



Manager, Resource Consents
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Dear Sir/Madam

12 April 2021

**Kenepuru and Central Sounds Residents' Association
Submission on Resource Consent Application U210022 – Elie Bay,
Crail Bay, Pelorus Sound.**

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 300 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 values of some of these sites. Accordingly applications such as this one should be seen as an opportunity to revisit and re-evaluate the tradeoff between economic development and significant adverse environmental impacts.

Preliminary Matter – Why is this application being processed?

- 2.1 As we understand it this application was accepted by the Council after MEP Variation 1 (Marine Farming) was formally notified. Accordingly, we submit that Policy 16.8.1 of Variation 1 (which mirrors the wording of section 165F of the RMA) is a bar to this application being heard until the requirements of that operative policy are satisfied. Preliminary discussion with Council suggest that they are relying on Section 165J of the RMA to avoid this outcome.

- 2.2 With all due respect we submit that section 165J is not relevant. For example the applicant does not hold an authorisation as contemplated by that section. Accordingly, we request that the hearing panel seek separate independent legal advice on that point prior to any proposed hearing and we reserve our position on this issue but for efficacy sake we put to one side this apparent bar and look (briefly) at the applicants proposal.

Background Context

- 3.1 The application the subject of this submission is located in Elie Bay in the Marlborough Sounds. Elie Bay is a relatively sheltered small bay well used by visitors and residents. It is an area of intense mussel farm activity with six farms taking up the foreshore in this low flow Bay.
- 3.2 The subject application concerns a request to “renew” and reconfigure an existing farm consent/license for the marine farm referred to as MF 8537. The farm consent (totalling 3.75 ha) expires in December 2024. A new term of 20 years is requested.
- 3.3. 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 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.

Farm Consenting History

- 4.1 In October 1978 S.L. Godsiff applied for a 5 ha marine farm which would occupy the last section of free space along the foreshore of Elie Bay. No environmental effects report accompanied this application. The application simply stated that this location in the Sounds was deemed suitable for mussel farming. The Harbour Board objected to MF8537 for several reasons² and voiced its opinion in a letter to the Ministry of Agriculture and Fisheries (MAF) as follows:
- The Board considers that the continuous granting of marine farming licences within the waters of the Marlborough Sounds, without any planning procedures upon which to base the development of marine farming, and its inter-relation with other water users and the use of the adjacent land, is undesirable and contrary to the public interest.*
- 4.2 Overruling the Harbour Board objections, MAF granted a licence three years later in August 1981 for a smaller 3.75 ha farm. Since then the licence has been renewed, but never has an Assessment of Environmental Effects (AEE) report been part of the consenting process.
- 4.3 In 1984 salmon farming was combined with mussel farming in this farm. In all likelihood this proved to be unsuccessful. This particular farm has a long list of species to be farmed and experiments have also been done with oysters.

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).

² Marine farm licence history.pdf - page 220.

<https://www.marlborough.govt.nz/property-search/files?url=https%3A%2F%2Fdata.marlborough.govt.nz%2Ftrim%2Fapi%2Ftrim%2Fget%3Fid%3D1222110&name=Marine%20Farm%20Licence%20History.pdf>

- 4.4 Several applications to change the long line layout were made over the years. The original consent was granted for 20 longlines of 73 metres in length, with a total longline length 1460 metres. This was subsequently varied in 1984 to provide for 19 longlines, all of 75 metres in length, plus a salmon cage. In 2003 another request was made for a structures approval for 10 longlines of 200 metres or a total longline length of 2000 metres, an increase of the farms production capacity with 33%. The 50 metre navigable channel through the middle of the farm would be eliminated. The Council requested an Assessment of Effects, before making a decision. This revised farm layout never eventuated.
- 4.5 In 2012 another way to improve this farm's economic performance was attempted via a variation of species with the addition of farming sea cucumbers in cages, suspended between the mussel lines or let loose to roam underneath the farm, if that was allowed. An attempt at polyculture, probably an exciting new development in aquaculture, but the locals were not convinced and submitted in opposition. The variation was withdrawn and the marine farm transferred to Wakatu Resources in 2013.
- 4.6 In 2017 Wakatu Resources applied again for the removal of the 50 metre wide navigable channel in the middle of the farm. The new layout requested was for 8 longlines, each 185 metres long. The total longline length would remain about the same, but the spacing between the longlines would be increased. One opposing submission was received, mentioning the cobble habitat under the farm. The Council requested further information regarding this cobble habitat³, and subsequently this application was also withdrawn⁴.

