

Kenepuru & Central Sounds



Residents Association Inc.

Marlborough Mussel Farming

The Perfect Resource Management Storm

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Marlborough Mussel Farming The Perfect Resource Management Storm

The process of resource consenting Marlborough's mussel farming activity has become a contentious and messy business – and is evolving into the perfect resource management storm. This article tells the story of how we have got to where we are today – and where things have gone wrong. This is a story about conflict between private and public use of water space and a Council that has perpetuated that conflict.

I start with the Short Story – this just to give you an overview of how history has collaborated to put us where we are today. Then follows the Detailed Story - which I hope will fill in the gaps for you.

The Short Story

- Resource consents to farm mussels in Marlborough have historically been granted without any rent payable. This has seen resource consent gold rushes, moratoriums imposed on resource consent applications, and various proposals mooted to address the resource consent allocation problem.
- New laws were introduced in 2004 and finally settled in 2011. These facilitate the public tendering of rights to apply for aquaculture resource consents. This both stops the gold rushes and provides a market return to the public for the use of public resources.
- Marlborough District Council (MDC) has never adopted a public tender system. It has continued with a free use system - whereby existing resource consent holders get both free use of the marine space and first right to apply for replacement resource consents. Marlborough is currently one of the only places in the world that does not charge rent for the use of public marine space for aquaculture.
- The free use system has engendered an industry that is focused on denying the adverse effects of existing aquaculture activity – this so that their resource consents for free use of the public marine space can be renewed again.
- MDC has appeased this industry culture. It has, over the years, repeatedly acceded to industry demands for the promotion of policy that suppresses the recognition of the public's values in the Sounds when aquaculture resource consents are being considered.
- Meanwhile we have had four decades of systemic failure in the assessment of aquaculture resource consent applications in the Sounds. These have rendered aquaculture activity in some inappropriate places¹ and in other places aquaculture that is materially, and in some areas significantly, beyond sustainable or acceptable thresholds, including ecologically.
- These facts collide to produce the perfect storm. Existing resource consent holders want their free rights to use public marine resources renewed. The public wants the aquaculture settings in the Sounds corrected – they want the consenting mistakes of the past rectified and their

¹ Factors rendering locations inappropriate would ordinarily include things like navigational safety and impedance, anchorages, landscape or natural character, visual amenity, public habitation, recreational or coastal access, sensitive ecological environment, very low flush or shallow waters.

values in the Sounds properly recognised going forward. This collision stands to manifest itself spectacularly through the yet to be released aquaculture chapter of the new Marlborough Environment Plan (MEP). The full fury of the storm will be released if MDC tables an aquaculture chapter proposing that existing aquaculture is appropriate going forward and that existing consent holders are able to renew their resource consents without any need to pay a market rent.

- To complicate matters the Ministry for Primary Industries has joined the fray. It proposes a national rule that stands to cut the Marlborough public out of the proper process for determining what are appropriate places and densities for aquaculture in the Marlborough Sounds.
- MDC has an obligation to get the settings right for aquaculture in the Sounds. It has failed and it continues to fail to do this. It has an opportunity to get it right through the MEP. Further failure will ferment a time bomb of public frustration and resentment.
- The solution is obvious. MDC needs to stop its appeasement of self-interested existing aquaculture resource consent holders. It needs to identify appropriate areas and intensities for aquaculture in the Marlborough Sounds objectively – absent the disruption of heavily conflicted existing resource consent holders. Adopting a system of publicly tendering rights for aquaculture resource consents in the Marlborough Sounds will facilitate this. It will also effect a more equitable allocation of public resources.
- MDC has to find the resolve to do this – else it fails, yet again.

