

Kenepuru & Central Sounds



Kenepuru & Central Sounds Residents Association Inc.

Manager, Resource Consents
Marlborough District Council
PO Box 443

Blenheim 7240
Email: mdc@marlborough.govt.nz

Andrew Caddie
President KCSRA
C/- PO Box 5054
Springlands
Blenheim 7241
email: president@kcsra.org.nz
WWW: kcsra.org.nz

5 November 2019

Dear Sir/Madam

**Kenepuru and Central Sounds Residents' Association
Submission on Resource Consent Application
U190765 – Clova Bay - Clearwater Mussels Ltd**

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 270 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.
- 1.3 Over the last year 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 this farm 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. This application is very apposite in that context.

Kenepuru & Central Sounds Residents Association Inc.

President	Andrew Caddie
Vice President	Tom Wright
Secretary	
Treasurer	Stefan Schulz

president@kcsra.org.nz
vicepresident@kcsra.org.nz
secretary@kcsra.org.nz
treasurer@kcsra.org.nz

- 1.4 We submit that the application the subject of this submission has more than minor adverse cumulative and negative environmental impacts on matters such as Natural Character, Indigenous biodiversity, Landscape, Navigation and Recreational use.
- 1.4 For the reasons set out in this submission we submit the application should be **declined**.

Farm History

- 2.1 The 4 ha farm under consideration is owned by Clearwater Mussels Limited. The initial application for a three hectare farm was made in November 1978, and was immediately opposed by the Marlborough Harbour Board¹.

The grounds where that the application would be contrary to the public interests for planning reasons and more particularly, that the granting of a licence in this area would unduly interfere with the existing or proposed usage of the adjacent foreshore. The main reason for that objection was that the area applied for fronts a good quality beach, suitable for public use

- 2.2 After repeated application a Marine Farming License was finally granted on 28 October 1992, **some 14 years later** by the Ministry for Fisheries. The farm was extended by one hectare in 1999. The licenses expire on 31 Dec 2024 for the initial farm and on 12 October 2020 for the extension. The current application is to replace U930087, MFL496, U991210 and MPE454.
- 2.3 Subsequently, there has been little or nothing in the way of monitoring the cumulative ecological adverse effects of cultured mussel farming by decision makers. This is the first opportunity for many years for the public to highlight what we now know and to consider the adverse ecological and other cumulative effects for this farm on matters such as cumulative adverse ecological effects, cumulative adverse landscape, amenity and navigational effects and so on.

Farm Location

- 3.1 **Location:** The application the subject of this submission is located in Clova bay, a part of the Beatrix basin in the Central Pelorus Sound. The Beatrix basin is packed with mussel farms, it has the highest density of mussel farming in the Pelorus Sound. Within the Beatrix basin, Clova Bay with a coastline length of approximately 7.8 km and covers an area of sea of approximately 335 ha² is the most intensely farmed bay, where 13 marine farms form a continuous ribbon along its shores. The question should be asked: when is enough, enough?³ We submit this application exceeds that threshold.

¹ Marine Farm Licence History file for MFL496.

² Davidson, R.J.; Richards, L.A.; Scott-Simmonds, T. 2019. Biological report for the re-consenting of marine farm 8549 in Clova Bay, Pelorus Sound. Prepared by Davidson Environmental Ltd. for Clearwater Mussels Ltd. Survey and monitoring report no. 974.

³ Philip Milne, Simpson Grierson: 2006.

https://www.qualityplanning.org.nz/sites/default/files/When_is_Enough_Enough_Dealing_with_Cumulative_Effects_Under_the_RMA.pdf

