

Kenepuru & Central Sounds



Kenepuru & Central Sounds Residents Association Inc.

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Dear Sir/Madam

**Kenepuru and Central Sounds Residents' Association
Submission on Resource Consent Application U200493 -
Tawhitinui Bay - Kuku Holdings Ltd.**

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

Introduction

- 1.1 The Association was established in 1991 and currently has approximately 310 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. We have also learnt that this rampant expansion was often haphazard with little appreciation of the adverse impacts on the ecological and other values of some of these sites. This application represents the worst of all worlds. It is an extension and a continuation application of a farm located in a most unfortunate site as it is an area with high biodiversity and landscape values. We see this as an opportunity to revisit and assess if in todays world this farm should be where it is let alone a massive extension.

Background Context

- 2.1 The application the subject of this submission is located in Tawhitinui Bay. Tawhitinui Bay is located within the central Pelorus Sound area (Te Hoiere) known as Pohuenui. The bay is relatively small and open to the waters of the Tawhitinui Reach. The Reach was described as probably the roughest area of water in the Sounds because of its length lying as it does along the access of the prevailing north-west and south-east winds. The substantial seas which this builds up are accentuated by strong tidal flows. The land which forms the bay is fairly steep, climbing to 565 metres at Kauauroa Trig. The Kenny Isle Scenic Reserve extends from this point down to the water on the eastern side of the bay, east of the location of the marine farm. The reserve fronts approximately 53 per cent of the coastline in the bay. The land behind this reserve and extending into the other half of Tawhitinui Bay belongs to Pohuenui Station.
- 2.2 The subject application concerns a request to extend an existing farm consent/license referred to as MF 8217. The initial application was made in October 1988 for a 9 ha farm (600m x 150m), which was objected to by the Marlborough Harbor board on navigational grounds¹. MAF granted a license in December 1992 for a smaller 6.75 ha (450m x 150m) marine farm. The farm consent has an expiry date of 2039.
- 2.3 The extension sought is an area of 6.11 hectares, which includes 0.5 ha of the “refused” 2.25 ha area in 1992. We note the applicant is seeking a new consent covering the existing and proposed extension with, as we calculate it, an expiry date of 2040.
- 2.4 It is worth noting in the context of this application that in 1995 MDC approved applications U941497 (3.2 ha) and U941507 (6 ha) for two other marine farms in Tawhitinui Bay. However these decisions were appealed by the Department of Conservation to the Environment Court who set aside the decisions of the Council. We set out below an excerpt from the decision which we submit is still applicable to this proposal.²

“Conclusion.

In terms of s.5(2)(a)(b)(c) of the Act by a majority decision we do not see that granting this application allows for sustainable management of the coastal marine area. It does not sustain the potential of its natural resources to meet the reasonably foreseeable needs of the future generations; it does not safeguard the life-supporting capacity of the ecosystem and its adverse effects cannot be avoided. The appeal is allowed and the decision of the council cancelled.”

Extension or New Application?

- 3.1. As noted it is proposed by the applicant that the existing consent will be replaced by a single consent for the whole area, if the extension is approved. This will have an expiry date greater than the existing farm. Accordingly, as we understand it, the application is not technically/legally “just an extension” but in fact is a continuation and extension application and thus is to be treated as if it were a new application.
- 3.2 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

¹ MFL479 History File, page 125.

<https://data.marlborough.govt.nz/trim/api/trim/get?id=12332378&name=Marine%20Farm%20History.pdf>

² Director General of Conservation v Marlborough District Council and Marlborough Mussel Company Limited NZEnvC Decision No.W89/97 – U941497

*Environment Court*³). In other words would we put a farm here now, let alone the proposed massive extension given what we now know? **We say no.**

- 3.3 Under this treatment at the very least we can tidy up at least one other irksome matter. The original drawing and description puts the farm 50 meters from mean High Water, NOT 50 m from mean **Low** Water Springs (MLWS) as required. This has not been rectified by MDC when they rubber-stamped the consent continuation a year ago. Nor is there an inshore exclusion zone, needed because of the cobbles etc. inside the consent.

Proposed Marlborough Environment Plan

- 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. The Proposed Marlborough Environment Plan (PMEP) is well advanced in the adoption process. However following severe central government and industry pressure the aquaculture chapter was withdrawn from the notified MEP. Hearings and appeals have advanced without the aquaculture chapter. Rather, the MDC decided more consultation was needed and convened an Aquaculture Review Working Group to look at marine farming (non finfish) 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.
- 4.3 In the last little while there has been a continuous stream of mussel farm re-consent applications 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 example of the wave of re-consenting is allowed to proceed.
- 4.4. Technically speaking the applicant has not appealed the PMEP on landscape matters. However, interests directly related to the applicant⁴ have appealed seeking the Outstanding Natural Landscape / Feature mapping removed in the vicinity of the marine farm. Accordingly, we submit that the hearing for this application should at the least be postponed until this unfortunate appeal has been decided by the Environment Court.

