

Kenepuru & Central Sounds



Kenepuru & Central Sounds Residents Association Inc.

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23 September 2020

Dear Sir/ Madam

**Kenepuru and Central Sounds Residents' Association –
Resource Consent Application U140294 - New Zealand King Salmon Co. Limited –
Variation sought to Waitata Farm consent condition 36.**

I write in my capacity as President of the Association.

Summary

For the reasons set out in this submission we submit the application is without merit and should be declined.

Introduction

1. The Association was incorporated in 1991 and currently has over 320 mainly household members whose residents live full time or part time in the Kenepuru or Central Pelorus Sounds. The Association's objects include, among other things, to coordinate dealings with central and local government on matters of interest to members.

2. The Association is active on a wide variety of issues of concern to members. These range from: attempting to maintain the security and reliability of the rather stressed local roading network; advocating with Council for the installation and/or maintenance of essential public services; advocating on conservation and environment matters concerning adverse impacts on the highly valued and iconic marine space of the Sounds. For more detail see our web site (www.kcsra.org.nz).

3. Since 2012, New Zealand King Salmon Co Ltd and its various subsidiaries ("NZKS") have

sought to acquire space in the Sounds for some 16 new fish farms. Once up to speed the Association (and many other community groups) quickly realised the significant adverse impacts of these proposals on the public space making up the iconic Sounds marine environment. These significant adverse impacts in our view vastly outweighed the benefits potentially accruing to King Salmon shareholders and the less than minor contribution accruing to the national economy. Nevertheless NZKS succeeded in acquiring some new farm space in the Central Pelorus region in a few instances.

4. Since then, rather than “accept the bed which NZKS made”, it has sought to vary what it sees as troublesome or limiting consent conditions (non compliance issues) on farms, which it acquired through this process. This variation application is such an application.

Background

5. In 2012, via a RMA Board of Inquiry process (**BOI**), NZKS was granted two of the five requested salmon farm sites in the Waitata Reach of the Pelorus Sound. The Waitata farm is one of these two farm sites. The White Horse Rock site, which butted up against the Waitata farm, was declined. It had a Maximum Initial Feed Discharge of 1000 tonnes per annum.

6. The BOI was a public forum of record, a retired Environment Court Judge chaired the Board, there were many submitters who commissioned a range of experts to present evidence, conferencing of experts was encouraged, evidence was taken under oath, cross-examination of experts and other witness’s was permitted.

7. The BOI effectively acknowledged that there were a number of real uncertainties surrounding the adverse impacts of the likes of the Waitata salmon farm operation that required a **precautionary approach** and that these potential adverse effects would be managed: by limiting the number of new farms to two in the Waitata Reach (Kopaua being the other farm), using a staged development, using a tiered monitoring system and ongoing adaptive management as ultimately reflected by the raft of consent conditions. NZKS actively participated in the development of those conditions including Condition 36.

8. Since its commencement the Waitata farm has not performed to NZKS expectations. Despite its own BOI evidence to the contrary as to it being marginal for water temperature it was touted by NZKS as being carefully selected as a supposedly cool, high flow site. Reality quickly arrived and within four years of operation it suffered recurrent significant mortality spikes¹ as water temperatures have consistently moved above the critical 17-degree mark for long periods. **We stress** that these ongoing, disturbing and risky (to the environment) mortality spikes have occurred and caused NZKS to be operating at feed discharge levels well below that envisaged.

¹ In a recent Commissioner decision (Decision for U190357 of 13 March 2020) it was noted in Paragraph 107 that the Association had estimated the mortality rate in 2018 as being in the region of **40%** - a calculation and result that the presiding Commissioner noted was **not challenged** by NZKS.

<https://www.marlborough.govt.nz/property-search/files?url=https://data.marlborough.govt.nz/trim/api/trim/get?id=2047541&name=Decision>

Thus non-compliance around the impact of farm operations on the benthic are in fact understated.