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The Detailed Story

1. What's this all this About

- 1.1 I have lived and enjoyed the Marlborough Sounds for 16 years and have a high regard for the environmental values of the Marlborough Sounds. At a professional level I am a Chartered Accountant and now consult from our home in the Marlborough Sounds. I advise on commercial and taxation law and have provided expert evidence on taxation law to the High Court level.
- 1.2 I have been working with the KCSRA² Marine Committee on aquaculture matters for many years. This has included assisting with aquaculture resource consent issues, hearings, and planning matters and has extended to assisting with Environment Court, High Court and Court of Appeal hearings. On behalf of KCSRA I have also provided expert economic evidence at a Board of Inquiry. Over time I have learned a lot about aquaculture in the Marlborough Sounds.
- 1.3 If the settings are right aquaculture is a positive thing for the Marlborough Sounds. But they are not, and in some places they are significantly not. The settings for aquaculture are about meeting environmental bottom lines and getting the balance right between the wider public's values in the Marlborough Sounds³ and the need to provide for aquaculture in appropriate places.
- 1.4 This story explains why the settings are not right, why there is so much resistance from industry to get the settings right, and why MDC has allowed all of this to perpetuate into a perfect resource management storm - a storm that has begun to release its fury on the process of inducting the new Marlborough Environment Plan (MEP). And it points to the solution – a solution that has sat in front of MDC for over a decade.

2. The Gold Rushes

- 2.1 Let's start by going back a bit. Broadly speaking the right to put structures in Marlborough Sounds water space and to grow product on them is attained by way of applying for a resource consent. Currently anybody can apply. If an application is successful the applicant gets to use the public water space to grow their seafood product for a finite term - generally a period of 20 years. Significantly, there is no rent payable for the use of the water space – it comes free.
- 2.2 Now getting a right to cultivate product in marine space like the Marlborough Sounds for no rent is of course quite a privilege. Once this caught on, in the 1980's and 1990's, things quickly

² Kenepuru and Central Sounds Residents' Association Inc

³ These are the things that the residential, holidaying and visiting public value in the Marlborough Sounds, including things like the landscapes and the natural character, the ability to undertake recreational activities such as kayaking, watersports and fishing, the ability to navigate around the Sounds safely and without material impedance, easy beach and coastal access, the indigenous biodiversity of the coast and subtidal marine environment, the remoteness, quietness and cleanliness of the Sounds environment.

turned into a gold rush. Literally hundreds and hundreds of applications for Marlborough Sounds aquaculture resource consents flooded into the Marlborough District Council (MDC). This culminated in two moratoriums being imposed – prohibiting more applications being made whilst some better systems for managing aquaculture resource consents were worked through.

3. The Allocation System or the Open Slather System

- 3.1 After a couple of failed systems the aquaculture rules that we have today were introduced into the Resource Management Act in 2004 and finally landed in their current form in 2011⁴. These rules give Councils the power to control aquaculture resource consent applications by way of adopting an ‘allocation system’. Under an allocation system applications for aquaculture resource consents can only be made if you are firstly given an *allocation right*. The default way for Councils to give out *allocation rights* is for them to be publicly tendered. So, we call this system the Tender Allocation system. Properly implemented, a Tender Allocation system will see a market return to the public for the use of the public resources⁵ and a halt to the endless procession of resource consent applications.
- 3.2 Unfortunately adopting a Tender Allocation system wasn’t made compulsory. If a Council didn’t adopt a Tender Allocation system then the existing free use system continued to apply. Under this system anybody at all can apply for aquaculture resource consents and if successful they get use of the public resources for free. Moreover, they also get the first right to apply for future resource consents to use the same water space again and again into the future – all for free. We call this the Open Slather system.

4. The Problems with the Open Slather System

- 4.1 As you might gather there are some rather heavy and obvious public equity issues with the Open Slather system. A Council can’t charge a market rent for the right to use the public water space and nobody else can compete to use the same space themselves in the future.
- 4.2 These public equity issues render the Open Slather system little more than a very short term stop gap option, particularly when you are dealing with high value public areas such as the iconic and unique Marlborough Sounds.
- 4.3 Nonetheless, and for reasons unknown, after more than a decade the MDC is still sitting on an Open Slather system. To put this in perspective, the Marlborough Sounds has very high public amenity yet it is now one of the only places in the world where market rental or license fees are not charged for the right to use public water space for aquaculture⁶.

