

7 March 2019

Manager, Resource Consents
Marlborough District Council
PO Box 443
Blenheim 7240
Email: mdc@marlborough.govt.nz

Dear Sir/Madam

**Kenepuru and Central Sounds Residents' Association
Submission on Resource Consent Application
U180923-Blowhole Point North – Sanford Limited
U180922- Mataka Point – Sanford 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 Over the last three months there has been something of a rush of mussel farm applications couched as renewals. Upon examination many of these recent applications create an opportunity for reflection as to whether these farms should continue to operate in areas, the environmental and ecological intrinsic values of which are now more greatly appreciated and indeed reflected in the requirements of

the likes of the New Zealand Coastal Policy Statement (NZCPS) and recent Environment Court decisions. These two applications are very apposite in that context.

1.4 We note the two applications the subject of this submission are both located in the bay between Blowhole Point and Mataka Point. This is a small bay, only 25 ha, on the western side of the entrance of the Pelorus Sound. Both farms share a common ownership – being Sanford Limited. Their initial applications were made on 26 October 1995, and the licenses expire on 2 May 2019. As a group in the same geographical area they represent an opportunity to consider the adverse ecological and other cumulative effects on matters such as cumulative impacts on the iconic and endangered King Shag, other cumulative adverse ecological effects, cumulative adverse landscape, amenity and navigational effects and so on.

2. Background Matters

2.1 **Controlled or Discretionary Activity Status?:** In the context of whether these two applications required notification the applicant argued they did not. The MDC planning office did not accept that argument on the grounds set out in his notification report. Whilst there may be room to argue if the application should be treated as fully discretionary or restricted discretionary we are of the view it is clearly not a controlled activity with fairly unrestricted rights of “roll over”.

2.2 **Not a Renewal:** As we understand it each of these applications are 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 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 these farms there now given what we now know? We say NO.

2.3 **Treat Collectively:** In total these two farms represent an area of some 7.45 hectares. There is one other marine farm in this bay with a size of 5.225 ha. It is fair to say that this small bay is dominated by marine farms, which cover 50% of the surface area of the bay. The Sanford farms even extend beyond the headlands of the bay and into the Coastal Marine Zone 1. Nowhere can one look out from inside the bay without having mussel farm surface structures detracting from the otherwise superb sea views. The positive aspects of the farms removal for the survival of the King Shag are also the same (times 2). Accordingly the Association sees a number of efficiencies in terms of treating these two applications collectively and submits accordingly. If this is seen as not permitted under the regulatory scheme or not appropriate for some reason then the submission can be easily separated into two.

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).

3. Historical Context

3.1 1995 was at the height of the "gold rush" for marine farming space in the Marlborough Sounds². The Marlborough District Council received 140 applications for marine farms, with at least 15 applications from Sanford. Four consent applications for Sanford in the Waitata Reach were heard and decided concurrently at a hearing by MDC, two for marine farms in the adjacent Harris Bay and two for the Blowhole Bay farms³. All were declined by MDC on the same grounds. The grounds for the decision were as follows:

1. *The proposed marine farm is within an area that is one of the options for a marine reserve for the French Pass /d'Urville area.*
2. *Aside from the concerns regarding the proposed marine reserve, the Committee considered that the area of the proposed marine reserve held considerable (and in some respects ecologically rare and important) ecological values, and hence the imposition of the marine farm in the area would be undesirable.*
3. *The Committee considered that the proposed marine farm would have a significant adverse effect on the natural character of the area. This area is the entranceway to the Pelorus Sound and the Committee considered that it holds significant natural character, which is contributed to by the open nature of the area.*

3.2 Following no doubt some back room negotiations both farms were granted by consent order in 1999, while 11 of Sanford's appeals for farm applications from 1995 were withdrawn. The Ministry of Fisheries permits were granted in 2000 for MPE400 and in 2007 for MPE893.

4. First Application - Some Issues with U180923 site 8060.

4.1 **Ecologically Important area:** In 1995 several reports were written for Sanford by the Cawthron Institute for this area⁴ and for mussel farming discussing their ecological effects in the Sounds generally⁵. For site 8060 the descriptions of the underwater world at the proposed farm site included two special reef area types. In those days a diver did a couple of transects perpendicular to the coast. The transect through the northern end of the proposed farm into deeper water found an unusual bottom profile with boulders/cobbles covered in carpophyllum forest, changing after 5 meters depth into occasional bedrock with carpophyllum surrounded by shell / pebble / sand up to 160m into the site, when the depth was 10 meters. Beyond that point the benthic changed to mud.

² Banta W, Gibbs M 2006. Factors Controlling The Development Of The Aquaculture Industry in New Zealand: Legislative Reform and Social Carrying Capacity Prepared for Cawthron Institute. Cawthron Report No. 1208. 29p

³ MDC Property files online - U950400 Decision Document.

⁴ Forrest, B. and Roberts, R. 1995. Ecological site characterisations for potential marine farming sites in the Marlborough Sounds. Cawthron Report No. 283.

