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4 February 2020

Dear Sir/Madam

**Kenepuru and Central Sounds Residents' Association  
Submission on Resource Consent Application U191043 -**

**Te Puraka Point, Beatrix Bay – Treble Tree Holdings Limited**

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 280 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. Most notably the Association has identified particularly egregious mussel farm applications and successfully opposed them at Commissioner led hearings. The Association has then participated in successfully opposing appeals to the Environment Court (and beyond) by those unsuccessful mussel farm applicants.

## 2. Background Context

- 2.1 The subject application concerns a request to “renew” an existing farm consent/license collectively referred to as MF 8263. The farm area (2.74 ha) has an expiry date of 2 May 2020. For completeness sake we also note that there is a relatively large Fisheries Exclusion zone (0.704 ha) along the two inshore sides of the farm. The license U990653 was approved on 3 May 2000. It took another 5 years before MPE766 was granted on 24 January 2006.
- 2.2 **Not a Renewal:** As we understand it this 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 recent Port Gore decision of the Environment Court.*<sup>1</sup>). In other words would we put a farm there now given what we now know? We say NO.
- 2.3 We submit that even on a stand-alone basis this application generates a number of new adverse effects. In essence the Applicant wishes to farm an area currently not occupied, by removing the Fisheries Exclusion Zone. It is to be replaced by a narrow strip of Backbone Exclusion Zone, which as applied has no protective effect (warps and anchor blocks are allowed) and thus the whole 2.74 ha can be farmed. Clearly the continued protection of the valuable inshore fish spawning area is not deemed necessary by the applicant.
- 2.4 We note that the Application the subject of this submission is located in Puraka Bay, the bay situated between the headlands Te Puraka Point and Waimaru Point. The land surrounding Puraka Bay and Waimaru Bay is the Waimaru Recreation & Scenic reserve and is administered by the Department of Conservation.
- 2.5 There are three marine farms in Puraka Bay. In total these farms represent an area of some 42 hectares. It is fair to say that this small bay is dominated by marine farms, which cover more than 50% of the surface area of the bay. The mussel farms, completely and unacceptably, we submit, dominate the natural character, sea views and the ecology of Puraka Bay. Nowhere can one look out from inside this bay or from the ridge above in the Waimaru Recreation and Scenic Reserve without having mussel farm surface structures detracting from the otherwise superb sea views.

## 3. Other Matters

### 3.1 Landscape and Natural Character:

We note that the application area is identified as an Area of Outstanding Landscape Value (AOLV) in Marlborough Sounds Resource Management Plan (MSRMP). The application area is also identified as an Outstanding Natural Features and Landscape (ONFL) area in the Proposed Marlborough Environment Plan (MEP). Clearly the strict rules of the NZCPS

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<sup>1</sup> 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).*

2010 apply under the MSRMP and MEP for this area, which is to avoid any adverse effects. This is best achieved here by declining the application.

3.2 The site is located directly south of a significant headland (Te Puraka Point) and its associated reef. Under the current plan (MSRMP) headlands are to be avoided as mussel farm areas. We also note that in addition to headlands creating high value landscape and natural character values they are often adjacent to biodiverse reef areas, as is the case here. In the recent *Davidson Family Trust v MDC*<sup>2</sup> the application for a new farm was, among other things, rejected because it was proposed to be located around a headland. We submit the same analysis applies here.

### 3.3 **Recreational Use:**

The Waimaru Recreation and Scenic Reserve, created in 1982, includes the Puraka bay peninsula and clearly designates the intended purpose of this area. The recreational use is not limited to the land, but includes the bays surrounding the Reserve. In our view the application further degrades the recreational use and enjoyment of the Waimaru Reserve.

### 3.4 **Alienation of Public Space:**

Old maps show that the location of MF 8263 was a recognised anchorage for small craft. Due to the presence of this marine farm, the anchorage area could not be used any more by the public for that purpose. The continuous ribbon of marine farms along the whole shoreline of this small bay, particularly as it is enclosed between two significant headlands, creates a domination of marine farming activity over all other uses. It is considered to be a significant alienation of public water space. Now is the time to reclaim this public water space by declining this application.

