

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 40.**

I present this submission in my capacity as President of the Kenepuru and Central Sounds Residents' Association ("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 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.

6. In total NZKS garnered three new supposedly carefully selected high flow cool temperature sites in the Marlborough Sounds to significantly expand its farming operations. The various terms and conditions of these consents - of which the farm the subject of this application (Waitata) is one - were carefully crafted via the public BOI process.

7. 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, evidence was given under oath, conferencing of experts was encouraged, cross-examination of experts and other witness’s was permitted.

8. 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 (Kopaua being the other), 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 40.

9. Since then 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 carefully¹ selected as a supposedly cool, high flow site. Reality quickly arrived and within

¹In 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.

three years of operation it suffered recurrent significant mortality spikes as water temperatures have consistently moved above the critical 17-degree mark for long periods. This has created ideal breeding grounds for hitherto unknown, to New Zealand, pathogens, which have been isolated in its salmon mortalities. Despite feed discharges being much lower than permitted, MDC monitoring records also show non-compliance for the likes of condition 40.²

10. 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. The Association sees the current application as continuing to attempt to water down the consent condition regime rather than farming within the conditions.

The Application

11. The application seeks to vary Consent Condition 40 of U140294 in various ways.

12. At paragraph 25 and 26 the applicant is clearly seeking to remove the reference to “conditions”. There is some history to this, which is very relevant.

13. This wording of Condition 40 proved troublesome for the applicant when independent expert scientists assess compliance or not of this condition. Thus Dr. Hilke Giles who reviewed the 2018/19 monitoring report for the Marlborough District Council³ noted the ambiguity the authors of the monitoring report detected in Condition 40 for the Outer Limit of Effect (OLE) but pointed out that the *individual* EQS conditions (components) making up the overall ES have to be assessed for compliance. The Association supported and continues to support this approach. The applicant now, once again, strongly rejects this approach.

14. Dr Giles concluded from the 2018/19 monitoring results that because the deposition footprint of the Waitata farm extends beyond the two OLE monitoring sites 600 meters North and South of the of the farm, as well as beyond the inshore and offshore OLE limits, the EQS for Seabed Deposition has not been met. In other words, the deposition footprint of the farm extends beyond the consented 24 ha, and Condition 40 has not been met.

15. At the related hearing the size of the benthic footprint was a major topic of discussion and bone of contention between the applicant v’s the MDC expert and submitters expert. A submitter expert pointed out a number of anomalies in the monitoring reports around comparing EQS values under the cages and at the control sites. The applicant did not address these anomalies at that time and do not in this application. This is an area of concern for the Association.

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

²New Zealand King Salmon – 2019/2020 - Compliance Report for Coastal Permit (U140294) – Waitata Reach, dated 26 August 2020.

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

16. In due course the hearing Commissioner **declined** the U190357 application and one of the main reasons was⁴:

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.

17. The applicant is seeking to remove this irritating condition (to it) by once again arguing that Dr Giles (and the submitters expert) is wrong and a less restrictive approach (just looking at the overall ES figure rather than the various conditions making up that indicator) is required.

18. The fact of the matter is NZKS has been non-compliant notwithstanding the relatively low levels of feed discharge in the last couple of years (a little over 2000 tonnes v's the permitted 3000). Accordingly it seems far too premature to introduce a less restrictive approach, rather, the **precautionary** approach as set out in Policy 3 of the New Zealand Coastal Policy Statement (NZCPS) should be adopted and no such change made to condition 40.

19. The applicant in its letter dated 2 July 2020 to MDC then proposes some further changes to condition 40. With all due respect the applicant has failed to provide an over view of the changes resulting in a muddle of confusion. **We submit the applicant should be required by MDC to produce a collated "redline /strikeout" version of where it proposes condition 40 be amended well prior to the hearing.**

20. In any event the main thrust of this further change seems to be to introduce an explicit reference too the "Best Management Practice Guidelines for Salmon Farming 2019"⁵ (**BMP**). We have some difficulty with this request – to us it appears to only bring in the BMP for condition 40 and we reject this cherry picking approach. This is far too a complex area to agree to a "cherry pick" approach. Surely the BMP is a holistic approach and taking it on for one condition only, seems far from best management practice?