⁴ The framework of a consent right allocation system was legislated in 2004. This was refined in 2011, along with the lifting of a statutory moratorium on aquaculture applications outside of areas specifically designated as aquaculture management areas.

⁵ 50% of rents received would go to MDC and 50% to the Crown.

⁶ Chapter 3 - FARMING THE SEA - Marine Aquaculture within Resource Management System Reform – Raewyn Peart, Environmental Defence Society 2019.

5. The Cause of Conflict

- 5.1 In my view the Open Slather system is also responsible for most of the tension, acrimony and animosity in the Marlborough Sounds aquaculture consenting space. This deserves a little more explanation.
- 5.2 To reiterate, under the Open Slather system existing consent holders not only don't have to pay any rent but they also get first right to apply for future resource consents over their currently consented space. This is pretty much as good as it gets. Unsurprisingly then, the priority focus of the industry and its lobby bodies has become one of protecting these Open Slather rights to existing consent holders.
- 5.3 The biggest threat to this privilege is the public. This is because to get more resource consents for free use of public water space existing consent holders still need to show that public values are not inappropriately impinged by the aquaculture activity. And this is where the tension, acrimony and animosity begins. You have some 580 existing resource consent holders granted a free and preferential right to use over 3,000 hectares of public marine space in the Marlborough Sounds. The only thing in the way of this continuing is the public's values in that marine space. So industry have every incentive to deny and suppress the recognition of public values in the public marine space. Hence so much conflict.

6. Fictitious Entitlement

- 6.1 Now let me explain the 'entitlement' fiction that is held by some within the Industry. This is about the first right to apply for further resource consents that existing resource consent holders get under the Open Slather system. This pre-emptive right leads existing consent holders to believe that they actually own, or have some sort of entitlement to, the water space that they are currently consented to use.
- 6.2 This is a myth. The pre-emptive right to apply for future resource consents over the same area is simply a method of controlling what would otherwise be a flood of applications under the Open Slather system. It has no function beyond that. The fiction exists in existing consent holders believing that they should be compensated if a Tender Allocation system is adopted - because they will lose their pre-emptive right to apply for new resource consents for more free use. This is a fiction because their first right to apply for new resource consents has always been conditional on MDC not adopting a Tender Allocation system. There are thus no entitlements lost on a move to a Tender Allocation system. It would represent nothing more than an end to a privilege under the Open Slather system.
- 6.3 So, in a nutshell the Open Slather system is inequitable, it returns no rent to the public for public water space, and it has engendered an industry culture of self-interest and fictitious entitlement. In my view this, in turn, is the cause of much of the tension, acrimony, animosity and negative energy that surrounds the Marlborough Sounds aquaculture scene.

7. So Where is the MDC on All of This Now ?

- 7.1 As I say, Tender Allocation systems have been available to MDC to manage aquaculture consenting in the Marlborough Sounds for more than a decade now. As far as I know MDC

hasn't even considered such yet – as least not publicly. The question is why not? I think we have to look at what has actually happened over the last decade to garner an answer to this.

- 7.2 Post the 2011 changes MDC entered into talks with the industry lobby group (Marine Farmers Association), the Ministry for Primary Industries and the Department of Conservation. In November 2013 it was reported that a Memorandum of Understanding was being finalised which would influence future marine farming rules.
- 7.3 I haven't seen this Memorandum of Understanding. Nonetheless, the tenor of what it might have said became apparent in May 2014. Minutes record an MDC committee being advised by an MDC staffer that he had spoken to the existing consent holders (through the Marine Farming Association). The staffer advised that existing consent holders were concerned about growing public values in the Sounds and that this might restrict their ability to renew their resource consents.
- 7.4 So the existing consent holders were requesting that the consideration of the public's values in the Sounds be suppressed so as to ensure that they could get their resource consents for free use of the resource renewed. The reality, of course, is that increasing public values in the Marlborough Sounds is precisely why future aquaculture consents *should* be carefully considered and contested. This to ensure that the public gets an optimal utility out of such a high amenity area.
- 7.5 The MDC staffer nonetheless recommended to the committee that the industry's concerns be acceded to and the MDC committee accepted that recommendation. MDC then duly released a consultation document on marine farming in the Sounds. This, unsurprisingly, proposed a system whereby all existing resource consents within the Sounds could be renewed under the Open Slather system with limited or no public say – effectively a proposal to allow renewals of existing aquaculture activity irrespective of how much the activity might, now or in the future, impinge on amenity or public values.
- 7.6 MDC's apparent eagerness to put the industry's values ahead of the public's was accentuated by the fact that nowhere in the 2014 consultation document was there any mention, or even a whisper, of the option of MDC adopting a market based Tender Allocation system⁷. It seems this was off the table before public consultation even started.
- 7.7 Submissions on the 2014 consultation document did of course point out to MDC that it might be heading in the wrong direction. Things then went quiet from MDC. But MDC had made it clear where it sat. For whatever reason it would rather suppress the consideration of the public's values in the Sounds than not give the industry what it wanted.

