

**In the Environment Court
Christchurch Registry**

**I Te Kōti Taiao o Aotearoa
Ki Ōtautahi**

ENV CHC 2023

Under the Resource Management Act 1991

In the matter of an appeal under clause 14 of Schedule 1

Between **Kenepuru and Central Sounds Residents
Association Inc.**

Appellant

And **Marlborough District Council**

Respondent

**Notice of appeal against decisions on Variation 1 to the proposed
Marlborough Environment Plan (marine farming)**

Dated 30 June 2023

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To: The Registrar
Environment Court
Christchurch

1. Kenepuru and Central Sounds Residents Association Inc. (**KCSRA**), an incorporated society having its registered office at 3230 Kenepuru Road, RD 2, Picton 7282 appeals against decisions/parts of decisions of the Marlborough District Council on Variation 1 to the proposed Marlborough Environment Plan (**MEP**), a combined regional policy statement, regional plan and district plan for the Marlborough District. Variation 1 concerns marine farming provisions intended to merge in and become part of the proposed MEP pursuant to clause 16B of the First Schedule of the Act. Variation 1 provisions were publicly notified on 2 December 2020 and decisions on submissions made on Variation 1 were released on 19 May 2023.
2. KCSRA made a submission and further submission on Variation 1.
3. KCSRA is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. KCSRA received notice of the decisions on 19 May 2023.
5. The decisions were made by the Variation 1 Hearing Panel, acting under delegated authority from the Marlborough District Council.
6. The decisions/parts of the decisions that KCSRA is appealing are set out in Table 1, included in this notice of appeal.

Reasons for appeal

7. The reasons for the appeal are as follows.

Issue 1

8. New Zealand Coastal Policy Statement (NZCPS) policy 8 requires recognition that a relevant consideration in making provision for aquaculture activities in a regional coastal plan may include the need for high water quality for aquaculture activities. This assists in achieving relevant objective 6 matters, which in turn requires having particular regard to (inter alia) the efficient use

and development of natural and physical resources under section 7(b) of the Act.

9. Whilst there are many factors affecting mussel farm yield, it is widely accepted that key yield factors are high current and water depth. Farms in shallow low flush waters will generally have a low yield relative to farms of similar surface area in deeper higher flush water.
10. New Policy 13.21.3(j) requires regard to be had to the potential of the area for good aquaculture yield, including factors such as water depth and currents.

Issue 2

11. AMAs 8478, 8479, 8480, 8481, 8482, 8483, 8484, 8485, 8486, 8487, 8488, 8489, 8490, 8491, 8646, 8495, 8562, 8563, 8564, 8565, 8566 and 8567 are all in low flush water as shallow as 3 meters deep. Aquaculture yields from these sites are unknown but are likely to be up to 5 times less than yields from sites of similar surface area in deeper and higher flow water.
12. The NIWA report: *A biophysical model for the Marlborough Sounds, June 2015* prepared for Marlborough District Council predicts that mussel farming in these areas is also resulting in a zooplankton presence that is ten times less than it would be without the mussel farms. This represents a potentially significant adverse effect on indigenous ecosystems, important habitats, biological diversity and the natural character of the coastal environment.
13. The farms also generate a significant adverse cumulative effect on the values underpinning the Marlborough Sounds High Amenity Landscape Area, and on public access and navigation.
14. The listed marine farms are not located in *appropriate places* in the coastal environment for the purposes of policy 8 NZCPS and new policy 13.21.3.

Issue 3

15. An inadequate analysis has been undertaken of options for the management of competition for coastal marine space for aquaculture. This includes the lack of any in-depth consideration of an authorisation regime for all aquaculture resource consent renewals in the enclosed waters of the Marlborough

Sounds. Tendering was discounted in the section 32 Report on grounds of disruption to the industry, but without any analysis offered.

16. Aquaculture resource consents are of themselves a high value commodity. As the activity relies on the use of public space, proper consideration should have been given to an authorisation regime - in the same way that Department of Conservation concessions or leases for access to public space are paid for by users.
17. An authorisation regime with tendering is equitable at a public policy level and will promote an efficient use and development of natural and physical resources under Part 2 of the RMA.

Relief sought

18. Words added by this appeal are in green underlined and words struck out by this appeal are in ~~green strike out~~.

Issue 1

19. Amend Policy 13.21.3 by adding paragraph (j) as follows:

(j) Away from areas likely to return relatively low aquaculture yields, such as shallow low flush water

Issue 2

20. Remove from the Planning Maps AMAs 8478, 8479, 8480, 8481, 8482, 8483, 8484, 8485, 8486, 8487, 8488, 8489, 8490, 8491, 8646, 8495, 8562, 8563, 8564, 8565, 8566 and 8567

Issue 3

21. Insert the following new policy under Objective 13.21:

Policy 13.21.1A

In collaboration with Marlborough's tangata whenua iwi, relevant experts, the community and requisite central government agencies, the Council will conduct a comprehensive review of options for the management of

competition for the occupation of space for aquaculture in Enclosed Water CMUs, including through the use of authorisations, and present the results and a recommendation to the full Council within 5 years.

