

Proposed Marlborough Environment Plan

Hearing

13 February 2018

Block 2 - Topic 6

Indigenous Biodiversity

Presentation from

**Kenepuru and Central Sounds Residents' Association
and Clova Bay Residents' Association**

13 February 2018

Presentation to MEP Hearing Panel re Topics 1 and 3

Introduction

1. On behalf of the Kenepuru and Central Sounds Residents' Association (**KCSRA**) and the Clova Bay Residents' Association (**CBRA**) (**Associations**) I would like to thank the hearing panel for the opportunity to talk to aspects of the Association's submissions on the Proposed Marlborough Environment Plan (MEP) and our subsequent further submissions as it concerns the above topics.
2. My name is Andrew Caddie and I am the Vice President of KCSRA. For ease of administration and efficiency the Associations divided their response to aspects of the MEP among members and thus prepared and submitted several separate submissions. As I am currently living in Blenheim the Associations asked me to prepare and present on behalf of the Associations.
3. In terms of my professional background I hold 2 tertiary qualifications - a Bachelor of Forestry Science and a LLB, both from Canterbury University. I was a forester for a number of years with the then NZ Forest Service. Following a period of OE I obtained my LLB and practised law as a commercial solicitor for a number of years at various large National legal firms.
4. Today's session of hearings covers Topic 6 of Block 2 – Indigenous Biodiversity. I note the Chair's earlier assurances that panel members will have read the Associations submissions and accordingly we wish to focus on matters arising from the RMA Section 42A reports the Council has had prepared. In this case the Section 42A report prepared by consultant planner Mr Andrew Maclellan.

Section 42A Report– Topic 6

5. As noted in the Associations submissions, we focused on bio diversity issues arising in the Coastal Marine Zone of the Marlborough Sounds. We found the way Mr Maclennan grouped various matters from various sections of this topic a little difficult to follow so we retain a sequential approach (the order matters are addressed in this chapter of the MEP) as much as possible.

Objectives

6. As will be developed further at the hearing we believe that the requirements of the likes of section 5 of the RMA with its emphasis on “promotion” and Policy 11 of the New Zealand Coastal Policy Statement require more than identifying a few small areas of special significance in the costal marine area. Accordingly we support the change (*values*) suggested by Mr Maclennan to Objective 8.1, as we believe it reinforces this point and gives it greater importance.
7. We support the retention of Objective 8.2 as argued by Mr Maclennan.

Policies

8. **Policy 8.1.2 – Ecologically significant areas:** The focus of MDC as to identifying areas of significant indigenous biodiversity value in the coastal marine zone is, we submit in it its infancy.
9. Protection of fish spawning grounds, as ecologically significant areas, is one area of concern for the Associations, another is protection of foraging areas for the endangered King Shag. Thus for example it is historically accepted that the Kenepuru Sound was an important snapper spawning

area. To date as far as we can ascertain there has been no work carried out as to identifying key spawning area attributes and how they might be protected.

10. As a result of these concerns the Associations identified a gap in the MEP and submitted that areas meeting the assessment criteria for significant indigenous biodiversity value *but not yet discovered* or identified should also be protected.
11. In opposing this submission the Section 42A report makes two arguments. Mr Maclellan suggests that the better approach for the future is to rely on the plan change process where additional areas can be brought into the list within the MEP. This ignores practicalities. Among other things a plan change is a very time consuming process, which does not address the need to protect new areas in the interim in a timely manner. Our approach would afford better and more immediate protection.
12. Mr Maclellan then suggests that to amend this policy to cover the point as we submitted would, arguably, be duplication as in his view the likes of policy 8.3.2. “*seeks to achieve this outcome*”¹. In our reading of the relevant policies there is still the danger of a closed logic loop. That is, an area is not significant until it is part of the Plan list and until then these plan policies as proposed by Mr Maclellan do not provide a platform to recognise and thus provide better protection.
13. Accordingly, if Mr Maclellan’s view re the wording of policy 8.1.2 is accepted, then the subject policy may not be the appropriate place to cover off the matters as we have raised. Rather, it is submitted, that the likes of policies 8.2.3, 8.2.8, 8.3.1(b) 8.3.2 and 8.3.7 **should be amended** so as to *also* apply to marine sites not currently specifically/identified

¹ See page 22 of the Maclellan Section 42A report.

in the MEP but which are found to nonetheless meet the criteria for significance as outlined in Policy 8.1.1.