21. We also note that of the three BOI farms NZKS appears to be proposing this change to condition 40 for only two of the farms. The third - Kopaua - is being carefully overlooked. Is that because the latest monitoring report for Kopaua is flagging too many non compliance issues?⁶

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

⁵₁ Keeley, N., Gillard, M., Broekhuizen, N., Ford, R., Schuckard, R., Ulrich, S.C. Best Management Practice guidelines for salmon farms in the Marlborough Sounds: Part 1: Benthic environmental quality standards and monitoring protocol (Version 1.3, Fisheries New Zealand, July 2019).

22. Then there is the casual reference to “..or any comparable method included from time in the MEMAMP approved by Council”. This is, again, we submit a bridge too far by the applicant. Particularly, given the history of assurances from the applicant that all will be well and the fact that over time it is clear that it is not so removing any chance of the public being able to participate in a further change to this condition is inappropriate and should be declined.

23. In summary, the Association submits that these changes would result, if granted; in replacing the more environmentally friendly BOI set boundary conditions (Outer Limit of Effect) of the benthic footprint to a more lenient one. The applicant wants to shrink, on paper, the benthic footprint sufficiently to change the farm from non-compliant in 2019 to compliant with Condition 40. The Association submits the better approach (and the one envisaged by the BOI) is for the applicant to adapt by reducing the scale and intensity of its operations in order to become compliant - not pave the way for an increase in feed discharges given that even at current low levels of actual discharge it is failing to comply.

24. The applicant’s stance makes a mockery of the use of adaptive management to safe guard adverse impacts on the environment and the faith placed in adaptive management (and assurances given to the public) by the BOI. The application should be declined on this basis alone.

Retrospective application

25. The applicant then goes further and requests that, if granted, the application to vary this condition be treated as **retrospective**. In other words be deemed to have been in effect as at the date of grant of the consent by the BOI. What are the consequences? The applicant is silent. Will it mean that all the monitoring reports are to be recalled and reworked in some sort of Orwellian exercise so as to a correct the farms history of non-compliance? With all due respect this suggestion is outrageous.

26. Again the applicant’s intention seems to be clear to pave the way for an immediate and significant increase in feed discharges notwithstanding its failure to meet the consents required feed level discharges and other ongoing and persistent breaches. Such an approach again makes a mockery of public participation, in good faith, in the BOI process. The application should be declined on this basis alone.

Status of the Application

27. At paragraph 32 of its application the applicant considers if the application is effectively a fresh consent application or merely a variation to the conditions of an existing consent. As we see it turning a non-complying activity into a complying one and paving the way for an otherwise unsupportable 25% increase in feed discharges by altering a condition goes to the heart of

⁶MDC Report – NZKS – 2019/2020 – Compliance report for Council Permit (U1402950 Kopuaua Marine Farm dated 26 August 2020

materiality in terms of the potential adverse effects on the receiving environment. We **reserve** our position accordingly.

28. In any event we fail to see how the effects of the change (paving the way for increased feed discharges notwithstanding existing non compliance) can be argued to be no more than minor as the applicant seemingly does. One area of concern for the Association is the effect this change may have on the endangered and endemic to the Sounds King Shag. The applicant merely asserts that that there will be no effect and we **reserve** our position on this issue.

29. The applicant then places some stress on if it is wrong then the BMP is an appropriate replacement for the public BOI process and ignores the “behind doors” development of the BMP and the dissenting opinion of the community representative on relevant aspects of the same.

Conclusion

The application does not meet the spirit or requirements of the RMA and should be **declined**.

The Association advises that we wish to be represented at the hearing and in the interim 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.

We also record our concern at the wish of the applicant to have all three applications covering Waitata and Ngamahau heard concurrently in one hearing in one day. This seems to create an overly complex hearing matrix and an excessively ambitious timeline.

Yours Sincerely



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CC to NZKS C/;

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