgess; R Leask; R Hebbard; R K T Watson; R L Kenny; R M Ohia; R C Mallinder; R G Bunt; R T K Love; R T R A Denness; R J G Fairhall; S E Barcello-Gemmell; S Y M Baker; S Love; S D Little; S Riwaka; S G Telford; T J Herbert; T M Kipa; Te Atiawa Manawhenua Ki Te Tau Ihu Trust; T Rangihuna; T M Martin; T W Looms; Waikawa Marae Inc Management Komiti; Waikawa Marae Trustees; W F R Ohia; W I Aldridge; W T Reeves; W M L Simons; W J H Lourie;

Number of original submitter: 162, 161, 135, 53, 59, 80, 63, 62, 107, 146, 87, 96, 152, 48, 149, 112, 47, 154, 166, 46, 118, 45, 49, 115, 122, 39, 86, 103, 84, 53, 101, 145, 83, 134, 111, 147, 108, 52, 102, 51, 99, 55, 123, 60, 136, 59, 85, 94, 125, 58, 57, 104, 142, 137, 105, 56, 138, 159, 81, 155, 150, 93, 129, 128, 119, 141, 92, 65, 63, 144, 130, 164, 62, 120, 140, 61, 121, 68, 67, 66, 158, 109, 73, 114, 151, 167, 72, 71, 124, 126, 70, 153, 156, 50, 88, 78, 139, 157, 77, 76, 113, 148, 90, 95, 143, 97, 116, 117, 107, 127, 110, 75, 74, 79,

The particular parts of the submissions which MBMA opposes are:

The assumption that proposed Plan Change 21 will increase the intensity and number of moorings in Waikawa Bay.

The reasons for our opposition: Existing mooring owners in inner Waikawa Bay were required to apply for individual resource consents for their moorings. Port Marlborough Limited also wanted to secure its position regarding future development of its marina facilities and therefore had opposed mooring applications.

A single hearing was held for all mooring applications as a bulk lot in April 2008. The case was heard by Commissioner John Maassen. The Commissioner identified fundamental legal flaws in being able to approve all the applications for existing moorings. This was mainly due to the fact that many moorings were not located in accordance with their previous authorisations and also many mooring swing circles overlapped.

In essence the Commissioner considered it was not legally possible to approve moorings where there was potential for moored boats to collide in storm events. To approve such consents under the Resource Management Act framework would have also resulted in considerable liability for Council.

The hearing was adjourned to enable the parties to discuss alternative methods to deal with the issues. Plan Change 21 is a result of those discussions.

The combination of Mooring Management Areas under Plan Change 21 and the proposed Mooring Bylaw for Waikawa Bay will provide the tools to enable the existing moorings to be reorganised and to be put on more efficient mooring tackle to reduce the diameters of their swing circles.

The object of the exercise in respect to moorings was to formalise the existing moorings, not to increase the number of moorings. Some flexibility is provided in Plan Change 21 by way of provision under the Moorings Management Bylaw (subject of separate Local Government process) for Council's Moorings Manager to issue licences for individual moorings within the Areas. This could enable the Moorings Manager to authorise, for example, a mooring with a large swing circle to be replaced with two smaller moorings or vice versa. The footprint of the Mooring Management Areas would however remain the same. These areas have been sized to accommodate existing applications with the consequence that the total number of moorings within the areas is effectively constrained to nominally the existing unresolved applications.

We seek that the parts of the submissions that explicitly or by inference refer to increase in intensity or number of moorings in Waikawa Bay be disallowed.

Exclusion of Existing Mooring Owners

Name of original submitters: Bentham Aitrau Ohia; S E Buchanon

Number of original submitters: 46, 91

The particular parts of the submissions which we oppose are: That existing mooring owners are being forced to accept the Plan Change and will be forced out of the Bay.

The reasons for our opposition: Existing mooring owners in inner Waikawa Bay were required to apply for individual resource consents for their moorings. Port Marlborough Limited also wanted to secure its position regarding future development of its marina facilities and therefore had opposed mooring applications.

A single hearing was held for all mooring applications as a bulk lot in April 2008. The case was heard by Commissioner John Maassen. The Commissioner identified fundamental legal flaws in being able to approve all the applications for existing moorings. This was mainly due to the fact that many moorings were not located in accordance with their previous authorisations and also many mooring swing circles overlapped.

In essence the Commissioner considered it was not legally possible to approve moorings where there was potential for moored boats to collide in storm events. To approve such consents under the Resource Management Act framework would have also resulted in considerable liability for Council.