22. Insert the following new method;

13.M.43 Competition Management Plan Review

If Council resolves to change how it manages competition for the occupation of aquaculture space in Enclosed Water CMUs in a way that requires a review of this plan, the Council will promote a review of this plan to change the way that competition for the occupation of aquaculture space in Enclosed Water CMUs is managed.

23. Insert the following new method:

13.M.44 Temporary Restriction on Consent Renewals

Council will determine when the review under Policy 13.21A is completed and any consequential plan review is complete or operative and notify such date for the purposes of Rule 16.8.1.2

24. Insert new Anticipated environmental result:

<u>Anticipated environmental result</u>	<u>Monitoring effectiveness</u>
<u>Competition for the occupation of Enclosed Water CMUs for aquaculture is optimally managed having regard to the value of the access to public resources, the efficient use of natural and physical resources, and the sustainability of the industry.</u>	<u>There is public confidence that the competition management regime equitably recognises the use of public space in contributing to the value of aquaculture consents, represents an efficient use of natural and physical resources, and enables the sustainable operation of the industry.</u>

25. Add the following paragraph to the opening statement in **16.8 Occupation and allocation of coastal space with respect to marine farming** after the sentence *This section of the Plan provides specific methods for the allocation of authorisations to occupy coastal space.:*

This section also includes a rule prohibiting second applications being made for marine farms in AMAs in Enclosed Water CMUs pending a full review of how Council manages competition for this aquaculture space.

26. Add the following Rule 16.8.1.2 immediately after 16.8.1.1

16.8.1.2 In order to address the effects of occupation of the common marine and coastal area in Marlborough, and to manage competition for the allocation of space:

(a) No application can be made for a second coastal permit for the occupation of AMA space in Enclosed Waters CMUs before a date to be specified for this purpose in a notice publicly notified pursuant to Method 13.M.44.

27. It is acknowledged that alternative wording or relief may be acceptable in relation to the particular relief sought, together with any necessary consequential relief.

Table 1

Issue Number	Provision	Summary of Decision	Specific Provision or Matter at Issue
1	Policy 13.21.3	Where AMAs for existing marine farms are generally to be located.	Add a new paragraph requiring that AMAs be located away from areas likely to be of low aquaculture utility, such as low flush shallow water.
2	Planning Maps AMAs 8478, 8479, 8480, 8481, 8482, 8483, 8484, 8485, 8486, 8487, 8488, 8489, 8490, 8491, 8646, 8495, 8562, 8563, 8564, 8565, 8566 and 8567	AMAs as provided in northern Kenepuru Sound from Mills Bay to Kenepuru Heads.	Remove AMAs because they are in an area of low aquaculture utility, being a low flush area with water depths as low as 3 meters, and because of the potential for significant adverse effects on indigenous ecosystems, important habitats and biological diversity, the natural character of the coastal environment, public access and on the values underpinning the

			Marlborough Sounds High Amenity Landscape Area.
3	New Policies and Methods	Management of competition for high value space through use of a first come first right consent application system.	<p>Add new policy 13.21.1A for Council to comprehensively review and report on the management of competition for the occupation of coastal marine space. This to be done within 5 years of the policy becoming operative.</p> <p>Add a new method of a Council plan review if a review under Policy 13.21.1A determines that it is appropriate to review the manner in which competition for coastal space is managed.</p> <p>Add a new Anticipated Environmental Result of transition to a competition management regime that recognises the value of the use of public space, that ensures an efficient use of coastal marine resources, and that is transitioned to in a way that minimises disruption to the industry.</p> <p>Add a rule preventing applications for consent renewals until a date specified in a public notice to be issued following completion of the review of the consent renewal process options and any consequent plan change process.</p>

Dated 30 June 2023



JC Ironside

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Documents included with the notice of appeal lodged with the Environment Court

Submission and further submission by Kenepuru and Central Sounds Residents Association Inc.

List of submitters on Variation 1 to the MEP with email addresses.

All submissions and further submissions on Variation 1 to the MEP are available at <https://eservices.marlborough.govt.nz/programmes/ListProgrammeEvents?id=2904026>

The documents comprising the Hearing Panel's decisions on Variation 1 to the MEP are available at mdc.govt.nz.

Advice to recipients of copy of notice

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal. To become a party to the appeal, you must -

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submissions and the decisions appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Christchurch.