Multibeam Seabed Mapping of the Pelorus Sound

- 5.1 This seabed mapping project is currently underway in the Pelorus Sound, following the successful completion of the Seabed Mapping of the Queen Charlotte Sound and Tory Channel. Once completed there will be very detailed maps for all of the Pelorus Sound. At

³ **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).

⁴ ENV-2020-CHC-69 - Appeal lodged: 8 May 2020 J V Meachen v MDC - Notice of Appeal https://www.marlborough.govt.nz/repository/libraries/id:1w1mps0ir17q9sgxanf9/hierarchy/Documents/Your%20Council/Environmental%20Policy%20and%20Plans/MEP_Decisions/Appeals/69_%20J_V_Meachen/A_JVMeachen_v_MDC_NoticeOfAppeal.pdf

this moment the smart map for marine farms does not even show depth contours, but in future the Seabed smart map will show elements such as bathymetry, benthic terrain and ecology in great detail. For Tawhitinui Bay, with its strong currents sweeping past Tapapa Point and crossing the width of the Tawhitinui Reach to Tawero Point, the seabed mapping will show many interesting features. This is another reason to delay the hearing until this information becomes available.

Cumulative Adverse Landscape and Natural Character

- 6.1 The operative Marlborough Sounds Resource Management Plan (MSRMP) identifies Areas of Outstanding Landscape Value (AOLV). The proposed extension is only 62 metres from an AOLV, being the Kenny Isle Scenic Reserve, while the existing farm is adjacent to the Pohuenui Nature Resort peninsula, which is covered in regenerating bush.
- 6.2 We are of the view that the existence of the farm already adversely affects the Landscape and Natural Character values of the area. The 6.11 ha extension only exacerbates this situation. By declining this application these further adverse effects will be avoided. We submit this outcome is in line with the requirements of the MSRMP and the New Zealand Coastal Policy Statement 2010 (eg Policy 13 and 15).
- 6.3 We note that the application area is labelled Outstanding Natural Features and Landscape (ONFL) in the MEP. Whilst this aspect of the MEP has yet to be resolved we submit that the application cuts across even this designation and should be declined.

Biological reports

- 7.1 It is generally accepted that mussel farm activities will result in extensive adverse modification of the immediate and surrounding benthos from the likes of shell drop, discharges both natural and unnatural. According to the applicant's accompanying Biological report⁵ there were no historical biological reports found in relation to marine farm site 8217. Strictly speaking this is true, as no environmental report of any kind was produced, before this farm was eventually approved in 1991.
- 7.2 However, we submit it is some what ingenious and unhelpful of the applicant to stop there as, however, a report⁶ was written for an extension of the neighbouring farm to the west, as well as reports^{7 8} for the two declined farm proposals to the east of MF8217. Combined, they describe the marine environment in Tawhitinui Bay on either side of the application site. We submit that these reports are extremely important in demonstrating just what a high biological and ecological value area the existing farm was allowed to occupy. We submit they underline why declining this application for additional marine farming area presents an opportunity to safeguard and emphasise the important biological values of the Tawhitinui Bay area.
- 7.3 On that basis we have taken the opportunity to set out various extracts from these earlier reports that touch on these issues.

⁵ Davidson, R.J.; Richards, L.A.; Scott-Simmonds, T. 2018. Biological report for the consenting of marine farm 8217 in Tawhitinui Bay, Pelorus Sound. Prepared by Davidson Environmental Ltd. for Kuku Holdings. Survey and monitoring report no. 898.

⁶ Davidson, R.J. 1995. Description of the subtidal macrobenthic community from a proposed marine farm extension in Tawhitinui Bay, Pelorus Sound. Research, survey and monitoring report no. 83.

⁷ Davidson, R.J. 1995. Description of the subtidal macrobenthic community from a proposed marine farm in south-eastern Tawhitinui Bay, Pelorus Sound. Research, survey and monitoring report no. 65.

⁸ Davidson, R.J. 1995. Description of the subtidal macrobenthic community from a proposed marine farm in south-eastern Tawhitinui Bay, Pelorus Sound. Research, survey and monitoring report no. 66.

7.4 From report no 83 (to the west (left) of the existing farm):

*The benthos investigated below most of the proposed marine farm was dominated by **hard shores offshore to 120 m distance or soft bottoms with a relatively high variety of conspicuous epibenthic species (emphasis added)**. The impact of a mussel marine farm on hydroids, bryozoans and other current induced species would result in smothering of these species by shell debris. Hydroid and bryozoan feeding apparatus may not be smothered by sediment derived from a mussel farm due to the depths involved at this site and the relatively strong tidal currents observed in this area.*

7.5 From report no 66 (to the east (right) of the existing farm):

Results from the scooter run across random parts of the proposed farm and along the inshore areas of the proposed marine farm and adjacent coast suggested that:

- 1)
- 2)
- 3) **a zone where three species of hydroids and tube worm mounds were regularly observed occurred between approximately 6 to 16 m depth (emphasis added);**
- 4)
- 5).....;

