

# Environment Canterbury

## Hearing Committee Report: Regional Coastal Environment Plan - Plan Change 1

26 June 2008

### 1-0-0 General

1-0-0	10.8	Kaikoura District Council	Add a new map 3.8 to volume 2 of the Regional Coastal Environment Plan, showing a proposed (by the submitter) new Swing Mooring Area around Kaikoura wharf - (refer submission for map).
	F109.11	Department of Conservation	<i>Oppose</i>

### Evaluations and reasons

**10.8:** This submission seeks the addition of a new Swing Mooring Area around the Kaikoura Wharf.

**F109.11:** This submission maintains that a new swing Mooring Area must be subject to a Plan Change process before it could be included in the RCEP.

#### Assessment

The submission is outside the scope of the current Plan Change and would require a separate Plan Change process. The Further Submission supports this point. For that reason, the submission is not accepted.

### Recommendation

**10.8:** Reject.

**F109.11:** Accept

### Amendment

Nil.

### 1-1-2 Proposed Plan Change 1

1-1-2	4.1	Department of Conservation	Supports the Proposed Plan Change 1, subject to minor alterations. Refer submission points 4.2 to 4.7.
1-1-2	6.1	Stephanie Brown	Supports the proposed Plan Change 1 subject to amendments, refer submission points 6.3 and 6.5.
1-1-2	6.3	Stephanie Brown	Hold Plan Change 1 until the bylaws on Navigational Safety are confirmed.
1-1-2	F109.6	Department of Conservation	<i>Oppose</i>
1-1-2	8.1	Joan H Swift	Supports the proposed Plan Change 1.
1-1-2	15.1	John R Milligan	Adopt the proposed Plan Change 1.
	F111.2	George C Spencer	<i>Support</i>
1-1-2	18.1	SJ Collins Family Trust	Supports and seeks to confirm Plan Change 1.

### Evaluations and reasons

**4.1, 6.1, 8.1, 15.1, F109.6, F111.2 :** These submissions support the Plan Changes.

**6.3:** This part of the submission seeks that the Variation (Change) be put on hold until the outcome of the Regional Coastal Environment Plan Plan Changes 1 and 2

review of the Navigation Safety bylaws is known. The submitter sees a link between conditions on a resource consent for a swing mooring, or between the permitted activity conditions and conditions imposed through bylaws.

**18.1:** This submission supports Plan Change 1.

#### Assessment

While there is a link between control of swing moorings through resource consents and bylaws, there is no conflict between the two sets of conditions. Conditions imposed through the RM Act process seek a different outcome, i.e. control of environmental effects, than those imposed through the bylaws, which relate to navigation safety. There is no case to be made for holding up the Plan Changes.

#### Recommendation

**4.1, 6.1, 8.1, 15.1, 18.1, F109.6, F111.2:** Accept

**6.3:** Reject

#### Amendment

Nil.

#### 1-1-3 1(a) Add new clauses (r) and (s) to Rule 8.1 Permitted Activities

1-1-3	2.1	Guy Carnaby	Support the change to Rule 8.1(r).
1-1-5	4.3	Department of Conservation	Add to the end of the proposed new clause Rule 8.1(r) as follows: “...as a <i>Lawfully Established Structure and is replaced in the same location.</i> ”
	F107.1	Lyttelton Port Company Ltd	<i>Oppose</i>
1-1-5	10.1	Kaikoura District Council	Retain the proposed change to Rule 8.1 (r).
1-1-8	10.2	Kaikoura District Council	Retain the proposed change to Rule 8.1 (s).

#### Evaluations and reasons

**2.1, 10.1, 10.2:** These submissions support the change to Rule 8.1(r). However, the evaluation for submission 5.1 (below) suggests an alteration which may qualify this support.

**4.3, F107.1:** This part of the submission seeks the addition of “and is replaced in the same location” to the end of the clause (r) of Rule 8.1. However, the evaluation for submission 5.1 (below) suggests an alteration that will remove this part of the Rule, if accepted. Further submission F107.1 opposes the submission on the grounds that the proposal lacks the certainty required of a condition on a permitted activity and extends the condition to the foreshore, rather than the structure itself.

#### Assessment

Since the wording of the clause already contains the words, “to replace”, it is not considered that the wording put forward by submission 4.3 will add to the sense of the clause, or make it more precise. The reason for opposing the submission put forward by F107.1 is accepted, i.e. that the proposal lacks the certainty required of a condition on a permitted activity and extends the condition to the foreshore, rather than the structure itself.

#### Recommendation

**2.1, 10.1, 10.2:** Accept.

**4.3:** Reject.

**F107.1:** Accept.

#### Amendment

Nil

#### 1-1-14 1(b) Add new interpretation for Rule 8.1(r) and 8.1(s)

1-1-14	4.4	Department of Conservation	Retain the Proposed Plan Change 1(b).
1-1-14	5.1	Graham W Batchelor	Amend Rule 8.1(r) to make the placement of a swing mooring in a swing mooring area apply to

			new swing moorings, not just replacements, as a permitted activity.
	F108.1	SJ Collins Family Trust	<i>Oppose</i>
	F109.4	Department of Conservation	<i>Oppose</i>
1-1-15	10.3	Kaikoura District Council	Retain the proposed interpretation provision for Rule 8.1(r).
1-1-15	10.4	Kaikoura District Council	Retain the proposed interpretation provision for Rule 8.1(s)

### Evaluations and reasons

**4.4:** This part of the submission seeks the retention of the Proposed Plan Change (1b). The recommendation in relation to submission 5.1, above seeks the deletion of part of the Rule (clause (r) to which this is an interpretation provision. This may qualify support for the retention.

**10.3, 10.4:** These submissions seek the retention of the new interpretation provision for Rule 8.1(r) and (s). The recommendation in relation to submission 5.1, above seeks the deletion of part of the Rule (clause (r) to which this is an interpretation provision. This may qualify support for the retention.

**5.1, F108.1, F 109.4:** This submission points out that that new swing moorings in swing mooring areas will still require a consent under the current wording of the Rule and that new swing moorings should also be a permitted activity. Given that the activity is in a designated area for swing moorings, it is contended that there should be little of or environmental impact from additional moorings, which are also subject to control through bylaws. Generating a requirement for a resource consent is considered to add costs without benefit. The submission considers that, if resource consent was to be required, it should cover both occupation and placement.