Receiving Environment

- 4.1 In total this farm represents an area of 4.0 hectares. There are 13 marine farms in total in Clova bay with a combined size of 140 ha. It is fair to say that marine farms, which cover more than 40% of the surface area of the bay, dominate this bay. The Clearwater farm extends beyond 300 meters from MLWS and the current proposal is to shift it yet another 20 meters further away from the beach. Nowhere can one look out across the waters in Clova Bay without having mussel farm surface structures detracting from the otherwise beautiful views. From the surrounding slopes the practice of mussel buoy clumping (aggregating surplus to requirements buoys on site in large elevated clusters) highlights the negative impacts on land and sea scape values.
- 4.2 The application glosses over the fact that this application is **not** just about repositioning of the farm rather it is a major and material change in farming intensity. The existing farm is consented for 11 backbones, each measuring 100m, the new layout is for 10 longlines, measuring 126 to 130m, in total 1280m. This is 180m more longline, an increase of 16%. Add to that that if the farm is moved to deeper water as proposed then the actual farming intensity increase (production capacity) is even higher.
- 4.3 **Why does this matter?:** Briefly - it does because green lipped mussels (**GLM**) are filter feeders. In order to filter out what the GLM considers suitable food it pumps water through its filter system at amazing rates. Some say up to 360 litres per 24 hours. They are indiscriminate filter feeders and thus predate phytoplankton, zooplankton, fish eggs as well removing other matter from the water column. When you multiply these filtration rates with the numbers of mussels in low flush intensively farmed areas like Clova Bay it becomes apparent, that they present an attack on the building blocks of the ecosystem and thus indigenous biodiversity.
- 4.4 The likely adverse ecological impacts in areas such as Clova Bay on zooplankton depletion have been assessed by NIWA in its 2015 report – *A biophysical model for the Marlborough Sounds – Part 2 Pelorus Sound*. In the Davidson Family Trust case at the Environment Court the Association analysed and highlighted the significant adverse effects the NIWA model was predicting on zooplankton depletion under certain scenarios. One of the reports' authors, under oath and as a subpoena witness, confirmed our methodology and thus the predicted outcomes was correct.
- 4.5 Subsequently our representative on the MDC convened Aquaculture Review Working Group was able to enlighten and inform the ARWG (and seemingly the ARWG scientific advice group) about the existence and methodology of the Aquaculture Stewardships Council (ACS) standard and thus its assessment of unsustainable phytoplankton depletion in Clova Bay.
- 4.6 It also needs to be borne in mind that the level and intensity of mussel farming far, far outstrips anything that might have been happening from GLM presence prior to the start of cultured mussel farming. In this regard the April 2017 NIWA Coring Study (*A 1000 year history of seabed change in the Pelorus Sound/Te Hoiere, Marlborough*) vividly illustrates the historic relative absence of GLM's in the sampled areas. So what we have today is a very artificial and, as the available science demonstrates, a significantly deleterious ecological construct.
- 4.7 In passing we note with concern that the DEL Davidson Environment report attached to the application appears to avoid the ecological carrying capacity issues facing Clova Bay by diverting into a Sounds wide comment on this aspect. Whilst this may present the

clients application in the best light it does not seem helpful or impartial in terms of an “expert” assessment of the issue. We submit ecological carrying capacity is appropriately determined at an “area of influence” level, generally a bay by bay level, not at a *Sounds* wide level.

- 4.8 We also take issue with DEL as to what the Zeldis paper actually shows is happening in the Sounds. We submit the *Zeldis* studies are yet further evidence that the ecological carrying capacity for aquaculture is being exceeded in Clova Bay and grounds for this application to be declined and thereby reduce the adverse cumulative impact footprint of marine farming in Clova Bay.
- 4.8 We look forward to a more detailed discussion of the evidence we have cited above and the important differences between ecological carrying capacity and mussel production carrying capacity as matters progress.
- 4.9 Accordingly we submit the proposed increase in production intensity is an additional **adverse effect, which is not minor**. Rather we submit we should be looking at reducing the intensity of farming in Clova Bay. For the applicant to suggest that it is well established that the biophysical effects from mussel farming in situations such as Clova Bay are less than minor is plain wrong.
- 4.10 For completeness sake we also note there are other indicators that suggest that the wider Marlborough Sounds marine environment is under stress. The Councils own State of the Environment report states: *Marlborough’s marine biodiversity is not in good shape, particularly in the Sounds – etc.* At a recent aquaculture conference graphs were produced indicating that a 100% increase in mussel farm area has not resulted in higher harvesting volumes in the Marlborough Sounds. In the last two years it seems no spat was collected in the Sounds. We note our conclusion in paragraph 4.6 above.