8. Why is the Industry Afraid of the Public's Values in the Sounds ?

- 8.1 Before continuing with the happenings of the last decade or so we need to pause and ask ourselves why the industry might be so afraid of public values in the Sounds. Existing farms

⁷ Coastal occupancy charges were mooted in the 2014 consultation document. However, these are fundamentally different to market rent or license fees payable for resource consents under a Tender Allocation system. Coastal Occupation charges are made to recover a set of budgeted costs (such as environmental monitoring) and are levied *because* somebody occupies public marine space. They are like rates. Rent or license fees payable under a Tender Allocation system would be market based and would be payable *for* the right to occupy the public marine space. The market would take account of coastal occupancy 'rates' when calculating a market rent or license fee *for* the right to use public water space.

have attained resource consents in the past - so surely the industry has nothing to fear from having to test their activity against public values when applying for new resource consents again ?

- 8.2 Firstly, remember industry claimed that they were only concerned with *increasing* public values in the future - presumably because these could challenge aquaculture water space availability in the future. However, changing public values would only be incremental. They are hardly likely to cause sudden catastrophic losses of aquaculture water space. So I don't think it was just increasing public values in the future that the industry was afraid of.
- 8.3 In my view the real fear behind the Industry's demands was in the fact that a lot of the existing consented aquaculture space in the Marlborough Sounds has either never been assessed against public values at all or has been inappropriately assessed against public values. In other words, a lot of the existing aquaculture in the Marlborough Sounds, although consented in the past, might not meet today's consenting standards.
- 8.4 The first reason for this is that marine farms applied for before the current Marlborough Sounds Resource Management Plan (MSRMP) was promulgated in the 1990's were approved with very limited regard to environmental effects. Most of these remain today.
- 8.5 The MSRMP then brought in the first real suite of environmental standards and assessment criteria for aquaculture resource consent applications. This included an identified band of 50m-200m from shore within which aquaculture activities within the Marlborough Sounds were considered most appropriate.

9. Enter the Second Problem

- 9.1 A loophole was soon discovered in the MSRMP that meant applications for marine farms outside of this 50m-200m band had to be assessed on essentially the same policy criteria as applications that were made within that band. This loophole essentially meant that for most areas there was no limit as to where aquaculture resource consents could be applied for.
- 9.2 This loophole was never corrected. Fortunately, the Environment Court did find that, in principle, mid-bay aquaculture was not appropriate when there was already coastal ribbon aquaculture. Nonetheless, the upshot of this loop-hole is that applications for more and more space within the Sounds, before and after the introduction of the 2011 allocation rules, have continued unabated and with no real regard to the originally intended band of 50m-200m from shore.
- 9.3 Thirdly, and to cap it all off, most of the aquaculture resource consents existing today have been approved by MDC naked of any regard to the cumulative effects of the ever growing marine farming activity – i.e. they have been approved without regard to the assimilative capacity of the relevant area for more and more marine farming. Rather, a sacrificial philosophy has often been inherent in the consent approval reasoning – *'there are already farms there so adding more won't matter'*.
- 9.4 As a result of this some Sounds shorelines have literally become ring fenced with mussel farms - extending out as far as half a kilometre from shore in some places. Landscapes have become dominated by aquaculture structures, navigation and public access to the coast has

been increasingly restricted and indigenous ecosystems have become significantly suppressed or disrupted, particularly in low flush areas.