⁵ Forrest, B. 1995. Overview of ecological effects from shellfish farms in the Marlborough Sounds: background information for marine farm applications. Cawthron Report No. 282. · 18pp

- 4.2 To be fair there was some attempt by the relevant regulators at the time to protect this clearly sensitive and important ecological marine area from the adverse impacts of the farms. As far as we can ascertain this took the form of an exclusion area.
- 4.3 **Ministry of Fisheries Exclusion area:** There is a Ministry of Fisheries (now MPI) exclusion area inshore⁶ as well as a smaller **Structures Exclusion area**. We note with alarm that in the current application U180923 the Fisheries Exclusion area has been omitted in the revised layout. We look forward to the applicant's explanation.
- 4.4 Furthermore it seems to the Association that the applicant has ignored the Fisheries Exclusion area and placed warps and 5.5 tonne block anchors inside this area. A relatively small but important area that should have been protected from the likes of these structures (to say nothing of the associated discharges) because of its high ecological value. The extent of the consent breaches can be seen on the MDC Marine Farms smart map. This is we submit **unacceptable behavior**.
- 4.5 It relies on an under resourced regulator to ignore such contemptuous breaches. We submit the application **should be declined** on this basis alone.
- 4.6 Bearing in mind the results of our research in paragraph 4.1 above, what did the Davidson report for the applicant find for this section of the farm, keeping in mind that warps, anchor blocks and even growing structures have been in this exclusion area since the farm was put in place? Photos 4, 5, 6, 7, 11, 12, 18, 22 and 21 should show whether the bedrock / carpophyllum forrest survived. Unfortunately their quality of the photos is poor.
- 4.7 It seems to the Association that the Bedrock and macroalgae showing in photo 5, 7 and 12, a tiny corner of the exclusion area is all that is left since the farm was established. There is no sign of the two small reefs with filterfeeders, the tubeworm mounds and other significant ecological features that existed in 1995, on the photos in Davidson's report. Rather the applicant's Biological assessment report for site 8060 only comments on several important ecologically marine sites around this side of the Pelorus entrance.
- 4.8 To those who might say the degradation is unfortunate but it has happened, so attempting to bring it back by declining these applications is a waste of time and lets move on, we say, not so fast. There are long term studies in the Queen Charlotte that suggest that if mussel farms are removed then the benthic areas that have degraded may recover in ten to twelve years. We submit that by declining these applications this process of recovery of these clearly important ecologically areas can commence.
- 4.9 In passing we also note that the current consent is for 5 x 50 meter backbones plus 2 x 100 m backbones. However, the actual farm layout is 7 x 120 m backbones (840 m), instead of the consented backbone length of 450 m. We are perplexed as to how this apparent reconfiguration came about.
- 4.10 **New Adverse effects:** We also submit that even on a stand-alone basis this application generates a number of new significant adverse effects. In essence they

⁶ MDC Property files online – MPE400 Decision Document page 2 and 4.

appear to want to eliminate the Fisheries exclusion area, while occupying the remaining farm structure exclusion area with warps and anchors. The consented farming intensity will double from 450 m of backbones to 980 m.

- 4.11 **Cumulative Effects - Indigenous biodiversity – King Shag:** The application area is located only some 3 km from the major colony of this endangered, iconic species (See Policy 11 of the NZCPS as to the need to avoid adverse effects from activities on endangered indigenous taxa).
- 4.12 We note that the applicant’s avian 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 (see above) and a precautionary approach should be adopted - to decline the application.
- 4.13 We also draw the Panel’s attention to the important 2014 Environment Court case on cumulative impact issues around the survival of the King Shag – the *Davidson Family Trust v MDC*. Then there is the recent decision of the Environment Court in *Clearwater Mussels Ltd V Marlborough District Council* [2018] NZ EnvC 88. In relation to the latter we note the Court much preferred the evidence of the Council Avian and other experts to that led by Clearwater and the need too take a precautionary stance as per Policy 3 of the NZCPS.
- 4.14 We submit and urge the Panel to seek independent expert advice from Council commissioned experts on this important issue. It should not be up to under resourced community groups to try and provide that evidence given the tenor and finding of the Court decisions as noted above and in which the Council participated in. There has been some unfavorable judicial comments about the “supine” attitude of the Council in relation to King Shag matters and it would be unfortunate if this perception was not addressed as we suggest above.
- 4.15 **Impact on Landscape and Natural Character Values:** We note that the application area is labeled Outstanding Natural Features and Landscape (ONFL) in the MEP. This is of course merely a reflection of the magnificent wide landscapes in this area. As we see it the farms impact adversely on these values.
- 4.16 **MEP Process compromise:** These applications also cut 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.
- 4.17 Rather, the MDC decided more consultation was needed and convened an Aquaculture Review Working Group (**ARWG**) to look at marine farming (non-fish) from a spatial planning context.
- 4.18 The Association has sent representatives to this forum at considerable cost in terms of time, money and other resources. The ARWG was to give guidance and advise to the Council on the Aquaculture Section of the **MEP**. We understand from our

representatives on the ARWG that Council is currently looking at allocating mussel farms within designated aquaculture marine management areas. As the whole of the entrance to the Pelorus Sound including the seascape is assessed as an Outstanding Natural Feature or Landscape (ONFL) area in the Boffa-Miskell report, the strict rules of the NZCPS 2010 apply under the MEP for this area, which is to avoid any adverse effects. For this reason we understand no AMA has been proposed for any of the mussel farms in the Waitata Reach area.

