

Kenepuru & Central Sounds



Kenepuru & Central Sounds Residents Association Inc.

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19 February 2019

Dear Sir/Madam

**Kenepuru and Central Sounds Residents' Association
Submission on Resource Consent Application U181069 -
South East Bay – Clearwater Mussels 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.
- 1.3 As can be appreciated the Association has limited resources and there is currently a wave of 'renewal' applications for mussel farms, the reasons for which we believe this is happening is discussed elsewhere in our submission. In this case residents approached us to assist. On reviewing the file we see that in 2013 the residents beat off an

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application to extend this farm. Accordingly we fully understand their frustration at having to confront another unmeritorious application.

2. Background Context

2.1 The subject application concerns a request to renew an existing farm consent/license collectively referred to as MF 8335/MFL219. The farm area (3 ha) has an expiry date of December 2024. In 2013 that application was refused for a variety of reasons including the adverse impacts on resident amenity, navigation and recreation matters. As we see it these issues are still relevant and the passage of time has highlighted some new ones.

2.2 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 is an existing farmed area should not be a factor when considering the adverse 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 Court.¹ In other words would we put a farm there now given what we now know? We say no.

3. Other Matters

3.1 **High Value Inshore Area:** The applicant has eight lines in the water and we understand that this has always been the case. The applicant in its application suggests it has just discovered the existence of high value benthic areas (reef and cobble areas). The implication is that they are seeking to move seaward so these areas are protected. We find this hard to accept given the number of biological assessment reports that the applicant has commissioned in the past.

3.2 Looking at the layout of the farm on the MDC smart maps the applicant can and should achieve the “protection” these areas have long been lacking by repositioning the inshore line further out and tidying up the layout of its lines within the current boundaries. In other words there **is no need** to shift the farm further seaward. As we discuss later this suggests the real motive of the applicant is merely to get a new term and beat the MEP.

3.3 Furthermore, doing what we suggest will have the applicant rectify the long running breach of the consent conditions, and correctly position the outermost line within the consented boundaries.

3.4 **Navigation:** To reposition the farm further seaward will increase a potential navigational hazard. Other submitters will be able to provide first hand accounts of the navigational hazards densely farmed areas close to boat access only residential areas presents. The application can be declined on this basis alone.

3.5 **Landscape and Natural Character:** Bearing in mind that this application should at law be viewed as a new application then we submit it is time to revisit the positioning of this farm in front of a headland. Under the current plan headlands are to be avoided as

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).

mussel farm areas. We also note that in addition to headlands creating high value landscape and natural character values they are often adjacent to high value biodiverse reef areas, as is the case here. In the recent *Davidson Family Trust v MDC*¹ the application for a new farm was, among other things, rejected because it was proposed to be located around a headland. We submit the same analysis applies here.

- 3.6 We also note the comments of the Commissioner in the 2013 decision as to the increasing landscape and natural character values of the area outside of the zone labeled in the current plan as having outstanding landscape as regeneration proceeds.
- 3.7 **King Shag:** The leading Environment Court case on avoiding adverse cumulative effects as it concerns loss of foraging habitat for the King Shag is of course *Davidson Family Trust v MDC*². In his concluding words at paragraphs 299 and 300 Judge Jackson made it very clear that what was at risk was the survival of a very rare species of bird. He was of the view that until much more detailed and sophisticated research was carried out then the industry would have to accept it would not be able to expand or even continue at the same level. These comments are particularly applicable given that the latest census of the species has, unfortunately, shown a dramatic decline in population numbers.
- 3.8 We need to bear in mind that this bay is only some 8 km from one of the birds breeding colonies (Tawhitinui) and thus well within foraging range. Accordingly we suggest that even the relatively small seaward extension sought by the applicant represents an unnecessary adverse cumulative effect in this context and should (and can) be avoided in the manner we suggested in paragraph 3.2 above.
- 3.9 **Amenity Values:** The Association is of the view that due to the proposed nature, size and locality the farm is likely to have a more than minor adverse effect on the amenity values of the locality currently enjoyed by residents/landowners.

4. **Jumping the Marlborough Environment Plan (MEP)**

- 4.1 This application also cuts across the plan change process currently underway in Marlborough. Presently the Marlborough District Council Planning documents are 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 an Aquaculture Review Working Group to look at marine farming (non fin fish) from a spatial planning context.
- 4.2 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 management areas (AMA).
- 4.3 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 is one. It is fair to say that what is happening with this wave of applications is effectively industry looking to beat whatever the missing aquaculture chapter comes up with. We submit the MEP process will be severely compromised if this wave of re-consenting is allowed to proceed. There is no

¹ Davidson family trust v. MDC [2016] NZEnvC 81

² See above

need for this application to be granted due to expiry issues as it does not expire until 2024 and the adverse impacts it is causing to the high value inshore areas can be rectified as set out in paragraph 3.2 above without changing the consent area.

5. Decline Application

5.1 For the reasons set out above and elsewhere in this submission 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.

6. Request to Appear

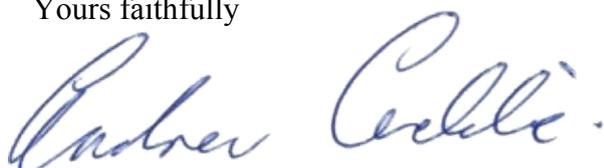
6.1 The Association confirms that it would like to present/talk to this submission at the public hearing and will be represented. The Association advises it is open to some form of pre hearing meeting with MDC and the applicant.

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 tough 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**.

Yours faithfully



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