The hearing was adjourned to enable the parties to discuss alternative methods to deal with the issues. Plan Change 21 is a result of those discussions.

The combination of Mooring Management Areas under Plan Change 21 and the proposed Mooring Bylaw for Waikawa Bay will provide the tools to enable the existing moorings to be reorganised and to be put on more efficient mooring tackle to reduce the diameters of their swing circles.

The object of the exercise in respect to moorings was to formalise the existing moorings, not to increase the number of moorings. Some flexibility is provided in Plan Change 21 by way of a limited discretionary consent for new moorings within Mooring Management Areas whereby for example, a mooring with a large swing circle could be replaced with two smaller moorings or vice versa. The footprint of the Mooring Management Areas would however remain the same.

MBMA represents most, but not all of the mooring owners in Waikawa Bay. MBMA has been working with both Port Marlborough and the Marlborough District Council to find a solution to the formalisation of the existing moorings in Waikawa Bay. If the proposed Plan Change and associated Mooring Management Bylaw are not successful and the existing resource consent applications are referred back to the Commissioner for a final decision, MBMA understands that many moorings may not be approved because of the overlapping swing circles of many of the existing moorings, and others because of their location within the existing Marina Zone.

Under the proposed Plan Change 21 and Mooring Bylaw all existing moorings that applied for a resource consent under the process that is currently adjourned and those few moorings that are already validated by a resource consent under the RMA will be able to remain. Mooring owners will benefit whether or not they are MBMA members.

No one is forcing anybody to accept the Plan Change. Port Marlborough staff have tried to consult with as many existing mooring owners as possible. MBMA has kept its members constantly informed of the progress with this proposal and the alternatives. Over the past ten months, a Moorings Facilitator contracted by Marlborough District Council has specifically consulted with each and every mooring applicant affected by PC21 and the proposed establishment of Mooring Management Areas regarding the proposed arrangements, including the likely location of their own mooring. Our understanding is that this consultation has met with strong support from mooring owners.

The public notification of Plan Change 21 provides potentially affected parties with an opportunity to make submissions.

We seek that the part of the submissions relating to existing mooring owners being excluded from Waikawa Bay and parties being forced to agree to the Plan Change be disallowed:

Setback of Moorings

Name of original submitter: DA & LM Stone

Number of original submitter: 36

The particular parts of the submission that we oppose are: The need for a wider coastal set back of moorings.

The reasons for our opposition: The location of existing mooring blocks and the swing circles of the existing moorings are randomly placed and closer to the coast and facilities than proposed in Plan Change 21.

The process outlined in Plan Change 21 allows for the reorganisation of existing moorings and the placement of those moorings on more efficient mooring tackle to reduce the diameter of swing moorings.

The process also allows for a consistent and greater setback distances from the coast and recreational areas, a specific area for waka to moor and defined transit paths to and from the public jetty and boat ramp in Waikawa Bay and also the marina. The attached plan shows the existing moorings overlain by the proposed Mooring Management Areas to demonstrate this.

MBMA therefore does not consider that there is any need to further widen setbacks of moorings from the coast.

We seek that the part of the submission relating to widening the setback of moorings from the coast and other activities and structures be disallowed.

Problems with the Existing Moorings

Name of original submitter: Guardian of the Sounds

Number of original submitter: 12

The particular parts of the submission which we oppose are: The assertion that there is no problem with conflict with existing moorings.

The reasons for our opposition: There are instances of adjacent boats crashing into one another, some of which we understand are reported to the Harbour Master. Moorings have historically been shifted around to try to mitigate this, however the problem still occurs from time to time.

Futhermore, the Commissioner in the recent hearing of individual resource consent applications for moorings in Waikawa Bay, considered it was not legally possible to approve moorings where there was a relatively high potential for moored boats to collide in storm events. To approve such consents under the Resource Management Act framework would have also resulted in considerable liability for Council.

Regardless of the practical situation, there is strong indication from the Commissioner that the moorings in the current format could not be approved under the resource consent process. The attached plan showing the extent of overlap of existing moorings graphically demonstrates the extent of overlap.

We seek that the part of the submission that asserts that there is no problem with boats on existing moorings be disallowed.

Costs to Mooring Holders

Name of original submitter: Island Moutere Family Trust, P H Thomas,

Number of original submitter: 99, 31

The particular parts of the submission which we wish to clarify are: On-going costs to mooring holders.

The reasons for our comment: Once the proposed Mooring Management Areas are approved and moorings are on more efficient mooring tackle, the ongoing cost will be an annual licensing fee. While it will be up to Council to set this fee, MBMA has researched license fees from elsewhere in the country which are up to \$150 per year.

