

# Kenepuru & Central Sounds



Kenepuru & Central Sounds Residents Association Inc.

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9 December 2020

Dear Sir/Madam

**Kenepuru and Central Sounds Residents' Association  
Submission on Resource Consent Application U200855  
– Wakatu Resources Limited - Clova Bay, Pelorus Sound area**

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 320 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.

## **Background Context**

- 2.1 The application the subject of this submission is located in Clova Bay in the Marlborough Sounds. Clova Bay is a relatively sheltered low flow Bay well used by visitors and residents. It is an area of intense mussel farm activity with many farms ringing this Bay. At the head of

the Bay is an ecologically significant marine area and so designated in the notified Marlborough Environment Plan (MEP).

- 2.2 The subject application concerns a request to “renew” an existing farm consent/license for the marine farm referred to as MF 8556. Part of the farm complex (totalling 8.354 ha) license expires in February 2021 and the remainder in December 2024.
- 2.3. 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 Court<sup>1</sup>*). In other words would we put a farm there now given what we now know? We say the answer – more likely than not - would be no.

### Cumulative Effects

- 3.1 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 on 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 Clova 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.
- 3.2 For these and other reasons we are pleased to support and endorse the detailed submission points, comments and recommendations made by the Clova Bay Residents Association (CBRA) in their submission on this application. For ease of reference we **attach** as a schedule a copy of that submission and thereby incorporating it into and forming part of the Association’s submission.

### Cumulative effects – Unauthorized Discharge of plastics

4.1 At the head of Clova Bay there is a designated Ecologically Significant Marine Area (ESMA). As a result of recent resident citizen science research the issue of plastic rubbish illegally discharged from Clova Bay based marine farms, including this one, and thereby fouling and significantly degrading the ESMA has come to prominence. It is unfortunate that the adverse cumulative impacts on the environment on a supposedly protected area like the ESMA from a plastic intensive operation like that proposed has been seemingly overlooked by the Marlborough District Council (MDC) to date.

4.2 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 Clova 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 management practices (such

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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).*

as clumping of spare mussel buoys) are 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.

4.3 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 intestines<sup>2</sup>.

4.4 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).

4.5 We submit it is unfortunate that the MDC, to date, has largely ignored these significant adverse effects in terms of compliance actions or proactive monitoring. We look forward to MDC (and hopefully the applicant) positively actively addressing this matter in the course of the hearing of this application.

### **Decline Application**

5.1 For the reasons set out above (and in the CBRA submission) the Association is of the view that the application should be **declined**.

### **Request to Appear**

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

### **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**.

Yours faithfully



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<sup>2</sup> 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

## **Schedule One**

**Attached** is the CBRA submission forming part of this submission.

2 December 2020

Marlborough District Council  
PO Box 443  
BLLENHEIM 7240  
By email: [mdc@marlborough.govt.nz](mailto:mdc@marlborough.govt.nz)

**Attention: Peter Johnson**

Dear Peter

**Re: Application U200855 - Site 8556 Wakatu Resources Limited, Clova Bay, Pelorus Sound (the 'Application')**

This is a submission on the above Application. It is filed for and on behalf of the **Clova Bay Residents Association Inc** (CBRA).

**1. Background**

- 1.1.** The CBRA represents most property owners and residents in the Clova Bay area. A key issue with CBRA members is marine farming in Clova Bay. The concerns extend to the impact the mussel farms of Clova Bay are having on the natural ecosystems of the bay, problematic navigation and public access issues, visual amenity issues, and the dominance of marine farm structures on natural character and natural landscape values of the bay.
- 1.2.** The aquaculture issues in Clova Bay are significant. They have derived from planning weaknesses in the existing Marlborough Sounds Resource Management Plan ('MSRMP') and from systemic failures of decision makers over the last four decades. These include failing to monitor mussel farm ecological effects, failing to grapple with the concept of cumulative ecological, landscape, natural character and other effects, adopting a sacrificial philosophy to areas where there are already consents on issue for aquaculture, and repeatedly putting the demands of applicants for more and more short term economic gain ahead of long term social and community values and appropriate aquaculture thresholds. As matters stand Clova Bay is probably the most acute example within the Central Pelorus area of what these systemic failures have led to today.

**2. Submission and Request for Hearing**

- 2.1.** Our submission is that the Application breaches acceptable thresholds for marine farming on several fronts and as it stands it must be **declined**.
- 2.2.** We would like to be heard on this submission at a **hearing**.
- 2.3.** We would welcome the opportunity to discuss a **transitional solution** to managing cumulative effect issues at this marine farming Site 8556

pending spatial matters being operatively determined under the proposed Marlborough Environment Plan (MEP).