9. In response NZKS took certain “damage control” steps. In 2019 The Association was very surprised to become aware through its background research when reviewing another publically notified application how NZKS had, through a series of non-notified applications, been carefully dismantling the BOI consent conditions as its Waitata farming operations suffered these setbacks. This rather cynical approach to adaptive management (change the consent conditions not your management) is not, it is submitted, at all what the BOI anticipated when putting in place a **precautionary** adaptive management regime with various compliance milestones.

10. The Association sees this current application as another attempt to obtain an increase in the allowed Maximum Feed Discharge, despite non-compliance with consent condition 40, which specifies the requirements regarding the size and the severity of the benthic deposition (“the footprint”).

Resource Consent Creep

11. We submit that it is important that the hearing panel is fully aware of some of the recent history of attempts by NZKS to vary existing resource consent conditions – a process often referred to as resource consent creep. A relevant example of resource consent creep is the variation NZKS sought in mid 2018 to Condition 37 of its resource consent for this farm.

12. The BOI consent conditions require that feed discharges can only be increased at the end of stage one against certain requirements. Condition 37 essentially requires NZKS to have been operating within 15% of the current maximum annual feed discharge (3000 tonnes) for **at least 3 years and** meet the requirements of Condition 40 (benthic footprint) before there can be an increase of the Maximum feed discharge by 1000 tonnes from 3000 tonnes to 4000 tonnes.

13. NZKS had become aware that in the monitoring period 2018/19 (the third year) it would not meet the requirements of condition 37. This was, NZKS confirmed in its application, due to high sea temperatures with associated elevated mortalities and thus a consequential reduction in fish to eat the feed. Ultimately NZKS could see that Condition 37 was a barrier to them increasing from 3000 to 4000 tonnes anytime soon.

14. The intent, we submit, of the original conditions was to make sure that, the benthic deposition was stable and that the benthic measurements were not indicating yearly increasing levels of enrichment at the initial maximum feed level of 3000 tonnes.

15. Somehow NZKS persuaded the Marlborough District Council (MDC) that it was highly unlikely (based on the previous two years of monitoring) that even if NZKS had been putting feed in during 2018/19 at the previous two year’s level that the other monitoring indicators would be exceeded. Unfortunately this variation application was granted, on a non-notified basis, by MDC in October 2018. Fortunately, NZKS still had to show that the benthic footprint was still within the 24 ha limit and complied with the EQS values at the zone boundaries.

16. We note that the 2018/19 monitoring report² was not available at the time the application was made. When it appeared it showed that the benthic footprint was **not** within the maximum size of 24 ha.

17. Nothing daunted NZKS then took another tack – our second example of resource consent creep. In November 2019 an application (U190357) was made by NZKS to increase the maximum number of salmon pens from 8 to 12, including additional moorings and mooring buoys.

18. At the hearing the size of the benthic footprint was a significant topic of discussion and a bone of contention between the applicant taking one position and the MDC marine expert and the submitters expert taking another.

19. The MDC expert Dr. Hilke Giles had reviewed the 2018/19 monitoring report for the Marlborough District Council³. She concluded that because the deposition footprint of the Waitata farm extended beyond the two Outer Limit of Effect (OLE) monitoring stations 600 meters North and South of the of the farm, as well as beyond the inshore and offshore OLE monitoring stations, the deposition footprint of the farm exceeded the consented 24 ha, hence the requirements of Condition 40 had not been met.

20. The hearing Commissioner declined the U190357 application for the farm size increase and one of the main reasons given⁴ was:

143. I have considered all the evidence presented to the hearing and the submissions that I have received since. I conclude that the applicant has failed to show that this proposal meets the purpose of the RMA: in particular, the failure to address the existing depositional footprint already covering 14 hectares beyond consented maximum and the applicant's failure to profile the expected footprint from the increase in pen area.

The Application

21. The application, the subject of this submission, is for a change in Condition 36, which defines the compliance rules and the settings for the Feed Discharge. Having failed to qualify under the consent conditions for an increase in feed discharge levels, NZKS now arbitrarily wants to

² Cawthron report no. 3323 – 2018-2019 Annual Environmental Monitoring Summary for the Waitata Reach Salmon Farm.

