

10 May 2021.

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

Dear Sir/Madam

**Kenepuru and Central Sounds Residents' Association
Submission on Resource Consent Application U210133 – Mills Bay,
Kenepuru 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 250 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.

Status of the application and other matters.

- 3.1 The application the subject of this submission is located in Mills Bay in the Kenepuru Sound. Mills Bay is a relatively sheltered small and shallow bay, situated in the Saint Omer peninsula. It has just 49 ha of sea surface area and the mouth is 660 meters wide. Mills Bay is intensely farmed with three mussel farms taking up 30% of the marine space in this low flow bay.
- 3.2 The application has been received by MDC after the National Environment Standard for Marine Aquaculture (NESMA) came into effect on 1 December 2020.
- 3.3 The proposed Marlborough Environment Plan (MEP) minus the Aquaculture provisions has (in part) had its hearings and is now in the appeals phase. The Aquaculture Chapter of the MEP has been notified as Variation 1 and 1A of the MEP on 2 December 2020 and the submissions period has just closed. We submit, the NESMA relates to the operative MSRMP plan, rather than the proposed MEP.
- 3.4 The whole Saint Omer peninsula and its surrounding marine area is designated as Outstanding Natural Landscape (ONL) under the operative MSRMP. In the 2017 discussion document for the NESMA¹, an inventory was made of existing marine farms in outstanding areas under the operative environment plan. All marine farms in Mills Bay are on this list and are effectively situated in an inappropriate area of the coastal environment for this activity. Policy 15 of the NZCPS 2010 requires that adverse effects of activities in areas of outstanding natural landscapes are to be avoided. The NESMA designates these outstanding areas as inappropriate for aquaculture.
- 3.5 The subject application concerns a request to “renew” and reconfigure an existing farm consent/license for the marine farm referred to as MF 8479. The farm consent

¹ MPI – June 2017. Discussion Document – Proposed National Environment Standard for Marine Aquaculture. <http://www.mpi.govt.nz/news-and-resources/publications>.

(totaling 3.0 ha) expires in December 2024. A new term of 20 years is requested. The activity status is discretionary according to the Application.

- 3.6. 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 Court². In other words would we put a farm there now given what we now know? **We say NO.**

Farm Consenting History

- 4.1 On 1 June 1977 a 3 ha marine farm licence was granted (MFL015) which would occupy a section of the northern foreshore of Mills Bay. No environmental effects report accompanied this application. The application simply stated that this location in the Sounds was deemed suitable for mussel farming.
- 4.2 In 1984 salmon farming was added to the species list. Scallops and dredge oysters followed in 1993.
- 4.3 This farm has had a long list of owners during its 44 year history. The consent has been “renewed” multiple times, but no environmental effects report has been found in the farm consent history.

Biological report.

- 5.1 The Biological report no. 1046³ from Davidson Environmental Limited (DEL), does not report on any previous biological reports for MF8479 either. Figure 4: Summary of existing studies from Kenepuru Sound provides an overview of biological surveys undertaken, but it is incomplete for the Mills Bay area. It does not show for instance, the Biological report no. 1017 for MF8478⁴ nor Biological report no. 980 for MF8480⁵ or the FRIA survey no. 1022 by the Cawthron Institute for MF8481⁶.

² **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).

³Davidson, R.J.; Richards, L.A.; Scott-Simmonds, T. 2020. Biological report for the re-consenting of marine farm 8479 in Mills Bay, Kenepuru Sound. Prepared by Davidson Environmental Ltd. for Wakatu Limited. Survey and monitoring report no. 1046..

⁴ Davidson, R.J.; Richards, L.A. 2020. Biological report for the re-consenting of marine farm 8478 in Mills Bay, Kenepuru Sound. Prepared by Davidson Environmental Ltd. for Sanford Ltd. Survey and monitoring report no. 1017.

⁵ Davidson, R.J.; Richards, L.A. 2019. Biological report for the re-consenting of marine farm 8480 in Mills Bay, Kenepuru Sound. Prepared by Davidson Environmental Ltd. for Aroma Aquaculture and Talley’s Group Ltd. Survey and monitoring report no. 980.

⁶ Cawthron FRIA Survey no 1022 – Nov 2005 for Consortium #5 Kenepuru Sounds.

- 5.2 This first biological report for this farm was conducted 43 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 pseudo faeces, 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 1046 contains 21 images of the seabed under the farm. All images are vague and blurry, because of the 0.5m visibility. It would have better, if the photos had been taken again with better visibility. Nothing much can be concluded regarding the seabed from these pictures. Is the complete absence of mussel shells due to the vague pictures or is it that this farm has been fallowed for a long time?