F108.1 opposes the submission on the basis that making new swing moorings in swing mooring areas a permitted activity may adversely affect the use of existing swing moorings. F109.4 opposes the submission on the grounds that all relevant matters should be considered before new structures are established.

### Assessment

Submission 5.1 makes valid points in that the wording for Rule 8.1(r) releases replacement of an existing swing mooring from the need for a resource consent, but leaves the requirement in place for new moorings (under Rule 8.2), thereby creating a dual regime. In this situation, existing moorings in swing mooring areas will never need consent to occupy whereas new moorings, when their consent term expires will need to apply again. Given that the moorings are located in areas designated as swing mooring areas, in order to control proliferation of moorings, it is considered that concentrating the minor adverse effects in such areas is acceptable and that requiring a consent for new moorings in such areas will serve no valid purpose under the RM Act. The occupation of the CMA by a swing mooring in a swing mooring area is already proposed to be a Permitted activity under new Rule 8.23(e).

Issues relating to the capacity of the swing mooring area can be covered through the Navigation Safety bylaws. These are a better tool for dealing with such issues since the capacity of such areas to accommodate more vessels is a navigation safety issue rather than a RM Act issue. The RM Act issue is that the moorings are located in areas designated as swing mooring areas, in order to control proliferation of moorings and to accord with the New Zealand Coastal Policy Statement (NZCPS) which seeks to encourage appropriate use in areas, “where the natural character has already been compromised (NZCPS Policy 1.1.1) The opposition advanced by F108.1 is not accepted since control over swing moorings will be exercised through bylaws. The “adverse effects” referred to in the further submission are considered to be no more than minor in relation to the RM Act. The opposition of F109.4 is not accepted since the purpose of establishing the swing mooring areas is to contain a limited range of effects within a given area. The minor effects of a new swing mooring, including relevant matters within such an area, are considered to have been covered within the reasoning behind establishing the areas.

It is considered that Rule 8.1, clause (r) should be amended by the use of the following wording, “the placement of a swing mooring in a Swing Mooring Area”. Subsequent wording is then deleted, thereby making the placement of existing and new swing moorings a Permitted Activity. As a consequential amendment, the existing Rule 8.2 will be deleted.

### Recommendation

**4.4, 10.3, 10.4:** Accept.

**5.1:** Accept with a consequential amendment.

**F108.1, F109.4:** Reject.

## Amendment

Amend Rule 8.1(r) by deleting part to read as follows, “the placement of a swing mooring in a Swing Mooring Area where the placement is to replace an existing swing mooring that has been placed as a Lawfully Established Structure.”

As a consequential amendment, delete Rule 8.2.

### 1-1-20 1(c) Add new note (4) to Rule 8.1 Permitted Activities

1-1-20	4.5	Department of Conservation	Alter proposed Rule 8.1(r) to include provision made in proposed Note (4) that the placement of a swing mooring in the Coastal Marine Area is required to comply with the current Navigation Safety Bylaws governing such an activity.
	F102.1	John R Milligan	<i>Oppose</i>
	F107.3	Lyttelton Port Company Ltd	<i>Oppose</i>

## Evaluations and reasons

**4.5, F102.1, F107.3:** This part of the submission seeks the inclusion of Note 4 as part of Rule 8.1(r) on the basis that otherwise Notes do not form a binding part of the Rule

F102.1 sets out a lengthier contention that incorporating Note 4 into the Rule could not legally require compliance with current bylaws and that changing the bylaws could bring them into conflict with this if it were a provision of the RCEP.

F107.3 opposes the submission on the basis that bylaws are not an instrument of the RM Act and that their complexity will create uncertainty.

### Assessment

The inclusion of the Note as part of the Rule as requested by submission 4.5 would provide a clause binding those affected to a piece of legislation other than the RMA and that this would not be possible. This point is expanded by F102.1 and echoed by F107.3. Further, should the bylaw be amended or deleted, the Rule may not be able to be applied or interpreted.

## Recommendation

**4.5:** Reject

**F102.1, F107.3:** Accept

## Amendment

Nil.

### 1-1-23 1(d) Add a new rule 8.19B and Principal Reason

1-1-23	4.7	Department of Conservation	Retain the Proposed Plan Change, clause 1(d), but add new Rule 8.19B to the section of the RCEP entitled "Occupation of the Coastal Marine Area".
1-1-24	10.5	Kaikoura District Council	Retain proposed Rule 8.19B.
1-1-24	17.8	Lyttelton Port Company Ltd	Delete proposed Rule 8.19B and replace with new Rules 8.36 and 8.37 as follows: <i>"Use of the Coastal Marine Area</i> <i>Rule 8.36</i> <i>The use of the Coastal Marine Area for the purpose of mooring vessels or other floating objects is a permitted activity provided that:</i>  <i>(a) The moored vessel or other floating object is located within a Swing Mooring Area defined in Schedule 5.7;</i>  <i>(b) The moored vessel or other floating object is</i>

			<p><i>located within an operational area of a port, and is covered by a coastal permit issued pursuant to section 384A of the Resource Management Act 1991 or a deemed coastal permit, and is reasonably necessary for port operations;</i></p> <p><i>(c) The moored vessel or other floating object is:</i></p> <ul style="list-style-type: none"> <li><i>i. For a temporary purpose such as loading, unloading, refueling a vessel or any other similar purpose for which it is reasonably necessary to moor a vessel temporarily but excludes the storage of any vessel; or</i></li> <li><i>ii. Necessary to protect the health or safety of persons or the safety of the vessel from an immediate and unforeseen threat or danger; or</i></li> <li><i>iii. Necessary to secure a marker, beacon, buoy or other floating navigation aid or temporary race mark buoy;</i></li> </ul> <p><i>(d) The vessel has been moored for a temporary period using an anchor as part of normal navigation.</i></p> <p><i>Rule 8.37</i></p> <p><i>Except as provided for by, Rule 8.36; the use of the Coastal Marine Area for the purpose of mooring vessels or other floating objects is a non-complying activity.</i></p> <p><i>Principal Reason</i></p> <p><i>Those swing moorings areas shown in Schedule 5.7 of the Coastal Marine Area were established many years ago and are now an accepted feature. Outside of these areas however the mooring of vessels is only anticipated for temporary periods as part of normal vessel navigation. The exception is within the immediate areas of the commercial ports providing the mooring is associated with port operations.</i></p> <p><i>Also make other consequential incidental amendments, deletions or additions to any part of the Plan as may be necessary to get effect to the purpose and intent of the relief sought by LPC.</i></p>
	F 102/8	John R Milligan	Oppose.