4.19 As we see it this underlines the importance of this area and strengthens the case to decline the applications. Given the uncertainties around the MEP it is possible that a compromise would be for the applicant to reduce the intensity of its adverse impacts in the likes of the exclusion zone and accept a shorter renewal period of say 5 years whilst the MEP is sorted.

4.20 **Cumulative Adverse Impacts – Landscape and Natural Character:** That the areas applied for sit within areas of outstanding natural features and landscape seems incontrovertible. However we note that the applicant disagrees with the likes of the MEP approach and intends to appeal the designation. We note our comments as to a possible compromise in the interim above.

5. Decline Application U180922

5.1 The Association is of the view for the reasons set out in this submission that the application should be declined.

6. Second Application - Some Issues with U180922 – site 8058

6.1 **Ecologically Important area:** In 1995 several reports were written for Sanford by the Cawthron Institute for farm applications in this area⁷ and for mussel farming and their ecological effects in the Sounds generally⁸. For site 8058 the report identified ecologically significant habitats or organisms as well as species which may be adversely affected by the proposed marine farm (e.g. scallops, kina). These were mainly along the inshore border of the farm. The shallow cobble zone along the shore contained a dense forest of brown algae (*Carpophyllum flexuosum* and *C. maschalocarpum*) and moderate densities of kina (0.5/m²). Paua were also common. The report suggested that the farm boundary be moved 20 to 30 meters seaward.

6.2 The relevant regulators at the time took steps to protect this clearly sensitive and important ecological marine area from the adverse impacts of this farm. As far as we can ascertain this took the form of an exclusion area.

From the decision document of MPE389:

6. That no marine farming structures are placed within 100 metres of Mean Low Water on the inshore side of the site, as shown on the attached plan.

⁷ Forrest, B. and Roberts, R. 1995. Ecological site characterisations for potential marine farming sites in the Marlborough Sounds. Cawthron Report No. 283.

⁸ Forrest, B. 1995. Overview of ecological effects from shellfish farms in the Marlborough Sounds: background information for marine farm applications. Cawthron Report No. 282. · 18pp

- 6.3 **Ministry of Fisheries Exclusion area:** There is a Ministry of Fisheries (now MPI) exclusion area inshore⁹. We note with alarm that in the current application U180922 the Fisheries Exclusion area has been omitted in the revised layout. We look forward to the applicant's explanation.
- 6.4 **High value inshore area:** Furthermore it seems to the Association that the applicant intends to extend its farm into the exclusion area, judging from the revised layout. It now proposes seven lines with the inshore backbone being 185 m long. The Council planner confirmed this. It is clear from the relevant MDC property file that the inshore area of the marine farm is a high ecological value fish habitat area with cobble benthic structures.
- 6.5 **Cumulative Effects - Indigenous biodiversity – King Shag:** The application area is located only some 3.5 km from the major colony of this endangered, iconic species.. We note that the applicant's avian 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.
- 6.6 We also draw the Panels attention to our equally relevant comments in around recent Environment Court decisions on cumulative impact issues around the survival of the King Shag in paragraph 4.13 and 4.14 above.
- 6.7 **Impact on Landscape and Natural Character Values:** We note that the application area is labeled Outstanding Natural Features and Landscape (ONFL) in the MEP. We refer the panel to our equally relevant comments in paragraphs 4.15 to paragraph 4.19 above.
- 6.8 **MEP Process compromise:** The same issues, discussion and conclusions in paragraphs 4.16 to 4.19 above are equally, it is submitted, applicable for this application U180986.
7. **Decline Application U180986**
- 7.1 The Association is of the view for the reasons set out in this submission that the application should be declined.
8. **Request to Appear**
- 8.1 The Association confirms that it would like to present/talk to this submission in respect of each and all two applications covered in 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

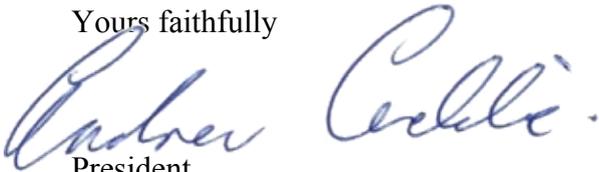
⁹ MDC Property files online – MPE893 Decision Document page 2 and 5.

The Association is of the view that each of the two applications 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. They stand to have a more than minor cumulative environmental impact and fail 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 applications U180983 and U180986 **should be declined**.

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

Yours faithfully

A handwritten signature in blue ink that reads "Andrew Caddie". The signature is written in a cursive, flowing style.

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