Species.

- 6.1 The species that are authorised by the current consent are: Green Shell Mussels (*Perna canaliculus*); Chinook Salmon (*Oncorhynchus tshawytscha*), Sockeye Salmon (*Oncorhynchus nerka*) and Atlantic Salmon (*Salmo salar*); Scallops (*Pecten Novaezelandiae*); Dredge Oysters (*Tiostrea lutaria*) and Pacific Oysters (*Crassostrea gigas*). Mills Bay is not a prime location for aquaculture and certainly not for salmon farming. **We strongly oppose** the continued inclusion of Chinook, Sockeye and Atlantic Salmon, Scallops, Pacific and Dredge Oysters in the list of allowed species to be farmed.
- 6.2 The location of this farm is wholly unsuitable for farming salmon. The minimum environmental 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 Mills Bay.
- 6.3 An investigation by the Biosecurity unit of MPI, identified two potential bacterial pathogens involved in summer salmon mortalities in the New Zealand King Salmon salmon farms in the Marlborough Sounds: *New Zealand rickettsia-like organism (NZ-RLO)* and *Tenacibaculum maritimum*⁷. Controlled Area Notices are in place to prevent the spread of the NZ-RLO to salmon outside of the Marlborough Sounds.
- 6.4 Recently there has been an incursion of *Bonamia Ostriae* in oyster farms in the Marlborough Sounds, which then spread to Stewart island oyster farms, endangering the wild Bluff dredge oysters. MPI undertook the drastic measure of culling all farmed dredge oysters in an attempt to stop the spread of this pathogen to the wild oysters.
- 6.5 We submit, that the farmed species list should be shortened to just Green Shell Mussels (*Perna canaliculus*).

⁷ Jeannine Fischer and John Appleby.(2017). Intelligence Report of NZ-RLO& T. maritimum 2015 response. MPI Technical Paper.

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 Mills Bay currently enjoyed by its residents/ landowners. Nowhere within Mills Bay can one take in the seaview without the mussel farms spoiling these views with their presence. The three marine farms occupy one third of the marine area of Mills Bay, completely dominating the seascape of Mills Bay.
- 8.2 The navigable channel through the middle of the bay is only 120 m wide, flanked on one side by a 100 m wide mussel farm and on the other side by a 140 m wide mussel farm. It is a cause of concern for a resident with boat access only to their property.
- 8.3 The marine farming industry work unsocial hours on their boats. Mussel boats can arrive as early as six o'clock in the morning to do work on a marine farm. These large mussel boats are very noisy. Wakatu Resources clearly never considers the adverse effects their farm operations have on the residents, or their boats would not arrive so early.

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 Mills 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 Mills Bay there is a tidal estuary with sand flats, bordered by salt marsh, sedges and sea grass beds. It is similar in structure, but of a much smaller size as the tidal estuary in Clova Bay, which is an Ecologically Significant Marine Site⁸. As a result of recent resident citizen science research in Clova Bay, the troubling issue of plastic rubbish, illegally discharged from Clova Bay Marine farms, fouling and significantly degrading the ESMA has come to prominence. A light has been shed on the disturbing scale and scope of the plastic discharges from

⁸ 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.

marine farm operations - from the gross (mussel buoys), to the medium (discarded plastic lashings) to fine (or nano) plastics. We refer you to <https://www.instagram.com/thefrayedknotproject/>. Subsequent ongoing monitoring clearly shows the issue is not historic as a result of previous bad management practices, but is ongoing.

- 10.2 In Mills Bay the same issue with plastics from the marine farms degrading the environment at the head of the bay is happening⁹. 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.
- 10.3 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 Mills 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.
- 10.4 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.
- 10.5 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). It is unfortunate that the MDC, to date, has largely ignored these significant adverse effects in terms of compliance or other monitoring.
- 10.6 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.

Conclusion

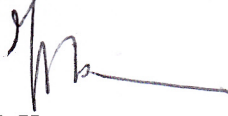
The Association is of the view that the application offends against the objectives and policies of the New Zealand Coastal Policy Statement and the relevant Marlborough Plans. It stands to have a more than minor environmental impact. For these reasons and the matters set out above the Association submits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

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 discussions with MDC and the applicant.

⁹ See the submission for U200379 of MF8478.

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

Yours faithfully



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