9.5 These, in my view, are the real reasons why industry wanted public values suppressed back in 2014.

10. The Industry's PR Game

10.1 So, getting back to the happenings over the last decade. We now know why the industry demanded suppression of public values back in 2014. We still don't know why MDC said yes.

10.2 As noted, MDC went quiet after submissions on the 2014 consultation document. In 2015 Industry, perhaps sensing that their demands might be getting a second thought, commissioned an economic impact report. This grandstanded the contribution the aquaculture industry was making to the Marlborough economy. At the same time it pointed out that if they had to properly renew the approximately 580 marine farm resource consents in Marlborough it might cost anything up to \$40M.

10.3 The objective of this PR activity was irrefutably the removal of barriers to existing consent holders getting consents renewed for more free use of marine space – those barriers being the consideration of public values. The point they seemed to miss is that cost has never been, and can never be, a basis for dismissing environmental impact assessments or the consideration of environmental bottom lines.

10.4 The motive of this PR campaign was not jobs, it was the pockets of existing consent holders. This was made no clearer than by the fact they were, on the one hand, happy to trumpet the jobs created by the industry that *added* to the pockets of the consent holders - but on the other hand they were quick to dismiss as unnecessary the \$40M of jobs also created by the industry (to assess resource consents for environmental effects) – but that *took* from the pockets of existing consent holders.

11 Enter the Ministry for Primary Industries

11.1 The industry then cried higher and seemed to catch the attention of the Ministry for Primary Industries. In 2017, under the eye of the previous Government, MPI produced a proposed "National Environmental Standard" for aquaculture. This, if promulgated, would have the force of a legislative instrument, and would trump whatever the MDC's environment plan might say about aquaculture activity in the Sounds.

11.2 Now ordinarily you would expect a 'National Environmental Standard' (NES) to be about setting *minimum* standards or thresholds that activities must meet to be granted resource consents. Not this one. This proposes *maximum* environmental standards and thresholds that can be imposed for aquaculture activities to be granted resource consents. It ties the local regulators hands. It proposes significant limits on the adverse effects on public values that can be had regard to, including the likes of farming intensity and impacts on biodiversity values. It prohibits the public from participating in the aquaculture consenting process. And it even goes so far as to actually dictate matters of fact – such as a limit of effect that aquaculture has on outstanding landscape values.

- 11.3 The proposed NES amounted, in my view, to blatant subsidisation of the aquaculture industry at the expense of the environment.
- 11.4 MPI proposes all of this, it seems, because there needs to be consistency in the consenting process across the country. Why there is a need for consistently reduced environmental standards and curtailed recognition of public values right across the country eludes me. But there you go.
- 11.5 The NES does at least propose that consistently reduced environmental standards and curtailed public values will only apply if the aquaculture application is within an area that is determined as appropriate for aquaculture by the relevant local environment plan. That's all good – except that it is also proposed that the NES will take legal effect before the Marlborough public has actually had the opportunity to fully contest and determine, through the full plan change and appeal process, what are appropriate areas and densities for aquaculture within the Marlborough Sounds.
- 11.6 Submissions were made on the NES proposals and some changes were duly made but on my last read the underlying drive to make aquaculture consenting more efficient comes at the expense of consenting being less effective – it comes by suppressing the recognition of public values.
- 11.7 MPI has somehow caught the attention of Ministers Nash and Parker and a proposed NES for aquaculture is presently being drafted for promulgation. We are yet to see if it will effectively cut the Marlborough public short on determining appropriate areas and densities for aquaculture in the Marlborough Sounds.
- 11.8 How far the NES will ultimately lean toward environmental subsidisation and suppression of public values is yet to be seen. It also remains to be seen whether, at a legal level, a National Environmental Standard that subsidises an industry at the expense of the environment falls foul of the scheme and purpose of its empowering legislation.

