

Threshold Test for Invited Private Plan Change Requests



Caring for Northland
and its environment

**NORTHLAND
REGIONAL
COUNCIL** 

TABLE OF CONTENTS

INTRODUCTION:.....	5
1. STAGE 1: THRESHOLD TEST FOR ALL PLAN CHANGE REQUESTS	6
2 STAGE 2: COMPARATIVE EVALUATION FOR PLAN CHANGE REQUESTS INVOLVING PROPOSALS FOR THE SAME PHYSICAL LOCATION.....	9
3 THE ADOPTED PROCESS FOR INVITED PRIVATE PLAN CHANGE REQUESTS.....	12

Threshold Test for Invited Private Plan Changes

INTRODUCTION

A key element in the Invited Private Plan Change approach to establishing Aquaculture Management Areas is the fact that, before any Plan Change can be publicly notified, the Council must first evaluate Plan Change proposals to determine whether these should be accepted for public notification, or rejected.

This evaluation process involves a threshold test to determine whether an Invited Private Plan Change is well prepared, comprehensive, and not proposed to be located in a part of the coast that is clearly inappropriate (Stage 1).

In addition to the threshold test, the Council may have to make a further evaluation if two or more Plan Change requests are seeking the same space in the coastal marine area (Stage 2).

If the Invited Private Plan Change request passes the evaluation test and is accepted for Public Notification then it may continue through the full public participation process for Plan Changes set out in the Resource Management Act 1991. This includes the opportunity for public submissions, further submissions and hearings before the Council and appeals to the Environment Court.

If, on the other hand, an Invited Private Plan Change request is rejected by the Council following this evaluation process, then that proposal must be abandoned. Such rejection by the Council can be appealed to the Environment Court so it is important that the Northland Regional Council uses robust evaluation criteria.

The Council has set out in this document the evaluation criteria it intends to use to address the threshold test and the additional criteria to be used in circumstances where two or more applicants are seeking the same space.

THRESHOLD TEST AND EVALUATION CRITERIA FOR INVITED PRIVATE PLAN CHANGE REQUESTS

The following 2-stage evaluation process shall generally be used by the Northland Regional Council in determining whether to accept or reject part, or all, of a Plan Change request to establish one, or more, Aquaculture Management Areas (AMAs) as a result of an invitation to make such a request pursuant to section 165Z of the Resource Management Act 1991.

The categories and criteria for Stage 1 are as stated in section 165ZE and the corresponding Schedule 1, clause 25(4) of the Resource Management Act 1991.

The criteria set out below for each category shall not limit the ability of Council to adopt and consider any other criteria it deems relevant at the time.

1. STAGE 1: THRESHOLD TEST FOR ALL PLAN CHANGE REQUESTS

In deciding whether to reject a Plan Change request under section 165ZE of the RMA 1991, Council will, without limiting its ability to adopt and consider any other criteria it deems relevant at the time, consider the following matters:

1.1 The request, or part of the request, is frivolous or vexatious

In applying this category, Council will consider whether:

- 1.1.1 The Plan Change request contains all the required essential elements, set out in clauses 21 to 24 of the First Schedule to the Resource Management Act 1991, including a description of the proposal with full contact details and exact location and area references for the proposed AMA.
- 1.1.2 The Plan Change request was received in time.
- 1.1.3 The Plan Change request was received together with the specified deposit.
- 1.1.4 The Plan Change request includes, in a suitable form, surety that the applicant is financially secure against the cost of the full process for the Plan Change.
- 1.1.5 The Plan Change request is constructed in such a manner as to frustrate the purpose of the Resource Management Act 1991, or to deny the opportunity for anyone else to make a Plan Change Request.

1.2 The substance of the request, or part of the request, has been considered and given effect to, or rejected by, the Northland Regional Council or the Environment Court within the last two years.

In applying this category, Council will consider whether:

- 1.2.1 The request either addresses new or different aquaculture activities or satisfies the grounds upon which the earlier request was rejected.

