

Kenepuru & Central Sounds



Kenepuru & Central Sounds Residents Association Inc.

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2 February 2019

Dear Sir/Madam

**Kenepuru and Central Sounds Residents' Association
Submission on Resource Consent Application U180979-
Horseshoe Bay - Goulding Trustees Limited**

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

1. Introduction

- 1.1 The Association was established in 1991 and currently has approximately 280 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 represent members on matters of interest to them.
- 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. 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 unsuccessful mussel farm applicants.

Kenepuru & Central Sounds Residents Association Inc.

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2. Background Context

- 2.1 The subject application concerns a request to renew an existing series (two) of farm consents/licenses collectively referred to as MF 8207. One area has an expiry date of 2021, with the other set at 2030. That area of the application is about 4.8 hectares. We also note that there is a fisheries exclusion zone, which effectively forms part of the consent albeit an area that cannot have surface structures etc.
- 2.2 **Not a Renewal:** As we understand it the application is not technically/legally a renewal but in fact an application as if it were a new application. In other words the fact that there are existing farmed areas should not be a factor when considering the adverse environmental effects - including cumulative effects - arising from this application (*section 104(1)(a) of the RMA as applied by Judge Jackson in the Port Gore decision of the Environment Court¹*). In other words would we put a farm there now given what we now know? We say no.
- 2.3 **New Adverse Effects:** We submit that even on a stand-alone basis this application generates a number of new significant adverse effects. In essence they wish to occupy and farm an area currently not occupied, which will for example further reduce King Shag foraging habitat.
- 2.4 **Impact on Landscape and Natural Character Values:** We note that the farm is adjacent to a significant headland. Increasingly headlands are seen as important attributes to both landscape and natural character values. This application we submit thus represents a significant degradation and adverse impact on the areas landscape and natural character values. We are a little surprised that the applicant has not addressed these adverse cumulative impacts generated by this application and look forward to their review of these matters in due course.
- 2.5 **MEP Process compromise:** This application also cuts across the plan change process currently underway in Marlborough. The Marlborough District Council Planning documents are presently under review. A notified Marlborough Environment Plan (MEP) is well advanced in the hearing process. However following severe central government and industry pressure the aquaculture chapter was withdrawn from the MEP and hearings have advanced without it. Rather, the MDC decided more consultation was needed and convened a Aquaculture Review Working Group (ARWG) to look at marine farming (non finfish) from a spatial planning context.
- 2.6 The Association has sent representatives to this forum at considerable cost in terms of time, money and other resources. We understand from our representatives on the ARWG that Council is currently looking at allocating mussel farms within designated aquaculture marine management areas.
- 2.7 In the last little while there has been a wave of mussel farm re-consent applications (17 at last count that we are aware of) of which this application is one of a group of seven

¹ **Port Gore Marine Farms v Marlborough District Council [2012] NZEnvC 72, Para 140**

There are two preliminary issues. First we need to bear in mind that we must imagine the environment, for the purposes of section 104(1)(a) of the Act, as if the three marine farms are not actually in it. We were not referred to any direct authority on that, but it is a logical consequence of the expiry of the earlier permits. If we had to take the continued presence of the farms on site into account it would undermine any persons' claims to be adversely affected. To that extent the question we asked at the beginning of this decision is slightly inaccurate : the case is not, at law, about whether resource consents should be renewed but, subject to section 104(2A) which we discuss later, whether they should be granted (emphasis added).

applications from entities owned or controlled by persons associated with Goulding trustees. We believe it is fair to say that what is happening with this wave of applications is effectively industry looking to beat whatever the MEP settles re aquaculture. We submit the MEP policy process will be severely compromised if this wave of consent applications is allowed to proceed.

3. Decline Application

- 3.1 This application appears to extend more than 200 meters from shore and as such the application would appear to be for a non-complying activity. The Association is of the view for the reasons set out in this submission that the application cannot meet the statutory threshold for a non-complying activity under Section 104D of the Resource Management Act 1991 (RMA) and that the application should be declined.

4. Request to Appear

- 4.1 The Association confirms that it would like to present/talk to this submission at the public hearing and will be represented. The Association advises it is open to some form of pre hearing meeting with MDC and the applicant.

5. Further discussion

- 5.1 **Cumulative Adverse Effects – Indigenous Biodiversity - King Shag:** Following the initial grant of area (3.0 has), in due course a fisheries exclusion zone was created (1997) in this original grant of about 0.5 hectare. The applicant then sought and was granted an extension of area (1.83has) in February 2001. This area has never been occupied. The applicant is now seeking a significant change to the lay out of the farm. In total this means we submit that the applicant is now seeking to occupy and farm an additional **new area** of some 2.4 hectares. We note the close proximity (4km) of the site to the Tawhitinui King Shag colony.

- 5.2 We note that the applicant's expert appears to argue that the application will have little impact on the survival of this critically endangered species but opines so on the basis that the effects of this application can be put to one side given the existing operation. This we submit is wrong at law and a precautionary approach should be adopted - to decline the application pending clarification/further research, in due course, of a number of the points of uncertainty noted by the applicant.

- 5.23 This area is we submit prime King Shag foraging area and thus presents an unacceptable potential adverse impact to this threatened, iconic and endangered species, which should be avoided by **declining the application**. See the discussion and subsequent findings on unacceptable cumulative impacts from loss of King Shag foraging area by the Environment Court (Judge Jackson) in *Davidson Family Trust v MDC*, being a decision upheld by the High Court.

- 5.4 We submit the application should be declined on this basis alone.

- 5.5 **Adverse Cumulative Ecological effects:** Given the increase in new area we are surprised that there has been no substantive attempt to assess the cumulative ecological impacts on the water column from an increase in intensity of farming of filter feeding bivalve shellfish.
- 5.6 **New Zealand King Salmon:** The Association notes its understanding that this site (or part of it) is also under consideration for a new salmon farm area as a result of the MPI/NZKS push for new salmon farm area. Accordingly we suggest that any hearing involving this application be postponed until that matter is worked through.

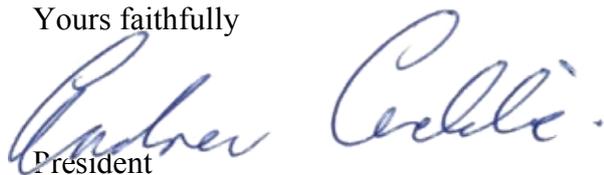
Conclusion

The Association is of the view that the application fails the discretionary activity criteria of the Marlborough Sounds Resource Management Plan. It also offends against the objectives and policies of the New Zealand Coastal Policy Statement and the Marlborough Regional Policy Statement. It stands to have a more than minor environmental impact and fails the legislative policy threshold as prescribed by sections 104D of the RMA.

For these reasons, and the matters set out above, the Association submits the application **should be declined**.

The Association notes that this application is over 100 pages which is very difficult to analyse on a screen and we request that the **applicant be required to supply** free of charge a hard copy to the physical PO Box address below.

Yours faithfully



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