**Evaluations and reasons**

**4.7:** This part of the submission supports the retention of Plan Change 1(d) in its current form but considers that new Rule 8.19B should be in the RCEP section, "Occupation of the Coastal Marine Area". Currently the Rule is included in a section under "Operation of Vessels or Vehicles".

**10.5:** This part of the submission seeks the retention of Rule 8.19B. However, the recommendation to 4.6 above would, if accepted, move the Rule to another section of the RCEP without changing its intent. This would not invalidate what this submission seeks.

**17.8:** This part of the LPC submission seeks the deletion of Rule 8.19B and the addition of significant modifications as new Rules 8.36 and 8.37 (as set out above).

**17.9:** seeks consequential amendments to give effect to 17.8

**102/8** Opposes 17.8 introduction of rule 8.36 on the basis that it introduces a contradiction. Suggested that the opposition would be removed if “Rule 8.36” was replaced by words “else where in the plan”.

#### *Assessment*

In relation to 4.7, the recommendation to submission 17.3 (below) would, if accepted, clarify the intent of the Rule and move it to another section of the Plan. It is not considered that this would change its intent. The reasons for seeking the change sought by 17.8 are considered valid. The first reason advanced is that the rule does not define the status of an activity which is specified as being exempt from the rule. By this, it is taken to mean that Rule 8.19B as currently worded does not determine what class of activity those listed as (i) to (vi) actually are, apart from saying that they are not Non-Complying. It is considered that what is sought by the submission could be achieved by adding the suggested wording to the current Rule 8.23, Occupation of the Coastal Marine Area; Permitted Activities, as new clause ((e) now renumbered as (f))(i) to (vi)). This would have the effect of making clear that they are Permitted Activities and would remove the confusion as to the class of activity which the current wording produces. 102/? accepted in part and clarification of Rule 8.24B (that it is dealing with occupation) is consequentially required.

The changes to Rule 8.19B seek to modify the Rule and add additional clauses. Placing the changes sought by the submission as Rules 8.36 and 8.37 would place them in an RCEP section entitled, “Production or Storage of Hazardous Substances”. This is not considered appropriate.

The wording put forward in the submission is considered to be acceptable, with some exceptions. These exceptions relate to;

- the opening phrase, “The use of the coastal marine area...” . This is not appropriate since the Rule relates to occupation, not use, of the CMA; and
- The suggested clause a) since it is incorporated into the title of the Rule; and
- The full wording of suggested clause b) is not considered to add clarity.

Therefore it is considered that the wording put forward in the recommendation below would be acceptable. The new “principal reason” put forward is not considered to be necessary since it reads as an explanation for the Swing Mooring Areas.

Rule 8.23(e)(i) (now renumbered to (f)) wording should clarify that the provision refers to a section 384A coastal permit by deleting the word “deemed”.

#### **Recommendation**

**4.7, 10.5:** Accept

**17.8, 102/8 :** Accept in part and an amendment is required.

#### **Amendment**

Remove Rule 8.19B from the Section entitled, “Operation of Vessels or Vehicles” and place in the section titled “Occupation of the Coastal Marine Area” The Rule will then be inserted into Rule 8.23 as f), i) to vi). Rule 8.19B as changed to Rule 8.23 f) to read as follows:

##### ***“Rule 8.23 Permitted Activities***

*The occupation of the Coastal Marine Area for the mooring or anchoring of vessels or other floating objects provided that the mooring;*

- i) Occurs within the area covered by a section 384A coastal permit and is reasonably necessary for port operations; or*
- ii) Is temporary and is for a purpose other than the storage of a vessel, such as loading, unloading, refuelling a vessel or other similar purpose for which it is reasonably necessary to moor a vessel temporarily; or*
- iii) Is necessary to protect the health or safety of persons or the safety of the vessel from an immediate and unforeseen threat or danger; or*

- iv) *Is necessary to secure a marker, beacon, buoy or other floating navigation aid or temporary race mark buoy; or*
- v) *Is consequential to the placement of a mooring as a Permitted Activity pursuant to Rule 8.1, or through a resource consent to place the mooring.*
- vi) *Is for a period and in a manner that falls within the normal scope of navigation.”*

Rule 8.24B Non – Complying Activities should read “Except as permitted by Rule 23, occupation of the Coastal Marine Area for the mooring or anchoring of vessels or other floating activities is a Non-Complying Activity”.

#### 1-2-7 1(e) Add new (e) to Rule 8.23 Permitted Activities

1-2-7	2.2	Guy Carnaby	Support the change to Rule 8.23(e).
1-2-7	5.2	Graham W Batchelor	Amend the proposed new clause Rule 8.23(e) to have the placement of a swing mooring in a swing mooring area to apply to new swing moorings, not just replacements, as a permitted activity.
	F108.2	SJ Collins Family Trust	<i>Oppose</i>
	F109.5	Department of Conservation	<i>Oppose</i>
1-2-7	10.6	Kaikoura District Council	Retain proposed Rule 8.23(e).
1-2-7	11.1	Moncks Bay Mooring Association	Reword proposed Rule 8.23 (e) to include existing swing moorings outside swing mooring areas as a Permitted Activity.
	F103.2	Moncks Bay Mooring Association	<i>Support</i>
	F105.2	Christchurch Yacht Club	<i>Support</i>
	F110.2	Moncks Bay Mooring Association	<i>Support</i>
	F112.2	Andrew J Whiteside	<i>Support</i>
1-2-7	12.1	Christchurch Yacht Club	Reword proposed Rule 8.23 (e) to include existing swing moorings outside swing mooring areas as a Permitted Activity.
1-2-7	13.1	Andrew J Whiteside	Reword proposed Rule 8.23 (e) to include existing swing moorings outside swing mooring areas as a Permitted Activity.
	F109.12	Department of Conservation	<i>Oppose</i>
1-2-7	14.1	John A Sutherland	Reword proposed Rule 8.23 (e) to include existing swing moorings outside swing mooring areas as a Permitted Activity.
	F109.13	Department of Conservation	<i>Oppose</i>
1-2-7	16.1	Lindsay J Coles	Reword proposed Rule 8.23 (e) to include existing swing moorings outside swing mooring areas as a Permitted Activity.
	F109.14	Department of Conservation	<i>Oppose</i>
1-2-7	19.1	Raymond I King-Turner	Reword Rule 8.23(e) to include existing swing moorings outside swing mooring areas as a Permitted Activity.
	F109.20	Department of Conservation	<i>Oppose</i>