1.3 The request, or part of the request, is not in accordance with sound resource management practice.

In applying this category, Council will consider whether:

- 1.3.1 There is sufficient evidence of consultation undertaken with iwi, relevant local authorities, government agencies and the community, and an indication is provided of proposed responses to the views of those consulted.
- 1.3.2 There is sufficient evidence (including benthic and hydrological analyses) of the technical requirements and environmental effects of undertaking the proposed aquaculture activity in the proposed AMA.
- 1.3.3 The required twenty percent (20%) representative space within the AMA(s) has been identified in consultation with Te Ohu Kai Moana Trustee Ltd.
- 1.3.4 The proposed AMA is consistent with the Objectives and Policies of the existing and adjacent Marine Management Areas described in the Regional Coastal Plan and, if not, the significance of any inconsistency.
- 1.3.5 Evidence that relevant planning documents recognised by an iwi authority have been taken into account.

1.4 The request, or part of the request, would make the Regional Coastal Plan inconsistent with Part 5 of the Resource Management Act 1991.

In applying this category, Council will consider whether:

- 1.4.1 The part of the Plan Change request that sets out the proposed Objectives, Policies, Methods and Rules for activities within an AMA is inconsistent with the Council's publicly notified Plan Change 4 (Policy and Regulatory Regime for Aquaculture Management Areas).

(Note, this criterion is applicable only to standard private plan changes i.e. not invited private plan changes as they will be limited to location and area only.)

- 1.4.2 Any inconsistency with Part 5 of the RMA is sufficiently material to the Plan Change as to require substantial consequential amendment to the Plan Change itself.
- 1.4.3 Allowing the person who requested the Plan Change to revise the Plan Change would unreasonably prejudice the opportunity for others to request a Plan Change for the same general area.

1.5 More than one person has requested a change to establish an aquaculture management area in the same area of the region and the council has adopted another request.

In applying this category, Council will consider whether:

- 1.5.1 Any of the requests propose different but compatible aquaculture activities to the request adopted by Council.

2. STAGE 2: COMPARATIVE EVALUATION FOR PLAN CHANGE REQUESTS INVOLVING PROPOSALS FOR THE SAME PHYSICAL LOCATION

When more than one Plan Change request is received for the same physical location and these are accepted by Council following the Stage 1 threshold test set out above, an additional comparative evaluation step may be required to determine the successful request.

Alternatively, where more than one Plan Change request is made for the same area, the Council may, within a suitable time frame, ask the parties to prepare a joint case for the Northland Regional Council to exercise its discretion under section 165Z of the Resource Management Act 1991, and either adopt that request or combine it with another request.

In the event that the Council does not exercise its discretion to adopt a request and combine it with any other request, the following criteria will be applied in evaluating the merits of the competing requests. The weight to be assigned each criterion will be determined, and advised at the time of formal notification of any invitation.

2.1 Invitee's competence to successfully complete the Plan Change process:

- 2.1.1 The extent to which the proposal demonstrates an understanding of NRC Plan Change requirements generally and the Regional Coastal Plan for Northland in particular.
- 2.1.2 The range and depth of technical competencies and regulatory structure of the AMA development contained within the proposed Plan Change.
- 2.1.3 The comprehensiveness of the proposed methodology for marine farming within the proposed AMA and its probability of success.
- 2.1.4 The extent of consultation with key stakeholders and the nature and appropriateness of any agreements or undertakings given.
- 2.1.5 The completeness and efficiency of relevant information and monitoring requirements proposed.
- 2.1.6 The extent to which the proposal demonstrates an understanding of, and provides for, the relevant matters contained in RMA Part 7A - Occupation of Coastal Marine Area and the Regional Coastal Plan for Northland.
- 2.1.7 The adequacy of the Section 32 report submitted.
- 2.1.8 The extent to which relevant planning documents [including recognised iwi planning documents] are taken into account.
- 2.1.9 The success of consultation with and any relationship developed with the Department of Conservation.
- 2.1.10 The extent to which the proposed Plan Change approach aligns with the current NRC policies – i.e. staged development, methods-based approach, provision for non-aquaculture activities, caution in the absence of reliable knowledge of the location proposed.