12. MDC Aquaculture Review Working Group

- 12.1 Meanwhile in 2017 MDC decides to convene an 'Aquaculture Review Working Group (ARWG)'. At last public interests are invited to the table and I was delighted to get the opportunity to represent the KCSRA on this group. Unfortunately, it very quickly became apparent to me that this wasn't the much needed greenfields review of aquaculture that I thought it might be. There were strong pre-conceptions held as to the outcome of this group – by both by MDC and the industry representatives. To me the group appeared to have been set up from the outset with parameters and guiding principles aimed toward an agreed outcome - that effectively being assured renewals of existing aquaculture resource consents into the future and without a market rent being payable.
- 12.2 The output of this group is not public yet. Suffice to say that on behalf of KCSRA I filed a dissenting opinion to its recommendations.

13. The New Marlborough Environment Plan (MEP)

- 13.1 Next comes the notification of the new MEP. For reasons that have not been entirely well articulated this has been notified absent any new rules or policies for aquaculture.
- 13.2 The newly notified provisions nonetheless deal with public values, such as indigenous biodiversity, natural character, public access, navigation, and landscape values. These provisions will thus advise where and how much aquaculture might be appropriate in the Sounds under a new aquaculture chapter to be notified later.
- 13.3 But notifying these new provisions without any idea of what the aquaculture chapter might look like creates a number of problems. Not least is the fact that we have 580 odd holders of existing resource consents under an Open Slather system that are strongly incentivised to deny the adverse effects of existing aquaculture – i.e. so that the consenting mistakes of the past don't hinder the continuance of the free use of public water space into the future. Consequently, the industry is responsible for around a quarter of the appeals already filed with the Environment Court on the MEP, covering dozens if not hundreds of appeal points. And the aquaculture rules haven't even been tabled yet.
- 13.4 These appeals are pretty much all about refuting or suppressing the environmental effects of existing aquaculture. They cover all facets of public values in the Sounds – from navigational ease, recreational access, and noise pollution through to adverse effects on landscape, natural character and indigenous biodiversity.
- 13.5 How far the industry has let itself fall from reality with its expectations is best illustrated by a 'reverse sensitivity' appeal that Aquaculture New Zealand and the Marine Farming Association have filed in the Environment Court. They are asking the Environment Court to include a policy in the MEP that acts to prevent the public from complaining about the effects of aquaculture on other activities that the public might undertake in the Sounds. We know their motive. But to expect aquaculture values to be artificially elevated to something that are more important than the values of other activity that might possibly occur in the Sounds in the future is simply astounding – they are seeking a suppression of public rights.
- 13.6 This is just the beginning of the perfect resource management storm. As I say, we have 580 holders of existing resource consents hell bent on getting their free access to public marine resources renewed. We have potentially serious and systemic consenting mistakes of the past that the public wants made right before we march off into the future. The first drops of the storm have already fallen with the release of the non-aquaculture chapters of the new MEP. The downpour will come if MDC releases an aquaculture chapter and doesn't adopt a Tender Allocation consenting system and/or that assumes that existing aquaculture is OK.

14. The Verdict on MDC

- 14.1 So what's the report card on MDC. In my view it's a fail. The 2013 decision to enter a Memorandum of Understanding on aquaculture planning matters with industry but not the public clearly signalled that MDC was setting out on a dangerous course. The agreement with industry in 2014 to effectively curtail the recognition of public values confirmed that. The decision to set up an Aquaculture Review Working Group in 2017 that was constrained by similarly targeted pre-determined parameters cemented this further. MDC's failure to have publicly considered a Tender Allocation system for more than a decade is inexplicable.

Further still, MDC has shown a reluctance to accept the scientific evidence of serious adverse ecological impacts from intensive mussel farming in low flush Marlborough Sounds areas⁸.

- 14.2 MDC has been instrumental in facilitating an industry culture of self-interest and fictitious entitlement. From at least as far back as 2011 it seems that MDC has been more concerned with oiling the squeaky wheels of this industry than with getting the environmental settings right.
- 14.3 Why is this? I can only speculate that MDC has failed to grasp the significance of not playing a balanced game with industry and public values in the Marlborough Sounds and it has buried its head in the sand on the systemic consenting failures of the past. And now it simply fears the noise that will come if the industry's bubble of fictitious entitlement is popped.