High Value Benthic Area – cobble habitat

- 5.1 The Biological report no. 1061⁵ from Davidson Environmental Limited (DEL), does not show any previous biological reports for MF8537 in Figure 4: Summary of existing studies from Beatrix Complex. This figure 4 is out of date for the Crail Bay area and does not show the report numbers for the known biological reports.
- 5.2 The first biological report for this farm was conducted in 2012, 30 years after mussel farming operations started at this farm. The seabed will have undergone changes as a result of the mussel farming operations in this location. The original seabed under the droppers has been covered over the years by copious amounts of faeces and pseudofaeces, excreted by the mussels hanging on the dropper lines. Mussel shells, live mussels and biofouling also accumulate under the farm when the green shell mussels are harvested. Due to the low currents in the bay, dispersion is low.
- 5.3 DEL report 741 / 871⁶ was part of the Sea Cucumber application of 2012. According to the report, a photograph taken in the 50 m wide channel inside the farm showed cobble habitat. The 2017 variation application to eliminate this channel in favour of 200 metre long longlines also referred to this DEL report. A new unpublished DEL report was then

³ <https://www.marlborough.govt.nz/property-search/files?url=https%3A%2F%2Fdata.marlborough.govt.nz%2Ftrim%2Fapi%2Ftrim%2Fget%3Fid%3D17151600&name=Sec%2092%20Further%20information%20required.vmbx>

⁴ Section 127 withdrawal letter stating: The applicant engaged marine scientist Rob Davidson to undertake a more detailed survey of the seabed in the gap between the two blocks of this farm and found more cobble habitat than expected.

Accordingly the applicant withdraws the variation application and requests the file to be closed.

⁵ Davidson, R.J.; Richards, L.A.; Rayes, C. 2020. Biological report for the re consenting of marine farm 8537 in Elie Bay, Pelorus Sound. Prepared by Davidson Environmental Ltd. for Wakatu Ltd. Survey and monitoring report no. 1061.

⁶ Davidson, R.J. & Richards, L.A. 2012. Biological report in relation to an application to add sea cucumber (*Australostichopus mol/*is) onto three marine farm permits in Pelorus Sound. Prepared by Davidson Environmental Ltd. for Aotearoa Seafoods Ltd. Survey and monitoring report no. 871.

commissioned by the applicant, which confirmed that more cobble habitat was present under the farm (see footnote 4).

- 5.4 DEL report 1061 contains 53 images of the seabed under the farm. One third of the images show that cobbles and boulders are present under the farm, predominantly in the channel. Mussel farms should ideally be located over areas of soft sediments to avoid smothering of reef habitats by biodeposits⁷. These hard substrates are considered high value benthic areas. Permit conditions should exclude areas within 20 m of rocky reef or other significant fish or seabed habitat because of typically high conservation values of these habitats.
- 5.5 We submit that a larger part of the 3.75 ha farm area **should be excluded** from the growing structures, not just the 50 meter wide navigation channel. The photos taken of the seabed under the growing structures predictably show silt and mussel shell, as the original benthic is covered by a thick layer of mussel farm deposits. The bathymetry maps of the Smart Map “Seabed Habitat Maps”⁸ show that effect as ridges on the seabed. What is needed is an investigation of the original benthos, by first removing the mussel farm deposits in places, before pictures are taken. It is most unlikely that the channel in the middle of the farm matches the exact narrow area where cobbles and boulders are present. The alluvial plane stretches at least from the woolshed to the creek just beyond the jetty. This creek still deposits cobbles on the seabed.

Species

- 6.1 The species that are authorised by the current consent are green shell Mussels (*Perna canaliculus*), Chinook Salmon (*Oncorhynchus tshawytscha*), scallops (*Pecten Novaezelandiae*), Pacific oysters (*Crassostrea gigas*) and dredge oysters (*Tiostrea lutaria*). Elie Bay is not a prime location for aquaculture and certainly not for salmon farming. **We strongly oppose** the continued inclusion of Chinook salmon, scallops and oysters in the list of allowed species to be farmed. The location of this farm is wholly unsuitable for farming Chinook salmon. The minimum requirements for salmon farming are a sea water temperature below 17 degrees Celsius, medium to high water flow and a water depth of 30 – 40 metres. None of these requirements can be met in Elie Bay. Oyster farming has also been tried in the last couple of years, with cages hanging from the long lines. It is unlikely that this experiment was successful, as the farm is now back to growing green shell mussels.

Consent term

- 7.1 A term of 20 years is proposed for the new farm licence. As a minimum (our preference is to decline outright) the Association submits that a shorter term should be considered, as a 20 year term will frustrate the implementation of the Marlborough Environment Plan, including the notified Aquaculture Variations 1 and 1A.

Amenity values

- 8.1 The Association is of the view that, due to the location of the farm, it is likely to have a more than minor adverse effect on the amenity values of Elie Bay currently enjoyed by its residents/landowners. Nowhere within Elie Bay can one take in the seaviews without the mussel farms spoiling these views with their presence. The six marine farms take up 21% of the total marine area of Elie Bay, completely dominating the seascape of Elie Bay.
- 8.2 This farm is close to the Elie Bay jetty, which is owned by a group of Elie Bay residents. The jetty can also be used by the wider public, as it gives access to the public Elie Bay road.