2.1.11 The extent to which the invitee has addressed whether appropriate financial contribution and/or development contribution requirements have been or need to be established.

2.1.12 The extent to which there is evidence of consideration of the need for and, if relevant, provision for non-aquaculture activities.

2.2 Invitee's demonstrated understanding of and ability to operate a commercially viable aquaculture activity:

2.2.1 The extent to which the invitee is able to demonstrate an understanding of the aquaculture industry, its commercial risks, and a successful marine farming track record

2.2.2 The extent to which the invitee is able to demonstrate an understanding of the need for, and commercial availability of, relevant associated infrastructure and capital.

2.2.3 The extent to which the invitee is able to demonstrate an understanding of the relevance of, need, and capacity for, undertaking appropriate research and development.

2.2.4 The extent to which the invitee is able to demonstrate an understanding of the use of current industry good practice for aquaculture activities.

2.3 Invitee's demonstrated competence on a range of collateral issues:

2.3.1 The extent to which the invitee has addressed whether the species intended to be farmed is indigenous to, or has previously been cultivated in, New Zealand or Northland's coastal marine area and, if not, the likelihood of it becoming established 'in the wild'.

2.3.2 The extent to which the invitee has addressed whether the location of the proposed farm in relation to tidal height, wave exposure, and water quality is suited to the growing habit of the species to be farmed.

2.3.3 The extent to which the invitee has addressed and identified the matter of representative and economic space in accordance with the Maori Commercial Aquaculture Claims Act 2004.

2.3.4 The extent to which the invitee addresses how existing water quality will be affected and the area of the receiving waters likely to be affected.

2.3.5 The extent to which the invitee has addressed whether the construction, maintenance or operation of any subsequently proposed aquaculture activity will require the use of vehicles in, on or along foreshore areas.

2.3.6 The extent to which the invitee has addressed the availability of associated land-based requirements necessary to operate any subsequent aquaculture activity.

2.3.7 The extent to which the invitee has addressed the degree of exclusive occupation of space likely to be required in relation to the available space within the locality, and an assessment of its effects on existing uses of that coastal space.

- 2.3.8 The extent to which the invitee is able to demonstrate consultation with Te Ohu Kaimoana Trustee Limited.
- 2.3.9 The extent to which the invitee is able to demonstrate successful consultation with the Ministry of Fisheries
- 2.3.10 The extent to which the invitee has addressed and identified any benefits to the Northland Region generally and the particular locality.
- 2.3.11 The extent to which the invitee has addressed the matter of public access and use of coastal waters.

3. THE ADOPTED PROCESS FOR INVITED PRIVATE PLAN CHANGE REQUESTS

- 3.1 The process to be followed is generally as set out in Part 2 of Schedule 1, and Schedule 1A of the Resource Management Act 1991 for Plan Changes.
- 3.2 When Council publicly notifies an invitation to request Plan Changes for Aquaculture Management Areas it will indicate the time period within which requests must be submitted for evaluation and any additional criteria or weightings that will be applied in determining those requests.
- 3.3 Council may require intending requesters to formally notify it of the type, size and location of any proposed AMA within a specified period of the invitation being notified for the purpose of advising all parties where competition for the same space seems likely, and a Stage 2 evaluation step may be required.
- 3.4 Requests for invited Plan Changes for Aquaculture Management Areas must be complete.
- 3.5 Requests for invited Plan Changes for Aquaculture Management Areas will not generally be adopted by Council, so requesters should be able to demonstrate their ability to execute entire Plan Changes including appeals.
- 3.6 Where a request is completed and submitted to Council in advance of the notified deadline, that request will not be processed or deemed to have been received until the deadline for the receipt of requests has been passed. Early receipt of requests confers no special right to priority in the processing of requests. All requests received by Council by the notified deadline are deemed to have equal priority and will be evaluated accordingly.
- 3.7 Requests not received by the notified deadline, but which are subsequently accepted by decision of Council as a late request, may be considered to have a lesser priority.
- 3.8 Further information may be required prior to Council making the critical determination to reject or accept requests. Where Council requires further information from parties competing for the same space it will do so in such a way as to be fair and reasonable to all such parties.