15. The Industry Arguments

- 15.1 Over the years we've heard all the Industry's arguments – the economics and the jobs, the faults with complex models that show extensive adverse ecological effects in low flush bays, and the claims that mussel farms are just replacing extensive natural mussel beds that used to be there (it has been found that extensive natural mussel beds have in fact not historically existed in the Sounds).
- 15.2 The latest industry cry is that its economic activity is even more important now that we are in a Covid 19 economic recovery. But a Tender Allocation system will not of itself remove water space or other resources from the industry - and nor will it somehow hinder economic activity. It will just shift a portion of the profits currently accruing to resource consent holders over to the public in return for the use of the naked public resources. The MDC will of course spend its share of the rent locally. This might actually help bridge NZ's growing wealth gap - and at the same time create a bit more local economic activity.
- 15.3 And in any event if Covid 19 has done one thing it has made us all pause. It has made us all realise that we need to take the opportunity to slow down a bit and get the settings right before we march off into a new normal. It is not an excuse to lock environmentally inappropriate activity into the future for some short term economic activity today.
- 15.4 Moreover, a Tender Allocation system will actually engender a more efficient industry. Inefficient farmers will not succeed and uneconomic water space will be brought to the surface – it will not be tendered for.
- 15.5 Then there's the call for certainty – industry will cry that certainty is needed to attract investment. As noted, a Tender Allocation system will simply take the economic profit attributable to the naked use of the public resource away from the consent holder and put it in the hands of the public. There is no dis-incentive to investment. Rentals or license payments will be naturally set by the market at levels that will facilitate an adequate return on investment.

⁸ The 2015 NIWA Biophysical Model is an acute example. This complex model reported very significant adverse effects of existing mussel farming in some low flush Sounds areas. Despite that, and the large amount of money invested in the model, MDC has never initiated any response to these adverse results. To the contrary, the results were dismissed by the MDC Coastal Scientist at the time on what are, with respect, inappropriate baseline grounds (refer paragraph 13 Pelorus Sound Hydrodynamic Models Report to the Environment Committee 23 July 2015). A reluctance of MDC to accept ecological concerns with existing mussel farming also became evident through my time on the ARWG from 2017 to 2019.

- 15.6 Industry infrastructure such as marketing channels, processing factories and servicing boats will all still be required – whether engaged through ownership of resource consent rights, sub-lease of resource consent rights or under contract to holders of resource consent rights. And there is no disincentive to engage in research and development (R&D) – investing in R&D will bring the same competitive advantages - irrespective of whether consent rights are held, leased, contracted, free or tendered.
- 15.7 Further, moving forward with environmental settings right and the animosity, acrimony and tension between the public and the industry removed provides the best platform for a certain future. Continuing to sweep public values aside in order to protect inappropriate environmental settings and the profits of existing consent holders will do nothing but ferment a time bomb of resentment, frustration and suppressed public values. What's certain is that this will make the future very uncertain.

16. So What is Needed ?

- 16.1 Where and how much aquaculture is appropriate in the high amenity waters of the Marlborough Sounds needs to be *properly* determined. This means much more of a greenfields approach to reviewing aquaculture than MDC has been prepared to entertain to date. This needs to be honest about the effects of aquaculture on natural character and landscape values and where aquaculture is otherwise appropriate in today's environment. And it needs to properly consider cumulative effects and the assimilative capacity of areas or bays for aquaculture activity, including ecologically. It needs to ask the question – *if all aquaculture in an area or bay is lifted out, how much would be consented if a single application was filed today for all that aquaculture again ?*
- 16.2 And this needs to be done objectively. It needs to be done absent the disruption of heavily conflicted existing resource consent holders. This means adopting a Tender Allocation consenting system. This will also effect a much more equitable allocation of public resources.
- 16.3 MDC has a statutory obligation to do this. It just needs to find the resolve.

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Kenepuru and Central Sounds Residents Association Inc

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