Comments - Legal Status of Application

- 5.1 **Non-Complying:** as far as we can ascertain the applicant accepts that the application is for a non complying activity but state our view that it is so on a “just in case” basis.
- 5.2 **Not a Renewal:** We believe it is now accepted that, at law, this application is not technically/legally a renewal but in fact an application to be considered 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 Court¹*). Posing the question: “Would we put this farm there now given what we now know?” We say NO.

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).

Natural Character

- 6.1 Natural character extends to natural biodiversity and to the ecological health of the benthic and water column environment.
- 6.3 As discussed above Aquaculture in Clova Bay is significantly above what is considered a safe intensity by the Aquaculture Stewardship Council (ASC). The NIWA Biophysical Model for the Pelorus Sound, which indicates that there would be as much as 10 times more zooplankton in Clova Bay without the existing aquaculture, corroborates this. It follows that the existing level of aquaculture in Clova Bay is more likely than not having a significant adverse effect on the natural ecological values of Clova Bay.
- 6.2 We submit the application stands to add to the significant cumulative effects on natural character values that aquaculture is already having. This in turn amounts to a significant effect and as such it must be avoided under New Zealand Coastal Policy Statement Policy 2010 (NZCPS) – policy 13.1 (b).

Landscape

- 7.1 Natural character is an aspect of the wider concept of landscape character. Both phenomena are the product of a reasoned, descriptive analysis of a landscape or an area of the coastal environment.
- 7.2 The Clova Bay landscape, particularly through the outer reach of Clova Bay where this application is located, is one of undeveloped hills cloaked in native or pine forest¹ plunging to a seascape that is unmodified but for marine farm structures. Beyond are vistas of unmodified seascape into the open Beatrix Basin area and out to Maud Island.
- 7.3 The Clova Bay landscape has at the least a moderate degree of natural landscape value and as such qualifies for protection under NZCPS policy 15. As noted, marine farm structures dominate the Clova Bay seascape and accordingly detract from the natural landscape values of Clova Bay to a significant degree.
- 7.4 The Application stands to add to the significant cumulative effects on natural landscape values that aquaculture is already having. This in turn amounts to a significant effect and as such it must be avoided under NZCPS policy 15(b).

Navigation and recreation Issues

- 8.1 The history of this farm shows that navigational issues have always been to the fore. This application seeks to take the marine farm yet further out into the Bay's navigational channel. It will extend beyond the adjacent farms to the north and south presenting an obvious navigational hazard and should be declined on that basis.
- 8.2 The existing farm lies approximately 7 meters from the MLW and has a depth of 0.5m at corner 4². The anchor block for the first line is likely to be clearly visible at low tide. Moving the farm 20 m further out from the shore is not going to fix this issue, when

¹ It is recognised that pine forest does not necessarily detract from landscape values. *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 14 7.

² Davidson, R.J.; Richards, L.A.; Scott-Simmonds, T. 2019. Biological report for the re-consenting of marine farm 8549 in Clova Bay, Pelorus Sound. Prepared by Davidson Environmental Ltd. for Clearwater Mussels Ltd. Survey and monitoring report no. 974. See Figure 8.

under the current MSRMP the minimum distance to MLWS for a marine farm is 50 meters.

- 8.3 In passing we are not at all certain that the exclusion zone proposed in the RJ Davidson Environmental report (**Davidson report**) is effective. We will comment further at the hearing.

Cumulative Effects - Indigenous biodiversity – King Shag:

- 9.1 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).
- 9.2 We note that the applicant's environmental report by DEL 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. (Policy 3 of the NZCPS).

MEP Process compromise

- 10.1 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.
- 10.2 Under the MEP the plan is to create Aquaculture Marine Areas (AMA), where the farms will be shifted 100m from shore and extend to the 300m line. Again, the proposed location of this farm is violating that principle on **both limits**. There is no room for a farm of this size in this location.

Request to Appear

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

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 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 the application U190765 **should be declined**.

The Association notes that this application is quite long (100 pages or so) , 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 this application to the physical PO Box address given below.

Yours faithfully



President
Kenepuru and Central Sounds Residents' Association
Email - president@kcsra.org.nz
c/- PO Box 5054 Springlands, Blenheim 7241

cc: R D Sutherland
Property and Land Management Services Ltd
Email: palmsltd@xtra.co.nz
C/- 15 Purkiss Street
BLENHEIM 7201