*The intertidal shore adjacent to the proposed marine farm area was dominated by a **combination of short bluffs and a bedrock shore in the west (emphasis added)** and a relatively low gradient shore or cobble/pebble beach in the east. At both transects the hard shore zone terminated in soft shores at approximately 12 m to 14 m depth and 40 m to 50 m distance from shore.*

7.6 From report no 65:

***On the hard shores, a shallow subtidal zone of relatively dense brown macroalgae occurred and was dominated by *Carpophyllum flexuosum* (emphasis added)**. With increasing depth the macroalgal bed was replaced by encrusting invertebrate communities including tubeworm mounds (*Galeolaria hystrix*). The soft bottom areas were dominated by dead whole and broken shell overlying fine sands in the shallower fringe and at greater depths, silts (Figure 3, 4). By 60 m distance from mean high water the bottom communities and substrata remained relatively consistent to 100 m distance from shore. On these soft bottom shores were hydroids and brachiopods (Figure 3).*

7.7 From the report no 898 (2018):

*The inshore corner depths of the consent area were 15.5 m and 16 m. Shallower depths were recorded on the eastern farm block along the inshore boundary ranging from 5 to 11 m. The eastern end of the consent boundary is located closer than 50 m from low tide. **Species abundance and diversity from most of the consent was low compared to other moderate current locations in the Sounds.***

The conclusion in this report is that the eastern block of the farm is too close to the shore and contains hard substrates and cobbles within the consented area. We submit that at least 25 meters of the consented area on the eastern side of the farm should be an **Exclusion Zone for all farm structures**. Unlike mud and silt, rocky substratum is not traditionally considered suitable for marine farming activities as it usually gets smothered by shell debris and likely no longer functions as hard substratum habitat.

7.8 Comparing these latest findings with the 1995 biological reports for Tawhitinui Bay, we submit it clearly shows in our view the significant adverse environmental effects of mussel

farming on the benthic communities inshore and under the mussel farm. We also note in passing other adverse effects on the benthic from mussel farm culture e.g. the predominance of 111 arm seastars attracted to such sites.

King Shag

- 8.1 We note the close proximity (800 m) of the site to the Tawhitinui King Shag colony. This is an endangered and iconic species. This extension of marine farm 8217 is we submit prime King Shag foraging area and thus presents an unacceptable potential adverse impact on this threatened iconic and endangered species, which should be avoided by declining the application. This is in line with the requirements of the New Zealand Coastal Policy Statement (see Policy 11). See also the discussion 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).
- 8.2 Another recent court case (2018) is the High Court decision (Judge Grice) in *Clearwater Mussels Ltd. v MDC*⁹, where a mussel farm application in Port Gore was declined, because of the cumulative negative impact on nearby king salmon colonies.
- 8.3 A significant adverse effect on the King Shag is the disturbance of breeding and feeding birds by the additional boat traffic associated with the presence of the marine farm. For this reason, Davidson et al (1995) proposed buffer zones of 300 metres around roosting sites and 1000 metres around breeding colonies¹⁰.
- 8.4 The ingestion of marine litter, particularly plastics, is common among seabirds and can cause death by dehydration, blockage of the digestive tract, or toxins released in the intestines¹¹. Although it is suggested that plastic litter arising from marine farming operations can be mitigated by management practices, the beaches and shores are at times littered with mussel buoys and countless bits of rope. In passing we also note the very high use of fossil fuels in these operations both directly and in indirectly. For example in relation to diesel use as well as in the production of mussel buoys, plastic based lines and as noted above the discharge of plastic from the operations (both fine and gross). It is unfortunate that the MDC, to date, has largely ignored these significant adverse effects in terms of compliance or other monitoring.
- 8.5 We submit the application should be declined under these heads.
- 8.6 We also note for completeness sake that the applicant submitted at the 11th hour a report on the King Shag. Clearly, there was not enough time for us to review, discuss and respond to this report. We reserve the right to comment on the same at the hearing.

⁹ High Court Decision CIV-2018-406-21 [2018] NZHC 961 - Appeal from Environment Court on refusal to grant consent to marine farms – Clearwater Mussels Limited v MDC

¹⁰ Davidson, R.J.; Courtney, S.P.; Millar, I.R.; Brown, D.A.; Deans, N.A.; Clerke, P.R.; Dix, J.C.; Lawless, P.F.; Mavor, S.J.; McRae, S.M. (1995). Ecologically important marine, freshwater, island and mainland areas from Cape Soucis to the Ure River, Marlborough, New Zealand: Recommendations for protection. Occasional Publication 16. Nelson/Marlborough Conservancy, Department of Conservation, Nelson, New Zealand.

¹¹ NIWA Client Report No: CHC2011-058 (July 2011). Assessment of potential environmental effects of the proposed NZ King Salmon expansion on seabirds, with particular reference to the NZ King Shag. Prepared for New Zealand King Salmon.

Decline Application

- 9.1 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.

Request to Appear

- 10.1 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 offends against the objectives and policies of the New Zealand Coastal Policy Statement and the relevant Marlborough Plans. It stands to have a more than minor environmental impact. For these reasons and the matters set out above the Association submits the application **should be declined**.

Yours faithfully



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