#### Evaluations and reasons

**2.2:** This submission supports the addition of the new Rule (e) to Rule 8.23.

**5.2, F108.2, F109.5:** This submission seeks to add “placement” to this new Rule as well as occupancy. However, it is recommended that the amendment sought by this submitter in relation to Rule 8.1(r) be accepted. If this is accepted then it is considered that what this part of the submission is seeking will be met.

F108.2 opposes the submission on the basis that making new swing moorings in swing mooring areas a permitted activity may adversely affect the use of existing swing moorings. This is not accepted since control over swing moorings will be exercised through bylaws. The “adverse effects” referred to in the further submission are not considered to be significant in relation to the RM Act.

F109.5 opposes the submission on the grounds that all relevant matters should be considered before new structures are established. However, the purpose of establishing the swing mooring areas is to contain a limited range of effects within a given area. The minor effects of a new swing mooring, including relevant matters within such an area, are considered to have been covered within the reasoning behind establishing the areas.

**10.6:** This submission supports the retention of the new Rule (e) to Rule 8.23.

**11.1, 12.1, 13.1, 14.1, 16.1, 19.1, F103.2, F105.2, F110.2, F 112.2, F109.12, F109.13, F109.14, F109.20:** The initial submissions, and the further submissions in support, seek to include existing swing moorings outside swing mooring areas as permitted activities. However, F109.12, F109.13, F109.14, F109.20 oppose the change that is sought, but only in relation to new swing moorings outside Swing Mooring Areas.

*Assessment*

Proposed Plan Change 2, new Rule (f) added to Rule 8.23 seeks to make all “Lawfully Established Structures” (at the time the Rule becomes operative) permitted activities. This part of the Rule will have the effect of including all existing lawfully established swing moorings outside swing mooring areas as permitted to occupy the Coastal Marine Area activities, since they constitute structures. The submitters requirements are considered to be met by this, but only in respect to those swing moorings lawfully in place.

**Recommendation**

**2.2, 5.2, 10.6, F108.2, F109.5, F109.12, F109.13, F109.14, F109.20:** Accept in part.

**11.1, 12.1, 13.1, 14.1, 16.1, 19.1, F103.2, F105.2, F110.2, F112.2:** Reject

**Amendment**

Nil

**1-2-11 1(f) Add new note to Rule 8.23 Permitted Activities**

1-2-12	3.1	Daniel Petrache	Amend proposed Note 4 under Rule 8.23 (PC1(f)) to reference a specific version of the Navigation Safety Bylaws, referred to by date, rather than referring to “ <i>the current Navigation Safety Bylaws</i> ”
	F109.3	Department of Conservation	<i>Oppose</i>

**Evaluations and reasons**

**3.1, F109.3:** This submission seeks the addition of a note or condition to 8.23(4) stating the date of the bylaws that the swing mooring has to comply with. F109.3 opposes the submission on the basis that swing moorings should comply with current bylaws.

*Assessment*

This would have the effect of “freezing” a particular version of the bylaws into the RCEP and would require a Plan Change to update the date when the bylaws changed in a way that affected swing moorings. Given that the bylaws operate independently of the RM Act, it is not considered reasonable to constrain the application of the bylaws in the way suggested by the submission. Case law indicates that a Note can be used in such instances, but not a Rule.

## Recommendation

**3.1:** Reject  
**F109.3:** Accept

## Amendment

Nil

### 2-4-39 Interpretation Provision for Rule 8.1(r) and 8.1 (s) Note (2)

2-4-39	4.6	Department of Conservation	Amend Note (2) to add sub clauses (r) and (s).
	F102.2	John R Milligan	<i>Oppose</i>
2-4-43	6.5	Stephanie Brown	Amend Note 4 following Rule 8.1 (PC 1(c)), by stating what the conditions of the permitted activity are by either referring to the Navigation Safety Bylaws by year or include the conditions.
	F109.22	Department of Conservation	<i>Oppose</i>
2-4-43	10.7	Kaikoura District Council	Retain proposed note (4) for Rule 8.23(e).
2-9-1	15.3	John R Milligan	Delete the heading "Military training" from Rule 8.23(d).

## Evaluations and reasons

**4.6, F102.2:** These submissions relate to submissions seeking to elevate Note 4 (of Plan Change 1(c)) to a Rule in the Proposed Plan Change. This has not been recommended for acceptance. F101.2 opposes the amendment. 4.6 Clarification on Note (2) wording is accepted.

**6.5, F109.22:** Seeks to include the conditions of the Navigation Safety Bylaws (NSBs) in note 4 of the Proposed Plan Change. As already indicated, NSBs are drawn from a separate piece of legislation dealing with matters not normally covered by the RM Act. It is not legitimate to bind either the RCEP or the bylaws, by their inclusion in the RCEP. Changes to the bylaws would then require a Change to the RCEP. F109.22 opposes the inclusion of the Navigation Safety bylaws noting that it is inappropriate to delay Plan Change 1 on the basis of waiting for another regulatory process.

**10.7:** Seeks the retention of Note (4) for Rule 8.23(e). This is supported.

**15.3:** Seeks the deletion of the heading "Military Training" from the existing Rule 8.23(d) on the basis that it does not correspond with the changes that have been recommended. This submission is accepted on the basis that the heading (as a result of additional changes to the Plan Change) no longer provides clarity. Provision for defence purposes is required by the NZCPS (policy 4.1.5) and these provisions remain. Removal of the redundant heading only is undertaken.