³ Dr. H. Giles. 2019. Comments on 2018-19 Annual Report for the Waitata Reach farm.

⁴ Decision Document for U190357, dd 13 March 2020, page 23. Available on MDC website.

increase the Maximum Initial Feed Discharge by 1000 tonnes to 4000 tonnes per annum. They rub salt into the wound by seeking that this change apply retrospectively.

22. This requires the existing Consent to be varied pursuant to section 127 of the RMA. We note that in its application the applicant states that the application is a discretionary one and for the purposes of this submission we assume the applicant is right. To be clear the Association reserves its position at the hearing on this aspect.

23. It seems appropriate to note that NZKS has made two separate applications for the Waitata farm at the same time. The other one is to vary Consent Condition 40, which sets the Environmental Quality Standards (EQS) for the seabed deposition.

24. The applicant gives the following reason for the proposed change of the Maximum Initial Feed Discharge to 4000 tonnes per annum:

20. NZ King Salmon, due to its operational requirements, wishes to increase its feed discharges above the current maximum of 3000 by November 2020. It is, therefore, making this application to confirm its ability to increase its feed discharge levels.

25. We are disturbed to read that operational requirements are seen as sufficient justification for an increase in the feed discharge level, effectively bypassing all the requirements of Condition 37, which deals with feed increases. Are we now to believe that “operational requirements” magically take precedence over any of the Consent Conditions and even overrides **not qualifying** for a feed increase according to the Condition 37? This application is outrageous.

26. There will most certainly be additional adverse environmental effects from the proposed feed increase. With the current maximum feed level of 3000 tonnes per year, the resulting benthic deposition footprint already exceeds the consented total area of 24 hectares, even when the feed discharge in 2018 was a mere 2164 tonnes, due to high fish mortality rates. What will the deposition footprint and the EQS be when 4000 tonnes are discharged? Another 33% increase? Has that been modelled? The applicant failed to seriously address these relevant questions by asserting they will be no more than minor. Without doubt, more feed discharge leads to more waste deposited on the seabed and thus adverse effects.

27. The AEE lists a series of aspects in paragraph 37 that have not been addressed in the application “as their effects have been fully canvassed by the BOI and the proposed change will not have any effect on those aspects”.

We disagree with this summary dismissal of any effect on the likes of:

- Natural character, in particular the seabed
- Seabirds, in particular the King Shag

An enlarged farm footprint and adverse effects beyond the EQS of Condition 40 have implications for the foraging habitat of the King Shag. The MEP also has a 25 km radius policy for the King Shag (see 8.3.5).

We submit, that this application should be **declined** as it has not considered the adverse effects on the King Shag.

28. Another unpleasant surprise is that the Cawthron Environmental Assessment attached to the application states on page 1 that it assumes the other separate application dealing with changes to condition 40 has been granted. This is we submit a rather arrogant assumption to proceed with for an environmental assessment. *“Assume matters are as we prefer them to be not as they are in fact”!*. We submit it goes to the heart of the veracity of the AEE, which should be put to one side. On this basis the application should be declined.

Board of Inquiry Assessment of Benthic Effects

29. Given the violence that the applicant is proposing to inflict on the carefully thought – in open forum - set of resource consent conditions, particularly around the setting of feed discharge limits and increases we think it is appropriate to revisit the same in the context of this extraordinary application.

30. The Feed Discharge settings in condition 36 were based on the reports and evidence presented to the BOI⁵. The terms used for the feed discharges in these reports for the BOI differ somewhat from the terms used in the Consent Conditions. The acronyms of the BOI terms will be used.

Evidence by Nigel Keeley for the BOI	Consent Condition 36	Feed Level (tonnes per annum)
recommended initial feed level (RIFL)	Maximum Initial Feed Discharge	3000
predicted sustainable feed level		4000

⁵ June 2012. Statement of evidence of Nigel Brian Keeley in relation to benthic effects for the New Zealand King Salmon Co. Limited, section: Approach to assessing effects and determining appropriate salmon feed levels.