3.5 **Cumulative Effects - Indigenous biodiversity – King Shag:** The application area is located some 4 km from the Tawhitinui Bay colony of this endangered, iconic species. The farm would be sited in the proximity of an identified King Shag feeding area (ecology map 2). From the evidence available it was concluded that there was a potential for marine farm structures in this location to impact on that identified value. The leading Environment Court case on avoiding adverse cumulative effects as it concerns loss of foraging habitat for the King Shag is of course *Davidson Family Trust v MDC*<sup>3</sup>. In his concluding words at paragraphs 299 and 300 Judge Jackson made it very clear that what was at risk was the survival of a very rare species of bird. He was of the view that until much more detailed and sophisticated research was carried out, then the industry would have to accept it would not be able to expand or even continue at the same level. These comments are particularly applicable given that the 2018 and the 2019 census of the species has, unfortunately, shown a further decline in population numbers.

3.6 For another example of the adverse impacts on the benthic community from intensive mussel farming we draw the hearing panel's attention to the photo site 5 on page 49 of the TC Environmental (TC) report. This shows a number of mobile benthic predator the sea star *Coscinasterias muricata*, often colloquially referred to as 11 armed sea stars. See also photo site 9 at page 50 of the TC report to similar effect. A scientific study has found that the incidence of these creatures in areas with mussel farms is up to **39 times** that compared to areas without mussel farms<sup>4</sup>. This is, it is submitted, a significant and adverse biodiversity change.

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<sup>2</sup> Davidson family trust v. MDC [2016] NZEnvC 81

<sup>3</sup> See above

3.7 There is thus both recent scientific and anecdotal evidence of a more than minor cumulative and negative material ecological impact on these highly valued inshore areas from existing levels of mussel farming activity.

3.8 It is telling that both the application and the TC environmental assessment report are silent on these matters. A precautionary approach should be adopted. The appropriate response we submit is to decline the application entirely.

### 3.9 **Efficient Use of Natural and Physical Resources**

This marine farm is relatively small and the potential return to the applicant would be limited, whereas the attendant significant adverse effects of this farm in terms of visual, amenity, recreational, ecological values and public use would remain.

This proposed farm does not constitute an efficient use of natural and physical resources and should we submit be declined.

3.10 **Activity Status** – The farm is situated in a corner of the bay and two of its off shore sides have to be considered in relation to the off shore boundary distance. In the application (page 10) only one off shore boundary has been considered and the resulting conclusion is that the farm lies within the 200 m from MLWS. However, if the other off shore boundary is used, the farm extends even beyond **300** meters from MLWS, simply because the length of the farm in that direction is already 250 meters. We submit, that the activity status is not discretionary as stated in the application, rather it is **non-compliant** and the application should, unless we are shown to be wrong, be declined.

## 4. **Conclusion**

On the basis above, the Association finds the proposal to be unsustainable in that:

- (a) It would not enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety [section 5(2) of the Resource Management Act (RMA)].
- (b) Fails to avoid, remedy or mitigate any adverse effects of activities on the environment [section 5(2)(c) of the RMA].
- (c) Did not preserve the natural character of the coastal environment [section 6(a) of the RMA].
- (d) Did not maintain or enhance public access to and along the coastal marine area [section 6(d) of the RMA].
- (e) Did not constitute an efficient use and development of natural and physical resources in terms of section 7(b) of the RMA.
- (f) Did not maintain or enhance amenity values [section 7(c) of the RMA].
- (g) Did not maintain or enhance the quality of the environment [section 7(f) of the RMA].

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<sup>4</sup> Inglis, G.T.; Gust, N. 2003. Potential indirect effects of shellfish culture on the reproductive success of benthic predators. *Journal of Applied Ecology* 40: 1077–1089.

The Association is of the view that [even if we are wrong about its non-compliant activity status] 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 environmental impact and fails 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 **should be declined**.

## 5. Decline Application

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-compliant activity under Section 104D of the Resource Management Act 1991 (RMA) and that the application **should be declined**.

## 6. Request to Appear

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

Yours faithfully



President

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