⁷ Lloyd, B.D. 2003: Potential effects of mussel farming on New Zealand’s marine mammals and seabirds: a discussion paper. Department of Conservation, Wellington. vii + 34 p.

⁸ <https://marlborough.maps.arcgis.com/apps/MapSeries/index.html?appid=155a89b0beb74035bd1c4c71f6f36646>

The mailboat arrives once or twice a week at the jetty to deliver the mail and show the tourists on board the Pelorus Sound and its residents. It is important that the jetty can be used in adverse weather and that the mailboat is not blown into the shallow areas at the head of the bay in Northerly winds. Other tourism operators also use the jetty to drop off groups of cyclists for instance, who then tour parts of the Sounds. Ease of access to the jetty would be much improved without this marine farm.

- 8.3 The Association does not see any merit in blocking the central channel of this mussel farm, as is proposed. The plan is for 10 x 190 metre long longlines, cutting off the access to deeper water for small boats launched from the boat ramp next to the jetty. It will act as a 190 metre long barrier in the water. At this moment one has to row past the 73 metre long longline, before turning into the channel to head for the fishing grounds. The channel itself can also be fished, but not if it is blocked by 10 longline ropes running across it. The Applicant has not for a moment considered the significant adverse effects this new layout will have on the recreational water activities in Elie Bay. Another drawback is that these very long longlines will shift and bow in the wind. Currently the extra set of anchors in the channel keep the shorter lines more or less straight.
- 8.4 The marine farming industry work unsocial hours on their boats. In the week of 11 January 2021, everyone in the bay was rudely woken twice that week by boats starting the harvesting or other farm work at 0630 in the morning in this marine farm. These large mussel boats are very noisy. Wakatu Resources clearly never considered the adverse effects their farm operations have on the residents.

Cumulative Effects

- 9.1 When engaging with these applications a difficulty we have noticed is the preference of the industry and applicants to see each application on a case by case basis and ignore or push to one side the myriad of significant adverse cumulative effects on the likes of landscape and natural character values, recreational activities, navigation, ecological impacts on the marine ecosystem and pollution from unauthorized discharges that a densely farmed area such as Elie Bay is suffering. Most unfortunately there is no area of influence overlay analysis in terms of assessing applications such as this in the context of the wider receiving environment.

Cumulative effects – Unauthorized Discharge of plastics

- 10.1 At the head of Elie Bay there is a tidal estuary with sand flats, salt marsh and sea grass beds. It is similar in structure, but of a smaller size as the tidal estuary in Clova Bay, which is an Ecologically Significant Marine Site⁹. As a result of recent resident citizen science research, the issue of plastic rubbish illegally discharged from Clova Bay Marine farms fouling and significantly degrading the ESMA has come to prominence. In Elie Bay the same issue with plastics from the marine farms degrading the environment at the head of the bay is happening. It is unfortunate that the adverse cumulative impacts on the environment of such an ecologically important area from a plastic intensive operation like that proposed by this farm has been seemingly overlooked by the Marlborough District Council (MDC) to date.
- 10.2 Although it is suggested by the industry that plastic litter arising from marine farming operations can be mitigated by management practices, the beaches and shores of the Sounds (and Elie Bay is no exception) are often littered with mussel buoys and countless bits of rope and other marine farm related rubbish. Further, the problem seems to be getting worse as poor practices (such as clumping of spare mussel buoys) are increasingly adopted by operators. Then there is the serious issue of the adverse effects of fine filament plastics released by the proposed activity polluting the marine ecosystem.

⁹ Davidson R.J.; Duffy C.A.J.; Gaze P.; Baxter A.; DuFresne S.; Courtney S.; Hamill P. 2011. *Ecologically Significant marine sites in Marlborough, New Zealand*. See page 87, 3.14 Clova Bay.

- 10.3 By way of example we note that the ingestion of marine litter, particularly plastics (petroleum derived), is all too common among seabirds and can cause death by dehydration, blockage of the digestive tract, or toxins released in the intestines¹⁰.
- 10.4 In passing we also note the very high use of fossil fuels in these operations both directly and indirectly. For example in relation to diesel fuel use as well as in the production of mussel buoys, plastic based lines and as noted above the discharge of plastic from the activity (both fine and gross).
- 10.5 We submit it is unfortunate that the MDC, to date, has largely ignored these significant adverse effects in terms of compliance or other monitoring and we look forward to MDC (and hopefully the applicant) actively addressing this matter in the course of the hearing of this application.

Decline the Application

- 11.1 Wakatu Resources Limited has applied to renew the existing resource consent (original licence number MFL148) for marine farm site 8537 (total 3.75 ha). This application appears to extend more than 200 metres from shore and as such the application would appear to be for a non-complying activity under the MSRMP. 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

- 12.1 The Association confirms that it would like to present/talk to this submission at the public hearing and will be represented.

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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¹⁰ 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