(PSFL)		
maximum conceivable feed level (MCFL)	Maximum Discharge	Feed 6000

31. The predicted sustainable feed level (PSFL) was estimated for each of the nine proposed sites. The PSFL represents the best estimate (based on modeling and experience) of the amount of feed a site can tolerate without the adverse seabed effects becoming unacceptable.

The recommended initial feed level (RIFL) is approximately 75% of PSFL and provides a **conservative estimate** of an appropriate initial feed level from which stepwise increases at set maximum tonnages and frequencies may occur. (*emphasis added*)

The maximum conceivable feed level MCFL represents the suggested upper limit, that could **conceivably** be achieved without excessively impacting the seabed and is useful mainly to assess worst-case scenarios. However, this level may never actually be reached in practice at many of the farms. (*emphasis added*).

32. The RIFL, the PSFL and the MCFL were determined through a number of steps:

- Predicting the depositional footprint through modelling,
- Predicting the empirical relationships between the seabed depositions and the (likely) Enrichment Stage (ES),
- Relating the findings to predefined criteria for ‘acceptable’ levels of effects regarding the maximum size and magnitude of the predicted footprints.
- Identifying the highest feed level at which the seabed effects directly beneath the cages are likely to be no greater than ES 5.

33. The above explanation of the determination process for footprint and corresponding feed levels shows that it is not a straightforward calculation. It is more like a best guesstimate. The Evidence clearly points out that the maximum sustainable feed level for the Waitata farm is 4000 tonnes per year. The Maximum Initial Feed discharge is derived from the Maximum Sustainable

feed level. The maximum feed discharge of 6000 tonnes is unlikely to be achievable, due to the magnitude and severity of the adverse effects on the seabed.

34. The change proposed by NZKS is as if the Waitata farm had been started off with the full PSFL or the Predicted Sustainable Feed Level of 4000 tonnes. This is contrary to fact (it started off with 3000). This lesser amount is totally consistent with the **precautionary** principle that the BOI deemed necessary as so many of the adverse environmental effects were uncertain or hard to quantify. In practice NZKS has failed to meet the BOI requirements and now wishes to arbitrarily be deemed to have always been permitted to go to 4000 tonnes as of right.

We submit that the application should be **declined** for this reason alone.

35. The Waitata farm is four years in operation. After three years the size of the footprint has been measured and it exceeds the Maximum area by 14 ha. Instead of 24 hectares it is at least 38 ha, while the feed discharge is still at the initial 3000 tonnes per year.

36. MDC has issued a compliance report for the Waitata farm⁶, stating that the site is non-compliant with Condition 40. As a consequence NZKS does not qualify for a feed increase due to not meeting the requirement for Condition 37 c.

37. We submit that this application offends against the Adaptive Management regime put in place for this farm by seeking to bypass compliance with conditions and should be **declined**.

Conclusion

38. The Association submits that application should be declined because of the applicant's

- Failure to profile the expected footprint from the feed increase
- Failure to comply with current consent conditions
- Failure to reach the current permitted feed levels
- Relying (assuming) on another consent change decision that has not yet been made
- Is attempting to change the adaptive management process to benefit their business, not the environment.

39. The Association advises that we wish to be represented at the hearing and in the interim be kept informed as the applicant or the regulator produces technical papers and any relevant other information etc. Please respond to the email address given below.

⁶ New Zealand King Salmon - 2019/2020 - Compliance Report for Coastal Permit (U140294) - Waitata Reach, dated 26 August 2020.

Yours Sincerely

A handwritten signature in blue ink that reads "Andrew Caddie". The signature is written in a cursive style with a period at the end.

Andrew Caddie

KCSRA

President

Email - president@kcsra.org.nz

CC to NZKS C/;

Email Address: jmarshall@gwlaw.co.nz