### Assessment

As already indicated, NSBs are drawn from a separate piece of legislation dealing with matters not normally covered by the RM Act. It is not legitimate to bind either the RCEP or the bylaws, by their inclusion in the RCEP. Changes to the bylaws would then require a Change to the RCEP.

## Recommendation

**4.6, 6.5,:** Reject.  
**10.7, 15.3, F102.2, F109.22:** Accept.

## Amendment

Delete heading "Military Training" from Rule 8.23

Amend Note (2) under Rule 8.1 to read "In order to be classified as a Permitted Activity under the rules, an activity need only comply with any one of the activity classes set out as 8.1 (a) to (s)".

# Hearing Committee Report: Regional Coastal Environment Plan - Plan Change 2

## 1-3-1 Proposed Plan Change 2

1-3-1	4.2	Department of Conservation	Supports the Proposed Plan Change 2, subject to minor alterations. Refer submission points 4.8 to 4.11.
1-3-1	4.9	Department of Conservation	Retain Proposed Plan Change 2(b).
1-3-1	8.2	Joan H Swift	Supports the proposed Plan Change 2.
	F113.1	Andrew Mazey	<i>Support</i>
1-3-1	15.2	John R Milligan	Adopt the proposed Plan Change 2 with amendments. Refer submission points 13.4 to 13.6.
	F111.3	George C Spencer	<i>Support</i>

## Evaluations and reasons

**4.2:** This part of the submission seeks the addition of “and is replaced in the same location” to the end of the clause (r) of Rule 8.1.

**4.9:** This submission seeks the retention of Proposed Plan Change 2(c). This is accepted, subject to amendments that may be recommended in response to other submissions in this group.

**8.2, F113.1:** Supports the proposed Changes. F113.1 makes particular reference to the rights of exclusive occupancy within defined boatshed areas.

**15.2, F111.3:** Support the proposed Changes, although the later parts of 15.2 seek amendments (ref submission points 13.4 to 13.6)

### Assessment

Since the wording of the clause already contains the words, “to replace”, it is not considered that this will add to the sense of the clause, or make it more precise. However, the evaluation for submission 5.1 (below) suggests an alteration that will remove this part of the Rule, if accepted.

## Recommendation

**4.2:** Reject

**4.9:** Accept

**8.2, F113.1:** Accept

15.2, F113.1: Accept

## Amendment

Nil

## 1-3-2 2(a) Add new (f) to Rule 8.23 Permitted Activities

1-3-2	4.8	Department of Conservation	Retain Proposed Plan Change 2(a), but add a new condition or standard as follows: “4. public access to and along the foreshore is maintained”.
	F102.3	John R Milligan	<i>Oppose</i>
1-3-3	10.9	Kaikoura District Council	Retain proposed Rule 8.23(f).
1-3-3	17.4	Lyttelton Port Company Ltd	Support proposed Rule 8.23 (f) without provisions 1,2 and 3.
	F109.18	Department of	<i>Oppose</i>

		Conservation	
1-3-3	17.6	Lyttelton Port Company Ltd	Add a new sub clause to Rule 8.23(f) as follows: <i>"4. Conditions 1-3 above do not apply to any structures within an Operational Area of a Port and do not apply to any navigational aids."</i>
	F109.26	Department of Conservation	<i>Oppose</i>
1-3-6	2.3	Guy Carnaby	Support the change to Rule 8.23(f)1.

### Evaluations and reasons

**4.8, F102.3:** This submission seeks to retain proposed Plan Change 2(a), but add a new condition or standard as follows: "4. public access to and along the foreshore is maintained".

F102.3 opposes the submission

**10.9:** This submission seeks the retention of new Rule 8.23(f). This support is accepted subject to any change that may be recommended in relation to the definition of "Lawfully Established Structure".

**17.4, F109.18:** This submission has qualified support for proposed Rule 8.23 as it opposes conditions 1, 2 and 3. The submitter considers that conditions 1 and 2, lack certainty and that they should not have to comply with condition 3 and that there are no R M Act reasons to apply conditions within the Port.

F109.18 opposes the submission on the basis that the conditions do not apply within the S384A permitted area of the Port. This is accepted.

**17.6, F109.26:** This part of the submission seeks the addition of a new sub-clause to Rule 8.23(f), as follows: "4. Conditions 1-3 above do not apply to any structures within an Operational Area of a Port and do not apply to any navigational aids."

F109.26 opposes the submission on the basis, that the conditions do not apply within the S384A permitted area of the Port. This is accepted.

**2.3:** This submission supports the change to Rule 8.23(f)1.

### Assessment

Plan Change 2(a) seeks to make occupation by a lawfully established structure a permitted activity. The existing provisions of the RCEP already permit the existing structures and the proposed plan changes are limited to permitting the associated physical occupation of the Coastal Marine Area. This physical occupation does not, as of right, give legal exclusivity to the structure owner. Granting legal exclusivity is necessary for the interior of an enclosed structure, but it is not necessary, as of right, for most coastal marine structures to occupy an area to the exclusion of other activities. In providing for occupation, it is necessary to prevent any further erosion of existing public access and to make owners of coastal structures aware of the limited nature of their legal occupancy rights over public land, and of the rights of others to have access within and along the Coastal Marine Area. For this reason, 4.8 is accepted.

In relation to 17.4, the condition, and the proposed Rule, does not apply in the Port Operational Area since this already has blanket consent to occupy under S384A (as the submission points out). On this basis it is considered that the submission has no basis in relation to the conditions which it seeks to oppose. Outside the Port Operational Area, the placement of a navigational aid is a Permitted Activity under Rule 8.1(k) of the RCEP. However, it is essential that existing lawfully established structures (pre-RMA) be recorded and their condition is maintained. Referring to the existence of the navigational aid in relation to a marine chart is not considered to be sufficient. There are valid RM Act reasons for the Port Company to be subject to the same controls as other occupations Crown land in the CMA.

