

Kenepuru & Central Sounds



Kenepuru & Central Sounds Residents Association Inc.

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30 April 2018

Dear Sir/Madam

Kenepuru and Central Sounds Residents' Association
Submission on Resource Consent Application U180173
Sanford Limited
Forsyth Bay

I write in my capacity as President of the Kenepuru and Central Sounds Residents' Association Inc.

1. Introduction

- 1.1 The Association was established in 1991 and currently has approximately 240 household members who live full time or part time in the Kenepuru and Pelorus Sounds. The Association's objects include, among others, to coordinate dealings with central and local government and promote the interests of residents of Kenepuru Sound and adjacent areas and to promote and act in the best interests of residents, ratepayers and persons associated with the Kenepuru and Central Sounds area.
- 1.2 A few years ago members became concerned at the seemingly endless tide of marine farm applications in the Kenepuru and Pelorus Sounds without regard to the cumulative adverse impacts on what is often referred to as a unique and iconic New Zealand environment. We decided to make a principled evidence based stand in order to bring much needed balance to these matters.
- 1.3 Consequently the Association has built up a sound knowledge and understanding of issues concerning the unsustainability of some marine farming in the Sounds. Most notably the Association has identified particularly egregious mussel farm applications and successfully opposed them at Commissioner led hearings. The Association has then participated in successfully opposing appeals to the Environment Court (and beyond) by those

Kenepuru & Central Sounds Residents Association Inc.

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unsuccessful mussel farm applicants.¹

- 1.4 We submit that these cases as footnoted above (hereafter referred in this submission as the *Davidson Case* and the *Clearwater Case* respectively) are good and binding authority on the Council and any hearing panel that the cumulative adverse impacts of mussel farm applications (be they extensions and/or renewals) on landscape and natural character values, navigation and incremental and cumulative loss of habitat for the endangered species the King Shag, cannot be ignored.
- 1.4 As noted the Association is concerned at the continuous push from mussel farmers to expand their activities through acquiring new public water space. Like Beatrix Bay, Forsyth Bay is, with some 36-mussel farms, unfortunately a prime example of what some refer to as the **Tragedy of the Commons**. “*If I do not make a grab for extra area then someone else will, so I may as well get in first*”. This approach and its consequences cannot, we submit, be allowed to go on unchallenged.
- 1.5 To further illustrate the point above we refer to the saying that “*every drop of water into a full jug overflows*”. One of the questions with this application that Council and/or a hearing Panel must, we believe, squarely address is – is it such a drop or is it as the applicant claims truly a “*like for like*” application and thus nothing extra?
- 2. Like for Like?**
 - 2.1 It is unfortunate that the manner in which mussel marine farming was allowed to develop in the Sounds has been somewhat chaotic and the regulation of it somewhat underfunded. This particular farm area seems no exception.
 - 2.2 As far as we can establish from this application the consented farm area has effectively been operated as 3 discrete sub farms (1 in the northern area and 2 in the southern part). It seems reasonably clear that cumulatively (including sub surface structures such as anchor warp lines) they occupy an area less than that of the current consented area. Each of these sub farms breaches their original licenses/permits conditions by being located significantly outside the consent areas.
 - 2.3 However it seems that, unfortunately, this is a common situation to which an under funded and resource stretched Council currently turns a blind eye.
 - 2.4 The applicant proposes to tidy things up by **extending** the current boundary seaward and **relinquishing** some area on the landward side. The applicant proposes to **increase** the number of lines from 21 to 26.
 - 2.5 The applicant’s lay out diagrams suggest that that at the end of the process the area for which consent is now sought will be filled by long lines and sub surface structures. From the data provided by the applicant we were unable to ascertain if this will result in an increase in the length of backbone (productive) lineage currently deployed by the applicant. We submit Council should ascertain this from the applicant.
 - 2.6 Nevertheless, we submit that **this application does not** seem to be a “like for like” renewal application as claimed by the applicant. We submit Council should assess it on the basis it **is not** like for like.

¹ *RJ Davidson Family Trust v Marlborough District Council* [2016] NZ EnvC 81, *Clearwater Mussels Limited & KJB Marine Farms Limited v Marlborough District Council* [2016] NZ EnvC 21 .