14. **Policy 8.1.3 – Adequate Information:** This reads “*Having adequate information on the state of biodiversity in terrestrial, freshwater and coastal environments in Marlborough to enable decision makers to assess the impact on biodiversity values from various activities and uses*” We submitted in general support of this policy.
15. However we also submitted that it be clarified that the range of information collected should clearly cover the effects of *existing* activities on the environment. In particular changes occurring to coastal marine indigenous flora and fauna. This is particularly relevant to re-consenting applications.
16. Mr MacLennan disagrees (page 24) and says the policy is restricted to *future* activities (and impliedly should stay that way). Unfortunately no basis or discussion is made as to why this policy should **not** address *existing* activities.
17. We submit that it is difficult to rationalise why the MEP should exclude an information gathering policy on the effects of *existing* regulated activities. It is certainly required, it is submitted, to manage the likes of aquaculture activities going forward where there are ecological indications of over-farming. In order to assist the hearing panel **we table** a report from Dr Brian Stewart, which highlights this concern². We can address this further at the hearing.
18. Mr MacLennan has also recommended some wording changes to the policy. We submit against the deletion of the word ***adequate*** as without it there is no objective standard to judge the efforts of the MDC in complying with this policy.

² Paper commissioned by KCSRA from Dr Brian Stewart dated December 2015.

Policies 8.2.1 to 8.2.13 – Protecting and enhancing Indigenous Biodiversity

19. **Policy 8.2.1:** Whilst we agreed generally with this policy Mr Maclennan rejected our submission that it be extended to include the determination of acceptable cumulative ecological impact thresholds (*‘ecological carrying capacities’*) for regulated activities in the coastal marine area such as marine farming. This was on the grounds that the aquaculture chapter, when it emerges, is the place to address this.
20. We dispute this logic.
21. Chapter 8 overarches the likes of the delayed aquaculture chapter. Thus there stands to be an inconsistency if there is no general policy requiring the determination of acceptable limits of regulated activities in the plan. We also note that Policy 7 of the NZCPS requires that areas under threat from cumulative effects to be identified and managed.
22. In terms of the changes to the policy as recommended by Mr Maclennan. We query the insertion of the words “*resource users*” in the sense that it highlights the need to also insert a reference to “*community groups*” and submit accordingly.
23. **Policy 8.2.3 Priority Protection etc., of habitats, ecosystems and areas:** Mr Maclennan recommends a sweeping policy change to this general policy. Namely that it be restricted to terrestrial areas and **thereby exclude** marine areas (page 30). Mr Maclennan suggests that by having a policy (8.3.7) aimed at restricting certain fishing practices this is enough. We beg to differ.
24. We submit that ecologically significant marine environments are just as deserving of priority under this policy section as terrestrial environments.

25. Further, our submission is that there is also a need to prioritise *significant effects* of activities on all marine areas of indigenous biodiversity value. We suggest that the Section 42A response to that (lack of funding) is somewhat lacking.
26. **Policy 8.2.9 – Maintain, enhance, and restore ecosystems, areas not labelled as significant re policy 8.1.1:** Like many other submitters we supported this policy. We are extremely concerned that that Mr MacLennan now recommends that this **policy be deleted**. This appears to be on the basis of submissions from the likes of the Marine Farmers Association and Federated Farmers. We submit that Mr MacLennan appears to be, among other things, overlooking the requirements of Policy 14 of the NZCPS.
27. The MFA submission suggests that policy 8.3.2(b) is enough. We submit that they (and Mr MacLennan) are overlooking the fact that policy 8.3.2(b) **is not** about restoration and rehabilitation of the environment. Rather, it is about the anticipated effects of an activity being considered for a resource consent.
28. Without policy 8.2.9 there is we submit, and contrary to Policy 14 of the NZCPS, no policy on the matters currently covered by MEP policy 8.2.9. This should not be so.
29. **Policy 8.2.12 – Encourage and support landowners, community groups:** Due to the asymmetrical disadvantages of community groups submitting on proposals advanced from well resourced, economically incentivised industry participants we submitted this policy be extended. Mr MacLennan rejected this on the grounds it was outside the ambit of the MEP (page 28). We submit this is an inconsistent approach, compare for example policy 8.2.1.