The cost of more efficient mooring tackle to achieve smaller swing circles will be a one-off cost and will depend on the depth of each mooring.

MBMA considers that the above costs are far more preferable than the ongoing costs and uncertainties of having to renew coastal permits through the resource consent process. The enormous cost, time delays and uncertainty of the currently adjourned resource consent process for the existing moorings, is a case in point.

We seek that the part of the submission regarding ongoing costs to mooring holders be considered in light of the above.

Extent of Mooring Management Areas

Name of original submitters: R Anderson; S Woledge

Number of original submitters: 15, 5

The particular parts of the submissions that we oppose are: That the existing moorings in Wharetukura Bay or other parts of Waikawa Bay have similar issues as moorings in the inner Waikawa Bay.

The reasons for our opposition: The existing moorings in Wharetukura Bay and other parts of Waikawa Bay outside of the proposed Mooring Management Areas have resource consents under the Resource Management Act. Furthermore most of those moorings are owned by adjacent land owners.

The difficulty in trying to formalise the existing moorings in the inner Waikawa Bay area under the resource consent process has prompted the need for Plan Change 21 in respect of the moorings.

As mooring holders have resource consent for their moorings in Wharetukura Bay and other areas, it is doubtful that there would be a majority support from those mooring holders to be included in a Mooring Management Areas and therefore subject to the proposed Bylaw provisions. MBMA however is not fundamentally opposed to those areas being included in Mooring Management Areas.

Currently any mooring in Waikawa Bay requires a resource consent. Those existing moorings outside of the proposed Mooring Management Areas therefore are not disadvantaged in that they will still need to continue to renew the coastal permits for their moorings under the resource consent process as a discretionary activity as is the case now.

We seek that the parts of the submissions relating to extending Mooring Management Areas to other parts of Waikawa Bay be disallowed unless people in those areas can demonstrate majority support.

General Management of Moorings

Name of original submitter: DA & LM Stone

Number of original submitter: 36

The particular part of the submission that we wish to clarify is: That the moorings should not be moved until the area that they occupy are required for marina development.

The reason for our comment is: The proposal is not to shift any moorings out of either the existing undeveloped marina zone or the proposed marina zone until development of new marina berths in those areas is imminent.

We seek that the above be taken into consideration.

Bylaw vs Resource Consent Processes

Name of original submitters: M P Rothwell, Waikawa Ratepayers and Residents Association Inc.

Number of original submitters: 35, 25

The particular parts of the submission that we oppose are: That the moorings in the inner part of Waikawa Bay can be managed adequately through the resource consent process.

The reasons for our opposition: Existing mooring owners in inner Waikawa Bay were recently required to apply for individual resource consents for their moorings. A single hearing was held for all mooring applications as a bulk lot in April 2008. The case was heard by Commissioner John Maassen. The Commissioner identified fundamental legal flaws in being able to approve all the applications for existing moorings. This was mainly due to the fact that many moorings were not located in accordance with their previous authorisations and also many mooring swing circles overlapped.

In essence the Commissioner considered it was not legally possible to approve moorings where there was potential for moored boats to collide in storm events. To approve such consents under the Resource Management Act framework would have also resulted in considerable liability for Council.

The hearing was adjourned to enable the parties to discuss alternative methods to deal with the issues. Plan Change 21 is a result of those discussions.

The combination of Mooring Management Areas under Plan Change 21 and the proposed Mooring Bylaw for Waikawa Bay will provide the tools to enable the existing moorings to be reorganised and to be put on more efficient mooring tackle to reduce the diameters of their swing circles.

We seek that those parts of the submissions relating to the resource consent process being more appropriate to manage moorings in the inner part of Waikawa Bay, be disallowed.

New Swing Moorings Outside of Mooring Management Areas

Name of original submitter: M & L Adams

Number of original submitter: 37

The particular parts of the submission that we oppose are: That moorings outside of Mooring Management Areas should not be non-complying activities.

The reasons for our opposition: It is important that limits for development of new moorings be set to prevent unbridled expansion of moorings in Waikawa Bay.

The intent of the proposed Mooring Management Areas is to legalise existing moorings, not to provide for additional moorings.

Moorings that are not within the Mooring Management Areas or not renewals of existing moorings outside of Mooring Management Areas, therefore need to be non-complying activities to discourage development of new moorings in the Bay.

We seek that the part of the submission relating to the proposed non-complying status for new moorings in Waikawa Bay be disallowed.