3. The King Shag

- 3.1 We were pleased to see that the applicant acknowledged (see section 10 of their application) that the site is located close to a major colony of the endangered King Shag. Albeit this was effectively on the basis that such proximity was not an issue in the past and as this is a like for like renewal application there are no concerns for the future.
- 3.2 As submitted above, on balance, any claim as to this renewal application being like for like seems misplaced. Accordingly, we were disappointed that the biological assessment report by Davidson Environment Limited (**DEL**) was very scanty on this important aspect. This is noteworthy given the familiarity that the principal of DEL should have as a result of his direct involvement in the leading Environment Court case setting out the importance of preserving King Shag habitat - *the Davidson Case*.
- 3.2 In that decision the more than minor adverse impacts on the King Shag from the cumulative loss of habitat from additional mussel farm space was thoroughly canvassed. First at the Environment Court and then again by the subsequent (unsuccessful) appeal by the RJ Davidson Family Trust to the High Court. We commend to the Council the decision of Judge Jackson in the *Davidson Case*. In particular his commentary on the King Shag in the context of a new mussel farm application. For example see paragraphs 161 to 169 and 299 to 300 of the decision of the Davidson Case.
- 3.3 We submit that the Council should seek expert clarification as to if the changes proposed by the applicant in this renewal will in fact adversely impact on the availability of feeding habitat of the endangered King Shag and, if it does, how that might be avoided. (See Policy 11(a) of the New Zealand Coastal Policy Statement 2010).

4. High Benthic Values

- 4.1 It seems reasonably clear from the DEL report that much of the original consented area was, unfortunately, an area of high indigenous biodiversity with a significant proportion of biologically significant benthic habitat. It seems clear from the DEL report that the impacts of mussel farming are adversely impacting underneath and in the immediate vicinity of the 3 current sub farms (eg., it has been shown that on average a mussel farm deposits of material between 250 to 400 tonnes per annum per hectare).¹
- 4.2 To their credit the applicants recognises this, in part, with its application to extend the consented area seaward and relinquish an area closer to the shore. The DEL report at section 5.4 and see also the diagram at Figure 5 makes some detailed recommendations in this regard.
- 4.3 In recent correspondence with the applicant, KCSRA was assured that the applicant intended to follow those DEL recommendations. Accordingly we submit this should be rejected in any conditions if the application is granted.
- 4.4 Further, upon reflection and looking more closely at the applicants proposed structure lay out, we also submit that the inside long lines seem excessively close – being, we suggest, a mere 5 metres from the sensitive areas within the “the red” boundaries. It is likely we submit that these backbone lines will swing with tidal currents/wind action and go closer in than currently shown and thereby deposit waste material into the sensitive area.

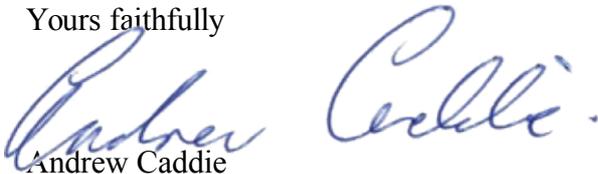
¹Acoustical and Sedimentological Characterization of Substrates in and around Sheltered and Open-Ocean Mussel Aquaculture Sites and its bearing on the dispersal of Mussel Debris.” Neil D. Hartstein. Journal Of Oceanic Engineering January 2005.

4.5 Accordingly we submit that if the application is granted the consent conditions should also clearly require that the “red areas” be kept free of “swinging” long lines. We also submit that this is best achieved by the applicant agreeing **to relinquish** the proposed inside lines along this boundary. This will also have the desirable effect of rendering the application more like for like in terms of the number and length of backbone lines.

5. Appearance

On the basis the Council addresses the matters raised above and in particular our submission that the “red line “ boundaries is contained in any conditions should the Council be so minded to grant the the application KCSRA **does not seek** a hearing in order to make an appearance and/or present further evidence. Nevertheless should the Council decide to go ahead with a hearing we request we be advised of the same.

Yours faithfully



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