30. **Policy 8.3.1 – Managing effects:** We strongly supported this policy. As may be appreciated we are now **very concerned** about the recommendation of Mr MacLennan to **delete** the reference in policy 8.3.1(c) to the words “.... *or are not identified as significant in terms of Policy 8.1.1 of the MEP*”.
31. We submit that the reasoning of Mr MacLennan here is flawed. It will for example mean there **is no policy** requiring the avoidance of significant adverse effects on the marine environment - unless it has been identified as a significant area. This change also catches and thus excludes cumulative effects. We **stress** that areas so identified within the Sounds as ecologically significant in the MEP are, in the main, quite small and comprise a very small percentage of the Sounds marine area. Leaving vast areas of the Sounds without even this limited degree of protection is not, we submit, appropriate or acceptable in this day and age.
32. **Policy 8.3.2 – Resource consents – adverse effects – ecosystems etc – avoid, remedy, mitigate - significant and other areas:** In our submissions we sought a tightening (and suggested wording) of the degree of protection afforded in the context of this policy.
33. Again we have been surprised to see that Mr MacLennan recommends a watering down of this policy. Delete “*remedy*” and “*mitigate*” for significant areas and merely “*manage*” effects elsewhere. This appears to be on the basis that this policy only relates to terrestrial vegetation issues – ie areas outside of the ambit of the NZCPS. We submit that this policy is required in terms of Policies 11 and 13 of the NZCPS and thus the suggested drafting changes from Mr MacLennan are not, we submit, appropriate. If it is thought appropriate to address the concerns of land based operations in the manner suggested by Mr MacLennan then this should not be at the expense of the marine area.

34. **Policy 8.3.5 – Re Policies 8.3.1 /2 - Adverse effects to be avoided etc, examples:** We submitted that this policy was inadequate in that it did not address cumulative impacts particularly in the marine area. We proposed and detailed such a policy. Mr MacLennan rejected this on the grounds that the delayed aquaculture chapter would address this matter (we assume that this is what Mr MacLennan (page 45) means with his reference to ” a subsequent plan change”).
35. It is not enough, we submit, to assume or speculate on what the proposed aquaculture chapter might contain to address cumulative effects. Not least because cumulative indigenous biodiversity effects are not constrained to marine farming. Secondly we submit, it is the role of Chapter 8 to set out how effects on indigenous biodiversity are to be managed. It is the role of the proposed aquaculture chapter to fit a particular activity (aquaculture) within those biodiversity policies, not to set them. Further, there stands to be inconsistencies and contradictions if the general biodiversity Chapter 8 does not contain a cumulative effects policy but an aquaculture chapter does. We also note that chapter 6 and 7 (natural character and landscape) do contain cumulative effects policies.
36. **Policy 8.3.7 and Rule 16.7.5 – Intrusive Fishing activities in Ecologically Significant Marine Sites (ESMS).** Policy 8.3.7 and Rule 16.7.5 are largely about prohibiting intrusive fishing activities in ESMS. The Section 42A report recommends that protection be restricted to areas identified as vulnerable to benthic disturbance by Davidson et al ³ (*Davidson et al Categorisation Report*).
37. ESMS 3.14 in Clova Bay encompasses the intertidal areas and the immediate offshore sub tidal area. The (first)

³ Davidson et al *Reassessment of selected significant marine sites (2014-2015) and evaluation of protection requirements for significant sites with benthic values.*

Davidson et al 2011 Report⁴ notes that a Ministry of Agriculture and Fisheries survey in 1987 indicated Mahau Sound, Maori, Nydia and Clova Bays are potentially the most important nursery areas for snapper in the Pelorus Sound. With respect to ESMS 3.14 the Davidson et al 2011 Report records:

“At the head [of Clova Bay] is a tidal estuary with sand flats, salt marsh and sea grass beds. Some fringing terrestrial plants border the tidal flats particularly in the eastern edges of the tidal flats around Totaranui Stream. There are horse mussels and scallops in the shallow subtidal area off Totaranui Stream.