Similar reasoning applies to 17.6 and that outside the area covered by the deemed coastal permit, it is considered that the conditions should apply to the Port Company as to any other body or individual.

### Recommendation

**17.4, 17.6, F102.3:** These submissions are rejected.

**4.8, F109.18, F109.26:** These submissions are accepted.

**10.9, 2.3:** This submission is accepted and no amendment is required.

### Amendment

Amend 8.23 ((f) now renumbered to (g)) by inserting (d) "public access within and along the coastal marine area is maintained".

### 1-3-8 Provide a definition of “Abandoned” for Rule 8.23(f)(2)

1-3-8[1]	2.5	Guy Carnaby	Include a definition of “abandoned” so that moorings only used occasionally or in summer are excluded or reword Rule 8.23(f) 2 to reflect this.
	F101.1	Thomas C Esplin	<i>Support</i>
	F103.1	Moncks Bay Mooring Association	<i>Support</i>
	F104.1	John A Sutherland	<i>Support</i>
	F105.1	Christchurch Yacht Club	<i>Support</i>
	F106.1	Andrew J Whiteside	<i>Support</i>
	F109.2	Department of Conservation	<i>Support</i>
	F110.1	Moncks Bay Mooring Association	<i>Support</i>
	F112.1	Andrew J Whiteside	<i>Support</i>

### Evaluations and reasons

**2.5, F101.1, F103.1, F104.1, F105.1, F106.1, F109.1, F110.1, and F112.1** : This submission relates to both Plan Changes. The submission seeks a definition of “abandoned” so that moorings only used occasionally or in summer are excluded or reword Rule 8.23(f) 2 to reflect this. F101.1, F103.1, F104.1, F105.1, F106.1, F109.1, F110.1, F112.1. These submissions in support provide the same reasoning as the initial submission. F109.16 seeks that the definition of “abandoned” should include the concepts of being deserted because of not being used any more and that this definition should be in the body of the Rule.

#### Assessment

The consideration of whether a structure is abandoned should be considered on a case-by-case basis, whereby investigations are carried out regarding ownership and use. Attempting a definition of “abandoned” in this instance would introduce an unwanted complexity. What is being used at any one point may become abandoned later, and to attempt to fix the point at which abandonment occurs would seem to be unnecessarily complex.

### Recommendation

**2.5:** Reject.

**F101.1, F103.1, F104.1, F105.1, F106.1, F109.2, F110.1, and F112.1** : Reject.

### Amendment

Nil

### 1-3-9 Rule 8.23 (f) (3)

1-3-9	2.4	Guy Carnaby	Support the change to Rule 8.23(f)3.
1-3-9	7.1	Christchurch City Council	Delete clause (f)3, OR amend by deleting the text " <i>evidence that the structure is a Lawfully Established Structure</i> " AND add a new clause 4 to read as follows: " <u>4. There is no information on Regional Council files that the structure required resource consent or any other form of authorisation, and evidence that no such consent or authorisation was obtained.</u> "
	F102.4	John R Milligan	<i>Oppose</i>
	F109.7	Department of Conservation	<i>Oppose</i>
1-3-9	9.1	Selwyn District Council	Delete clause (f)3, OR amend by deleting the text " <i>evidence that the structure is a Lawfully Established Structure</i> " AND

			add a new clause 4 to read as follows: <u>"4. There is no information on Regional Council files that the structure required resource consent or any other form of authorisation, and evidence that no such consent or authorisation was obtained."</u>
	F102.6	John R Milligan	<i>Oppose</i>
	F109.9	Department of Conservation	<i>Oppose</i>

### Evaluations and reasons

**2.4,:** This submission supports the change to Rule 8.23(f)3.

**7.1 and 9.1, F102.4, F109.7 F102.6, F109.9:** These submissions seek the deletion of clause (f)3, or its amendment by deleting the text "*evidence that the structure is a Lawfully Established Structure*" and add a new clause 4 to read as follows: "4. There is no information on Regional Council files that the structure required resource consent or any other form of authorisation, and evidence that no such consent or authorisation was obtained."

F102.4 and F102.6 oppose the submissions 7.1 and 9.1 and supports the retention of the Rule but contests the viability of the words in the existing proposed condition 8.23(f)3. The words contested are; "*and evidence that the structure is a lawfully existing (actual word is established) structure...*". While this further submission may be raising an interesting point with regard to the ability of a Permitted Activity Rule to require evidence. It is not considered that the rules requiring evidence is sufficiently uncertain as to be ultra vires. The submission in opposition is accepted but the further points raised are rejected.

F109.7 and F109.9 seek the retention of the definition of Lawfully Established Structure on the basis that the change put forward by the submitters is broad and uncertain. It is contended that the burden of proof lies with the owner of the structure and that the consent process would allow abandoned and disused coastal structures to be identified over time. This reasoning in these further submissions is accepted.

#### Assessment

While it is appreciated that the test of "lawful establishment" is onerous in terms of the long historical perspective of some structures and that the definition requires re-visiting, it is not considered that the wording put forward in these submissions is helpful in resolving the issue. While the opening part of the statement transfers responsibility with regard to establishing the provenance of the structure to ECan, the second part contains a non-sequitur. If the first part indicates that a resource consent was not required for the structure (and it follows that pre RM Act structures do not have "resource consents" in the strict interpretation of that term) then there will be no evidence "that no such consent or authorisation was obtained."

It is considered that it is the responsibility of the owner of the structure to establish that it has a legal right to occupy the CMA, but is also accepted that there may be some difficulties with structures, where records are incomplete. However, it is noted that some form of consent in relation to structures in what is now known as the Coastal Marine Area (CMA) has existed since the Harbours Act of 1887 and that records should be available.

In addition, it is highlighted that the definition of Lawfully Established Structure provides explicitly for circumstances in which a historically established structure may not have been formally 'authorised' by way of a permit etc. In this situation, where a structure has been in the Coastal Marine Area for more than 50 years (prior to the date the plan change became operative), evidence of 'existence' only is required (rather than of authorisation) – see definition of Lawfully Established Structure (d). The definition of Lawfully Established Structure and the rule recognises the historical context within which many structures were established while ensuring that illegal structures in the Coastal Marine Area are not sanctioned by a default rule. The rule as drafted is not considered to be so uncertain as to be ultra vires. The rule also does not reserve to the Regional Council the power to determine whether any particular proposal falls within a definition or class used in a rule. Amendment to this rule as sought by submissions is rejected.

### Recommendation

**2.4:** Accept.

7.1, 9.1, F102.4, F102.6 : Accept in part.  
F109.7, F109.9: Accept.

#### Amendment

Nil

#### 1-3-13 2(b) Add a new provision to Rule 8.23 Permitted Activities

1-3-13	1.1	George C Spencer	Reword the proposed new provision to Rule 8.23 2(b) as follows: <i>"<u>The occupation of the Coastal Marine Area by a Lawfully Established Structure comprising a boatshed and its associated launching ramp or rails within a Boatshed Area that is permitted by this rule explicitly includes the boatshed owner to exclude other persons from the said structure.</u>"</i>
	F109.1	Department of Conservation	<i>Oppose</i>
1-3-13	10.10	Kaikoura District Council	Retain proposed provision to Rule 8.23.
1-3-15	15.4	John R Milligan	Amend the proposed clause under "Exclusive Occupancy" in Rule 8.23 (PC2(b)) as follows (amendments proposed shown 6 underlined): <i>" ...<u>within a Boatshed Area or by a clubhouse that are in either case permitted by this rule explicitly includes the right of the boatshed or clubhouse owner to exclude persons from the interior of those buildings.</u>"</i>
	F109.23	Department of Conservation	<i>Oppose</i>
	F111.5	George C Spencer	<i>Support</i>

#### Evaluations and reasons

**1.1, F109.1:** This submission seeks the extension of the explicit right of a boatshed owner to exclude people from the interior of the boatshed to the associated launching ramps and rails as well. The reason advanced for this is that the exclusive occupancy thus conferred would allow a long-term lease to be granted to the owner. F109.1 opposes this submission on the basis of the potentially detrimental effects on public access to the foreshore. Public access is a matter of national importance under the RM Act and the submission contends that, if exclusive occupancy is sought, it should be through the consents process. This reasoning is accepted.

**10.10:** This submission seeks the retention of Plan Change 2(b). This is accepted, subject to any amendments that may be suggested in response to submission 15.3, below.

**15.4, F109.23, F111.5:** This submission seeks an amendment to the Exclusive Occupancy provision of Rule 8.23(f), by extending the provision to the interior of a clubhouse.

F109.23 opposes the submission on the basis of the uncertainty that the change would introduce. However, it sets out a change that is considered to meet the submitters concerns and suggests that exclusive occupancy should be extended to the interior of a clubhouse.

F111.5 supports the suggested change.

#### Assessment

It is not the intention that any form of lease or licence be granted in the manner requested by the submitter, and it is doubtful if such a lease over Crown land could be granted. In addition, extending exclusive occupancy in the manner requested could lead to public access along the foreshore being impeded, contrary to the requirements of Section 6(d) of the RM Act. However, in relation to 15.4, it is accepted that this is an omission and that, where such structures become permitted to occupy by virtue of this Plan Change, then security considerations would make such an exclusion legitimate. However, for the avoidance of doubt, it is considered necessary to provide a definition of "clubhouse" and to remove the stipulation that a boatshed or clubhouse be within a Boatshed Area as designated in the current RCEP. Most clubhouses that exist within the CMA do not occur within designated Boatshed Areas.

## Recommendation

**1.1:** Reject. Note that G Spencer advised at the hearing by letter of his withdrawal of 1.1 on the basis that he considered exclusive occupancy on landing ramps and rails would impede public access.

**F109.1:** Accept

**10.10, 15.4 :** Accept and an amendment is required

**F109.23, F111.5:** Accept.

## Amendment

Amend the proposed clause under "Exclusive Occupancy" in Rule 8.23(f) (now renumbered to (g)) as follows: "*The occupation of the Coastal Marine Area by a boatshed or by a clubhouse that are in either case permitted by this rule explicitly includes the right of the owner of the structure to exclude persons from the interior of those buildings.*"

Also to add a definition of "Clubhouse" to Appendix 1 "Definition of Terms" in the RCEP to read as follows, "*Enclosed premises in the Coastal Marine Area that are used for club activities associated with boating and marine activities in the adjacent waters of the CMA.*"

### 1-3-18 2(C) Amend or Add a new definition to Appendix 1 Definition of Terms

1-3-18	4.10	Department of Conservation	Retain Proposed Plan Change 2(c).
1-3-18	7.2	Christchurch City Council	Add a new clause to the definition of Lawfully Established Structure as follows (or similar): " <i><u>(e) a structure that at the time it was built either did not require, or had obtained, appropriate permission, license, permit authority or resource consent because it was outside the Coastal Marine Area as defined by the legislation operative at the time.</u></i> "
	F102.5	John R Milligan	<i>Support in part</i>
	F109.8	Department of Conservation	<i>Oppose</i>
1-3-18	9.2	Selwyn District Council	Add a new clause to the definition of Lawfully Established Structure as follows (or similar): " <i><u>(e) a structure that at the time it was built either did not require, or had obtained, appropriate permission, license, permit authority or resource consent because it was outside the Coastal Marine Area as defined by the legislation operative at the time.</u></i> "
	F102.7	John R Milligan	<i>Support in part</i>
	F109.10	Department of Conservation	<i>Oppose</i>
1-3-18	10.11	Kaikoura District Council	Retain proposed definition of Lawfully Established Structure (PC 2(c)).
1-3-18	15.5	John R Milligan	Add a new clause as (e) to the definition of Lawfully Established Structure as follows: " <i><u>(e) a clubhouse</u></i> "
	F109.24	Department of Conservation	<i>Oppose</i>
	F111.6	George C Spencer	<i>Support</i>
1-3-18	15.6	John R Milligan	Add a new definition for "Clubhouse" as follows: " <i><u>Clubhouse means: an enclosed structure held by a society of persons (whether corporate or not) formed for purposes that include the fostering of aquatic activities, and held by it for the principal purpose of providing facilities to it's members.</u></i> "
	F109.25	Department of	<i>Oppose</i>

		Conservation	
	F111.7	George C Spencer	<i>Support</i>
1-3-18	17.5	Lyttelton Port Company Ltd	Oppose in part, the proposed definition of "Lawfully Established Structure" (PC 2(c))
	F109.19	Department of Conservation	<i>Oppose</i>
1-3-18	17.7	Lyttelton Port Company Ltd	Add a new sub-clause (e) to the definition of Lawfully Established Structure as follows: " <u>(e) all structures in operational areas of a port erected prior to the enactment of the Resource Management Act.</u> "
1-3-29	14.2	John A Sutherland	Add a provision to the proposed definition of a lawfully established structure (PC2(c)), indicating that some records on some moorings are inaccurate and incomplete, and that these moorings (with inaccurate or incomplete records) may also be deemed to be a "Lawfully Established Structures".