Assessment of ecological significance

The estuarine fringe and the intact subtidal habitats immediately offshore are a relatively uncommon combination in Marlborough and this is one of the best examples.”

38. Figure 2 on page 19 of the Davidson et al Categorisation Report identifies Site 3.14 as a site warranting Category B protection. Accordingly we were startled and very concerned to find that Site 3.14 appears to have **been omitted** from the list of Category B sites in the Appendix to Chapter 8 of the MEP as proposed by the section 42A report and entitled “*Category B - Ecologically Significant Marine Sites*”
39. This appears to be an error - given that 3.14 is assessed as an ESMS because of “*the intact sub tidal habitats immediately offshore*” and as such requires at least Category B protection. Indeed, as noted, it is identified as a Category B Site in the Figure 2 Map in the Davidson et al Categorisation Report.
40. We are not sure exactly how this unfortunate omission arose but we note that Site 3.14 is not included **in the table** labelled *Appendix 2 Site categorization data* in the Davidson et al Categorisation Report and suspect that this is where the

⁴ *Ecologically Significant Marine Sites in Marlborough* (‘Davidson et al 2011 Report’)

error has originated – with this table then being picked up by the section 42A Report as the proposed Appendix to Chapter 8.

41. We **strongly submit** that it is a matter of urgency and of some importance to the integrity of this process that the Category B Map (page 9) and the proposed Appendix to Chapter 8 of the MEP be corrected to **include Site 3.14**.

42. Whilst the above matter diverted our attention somewhat we have noted Mr MacLennan’s long discussion (pages 64 to 79) leading to his fairly mild recommended amendments to Rule 16.7.5. We may discuss this further at the hearing as time permits.

43. **Policy 8.3.8 –Biodiversity Offsets:** We became concerned at this policy as on a first read this concept, rightly so, seemed limited to land use. However, the words “*or other activities*” gave us cause to pause. The submissions by the likes of marine based industry submitters underlined our concerns. With all due respect Mr MacLennan’s analysis, discussion and response still falls **well short** of the comfort we are seeking re application of this concept to the marine areas.

44. For example, we have a strong sense of unease that a private for personal gain applicant could trade off what is essentially public space (eg the sea bed) against other areas of public space.

45. Since our original submissions we have also had a short but sharp lesson in how this concept could be cynically twisted at the expense of the environment. We refer to the recent proposal from MPI to pave the way for NZKS to be granted new marine fish farm sites in alternative “better” areas. Part of the bland justification from MPI was that this would be offset by the possible closure of non-operational salmon farms. A net gain we think not.

46. Accordingly we submit it is not appropriate at this time to apply the use of offsets to the marine area. At the least, paragraph (g) (*proposal should be located close to the application site where this will achieve the best ecological outcomes*) (page 86) should be amended, we submit, to the effect that in the marine environment offset proposals *must* be located in the same area of ecological influence as the application site. This is to ensure that marine ecosystems around application sites are not sacrificed for gains, irrespective of the degree of gain, that are in different ecosystems.

47. **Eleven armed seas stars:** We have listened with some incredibility as marine farm resource consent applicants and their experts have suggested that what results under the likes of mussel farm operations constitutes acceptable bio diversity. We illustrate with the research into the presence of 11-armed sea stars under mussel farms compared to areas without. The **attached** paper⁵ records that levels of this indigenous mobile predator can be at densities of 39 times

⁵ Inglis, G.T.; Gust, N. 2003. Potential indirect effects of shellfish culture on the reproductive success of benthic predators. *Journal of Applied Ecology* 40: 1077–1089.

that of areas without mussel farms. We invite the panel to consider what happens when the mussel farms have been harvested.

Andrew Caddie

On behalf of the Kenepuru and Central Sounds Residents' Association and the Clova Bay Residents' Association
– KCSRA Marine Sub Committee Chair

1 February 2018