### Evaluations and reasons

**4.10:** This submission seeks the retention of Proposed Plan Change 2(c). This is accepted, subject to amendments that may be recommended in response to other submissions in this group.

**7.2 & 9.2, F102.5 & F109.8, F102.7, F109.10:** Following on from submissions seeking an amendment to Rule 8.23(f), these submissions seek an amendment to the definition of a Lawfully Established Structure. The submissions seek this wording; *a structure that at the time it was built either did not require, or had obtained, appropriate permission, license, permit authority or resource consent because it was outside the Coastal Marine Area as defined by the legislation operative at the time.*

A response has already been made to the submissions seeking changes to the Permitted Activity conditions with regard to Lawfully Established Structures.

F102.5 supports the submission in part, but points out that the concept of the Coastal Marine Area was only brought into existence by the RM Act and that this concept would need to be included in the submitters definition. While the point made in this further submission is accepted, the initial submission is not.

F109.8 seeks the retention of the definition of "*lawfully established structure*" on the basis that the change put forward by the initial submission is broad and uncertain in application. This is agreed.

**10.11:** Seeks the retention of the definition of a "*lawfully established structure*". This is accepted.

**15.5, 15.6, F109.24, F111.6, F109.25, F11.7:** The submissions seek the addition of a new definition of "Clubhouse" to accompany the request to exclude persons from the interior of such premises. It has been recommended that the part of the submission seeking exclusion of persons from a clubhouse be accepted, but the wording put forward in the submission has not. An alternative wording has been put forward as a response to 15.4 above.

F109.24 and F109.25 oppose the inclusion of a definition of "Clubhouse".

F111.6 and F111.7 support the submission. These are accepted

**17.5 & 17.7, F 109.19:** This part of the submission opposes in part the definition of a "Lawfully Established Structure" and seeks an extension to include, "all structures in operational areas of a port erected prior to the enactment of the Resource Management Act." F109.19 opposes the submission on the basis that the Operational Area of the Port already has authorisation to exclusively occupy the CMA. This is accepted.

**14.2:** This submission covers both Plan Change 1 and 2 and seeks the inclusion of a clause indicating that, where records are inaccurate and incomplete, the swing moorings affected should be considered Lawfully Established Structures.

### Assessment

It is not considered that the wording put forward by these submissions (7.2 and 9.2) is certain in its intent, or capable of application. The first part of the clause which is sought has some relevance, but is negated by the final part, which reads as follows "...because it was outside the Coastal Marine Area as defined by the legislation operative at the time."

If such was the case, then the structure would be "outside" the competence of the Plan Change, i.e., landward of the CMA ("outside"). However, given that no previous definition of the CMA existed prior to the RM Act definition, what is sought by the submissions cannot be achieved.

In relation to 17.5 and 17.7, the change sought is considered to be unnecessary since much of the Lyttelton Port area is covered by a deemed coastal permit under RM Act section 384A, which covers occupation. Outside the area covered by the deemed coastal permit, it is considered that the definition should apply to the Port Company as to any other body or individual.

In relation to 14.2, while it is accepted that current records of the legal status of structures in the CMA is inaccurate and incomplete, part of this problem is created by the owners and occupiers of the structures not informing ECan of change of ownership. Part of the reason for requiring proof of the lawful establishment of a structure is to create an up-to-date database of structures occupying the CMA. The recommendation in relation to submissions 7.1 and 9.1 is that the definition of a Lawfully Established Structure be amended. If this is accepted, it may go some way to meeting the requirement of this submission.

In relation to 15.5, a definition of a “Clubhouse” has been included as a consequential response to the recommendation to allow the exclusion of the public from the interior of such enclosed structures (in 15.4 above). The wording put forward in the recommendation does not accord with that put forward by the submitter, but is intended to serve the same purpose.

### Recommendation

**4.10, 15.5, 15.6, F102.5, F102.7, F109.19, F109.8, F109.10, F111.6 & F111.7:** Accept.  
**F109.24, F109.25:** Accept.  
**7.2 , 9.2, 17.5, 17.7, F102.7:**Reject.  
**14.2:** Accept in part.

### Amendment

Nil

### 1-4-1 2(d) Replace the present definition of Authorised Structure in Appendix 1 Definition of Terms With:

1-4-1	4.11	Department of Conservation	Retain Proposed Plan Change 2(d).
1-4-1	10.12	Kaikoura District Council	Retain Proposed definition for Authorised Structure (PC 2(d)).

### Evaluations and reasons

**4.11, 10.12:** Both these submissions seek the retention of the new definition of “Authorised Structure”. These are accepted, with the proviso that a prior recommendation in relation to Submissions 7.1, 9.1 and F109.23 has put forward a modification to Rule 8.23(f)(3).

### Recommendation

**4.11, 10.12:** Accept.

### Amendment

Nil

### 1-4-1 Retain new definition of Authorised Structure

1-4-1	4.10	Department of Conservation	Retain Proposed Plan Change 2(d).
1-4-1	10.10	Kaikoura District Council	Retain new definition for Authorised Structure.

### Evaluations and reasons

**4.10, 10.10:** Both these submissions seek the retention of the new definition of “Authorised Structure”. These are accepted, with the proviso that a prior recommendation in relation to Submissions 7.1 and 9.1 and F109.23 has put forward a modification to Rule 8.23(f)(3).

### Recommendation

**4.10, 10.10:** Accept.

**Amendment**

Nil