### **3. Existing Consents**

- 3.1.** Site 8556 started out in 1980's as a 3.75ha site extending out to around 200m from shore. In 2001 consent was granted to extend this site to an 8.4ha farm extending out to more than 300m from shore.
- 3.2 No comfort can be taken from the 2001 decision to approve the 4.64ha extension. This approval sadly epitomises the systemic flaws in aquaculture decision making that were occurring over what was an aquaculture consent gold-rush period. Public values were glibly dismissed without analysis and the effects of more activity were condoned because there were already effects from existing consented activity. This inherently sacrificial consenting philosophy is contrary to core resource management principles - overlooking cumulative effects and failing to protect key public values.
- 3.3 The cascading effect of this flawed consenting logic is no more evident than on this north east side of Clova Bay. Site 8557, immediately adjacent to the north of this Site 8556, was first extended out to more than 300m from shore in November 1999. The only real analysis given for this decision was that the Bay already had marine farms in it (i.e. the flawed sacrificial Bay philosophy). A large extension to Site 8555 (immediately adjacent on the south side of this Site 8556) was then approved in 2000, taking the farm out to close to 400m from shore. Again, the only real analysis given was that Site 8557 had been extended out and that the Bay already had marine farms in it. And then in 2001 this site 8556 was approved to go out to around 320m from shore - unsurprisingly, the only real analysis given for this was that the farms on either side of it had been extended out.
- 3.4 The result of this historical consenting fiasco is a degree of marine farming in Clova Bay, particularly on this side of the Bay, that now dominates landscape and natural character values, significantly impedes navigation and coastal access and, as we record below, is likely to be having significant adverse effects on indigenous biodiversity values.

### **4. Activity Status**

- 4.1.** The Application is for a single activity that will have structures extending beyond 200 meters from low tide (the application seeks to extend out to close to 350m meters from low tide). As such the Application falls as a non-complying activity under the operative MSRMP.
- 4.2.** We note that there is no notion of 'renew' or 'reconsenting' when assessing a coastal permit application. The application must be assessed as a new farm application and thus against a baseline of the proposed activity not being there at all<sup>1</sup>. This is precisely the purpose of the finite term coastal permit regime - to facilitate a full re-check of the

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<sup>1</sup> *Port Gore Marine Farms v Marlborough District Council* Decision No. [2012] NZEnvC 72. This is subject to the requirement under section 165Z] of the Resource Management Act 1991 that regard be had to the Applicant's compliance with the regional coastal plan and the conditions of previous resource consents.

appropriateness of an activity in today's environment and against today's standards, values and information.

- 4.3. As such, the Application must be taken as one for a fresh aquaculture activity from a base line of there being no structures or activity there.

## 5. Cumulative Effects

- 5.1. The adverse cumulative impacts of mussel farms are undeniable - aesthetically, recreationally, navigationally, and ecologically. Cumulative effects should be assessed on an "area of influence" basis - i.e. through the identification of that part of the water column or marine area that is being affected by a particular group of activities or farms, or the identification of that part of a natural landscape or a natural character environment that is being affected by a particular group of activities or farms.

- 5.2. It has been suggested that responsibility for redressing adverse cumulative effects should be spread across all of the existing consent holders in the relevant area of influence. This assumes that existing consent holders have some sort of entitlement to continue their activity beyond their existing resource consents. They do not. Coastal permit holders in the Marlborough Sounds operate through privilege and the charity of the public estate<sup>2</sup>. Whilst applicants seeking to re-consent an activity currently have a pre-emptive right to *apply* for another consent<sup>3</sup>, they bring no entitlement to actually attain a resource consent. In any event fairness is not a relevant consideration. The absence of a framework in the MSRMP to attribute the required redress across other consent holders in what might be considered a 'fair' way does not condone a Hearing Authority pushing the adverse effects aside.

- 5.3. If an application is made in the face of adverse cumulative effects then those effects must be mitigated or avoided. In our view, and under the current statutory framework, this means that ***applications for a coastal permit renewal must be declined if, with the subject farm in place, it is found that cumulative effects are environmentally unacceptable.***

- 5.4 In our view Clova Bay is farmed significantly beyond an environmentally acceptable level. On this basis we submit that the application **must be declined.**

- 5.5 It must be said that we are not averse to aquaculture in Clova Bay. But we are certainly averse to *too much* aquaculture in Clova Bay. We acknowledge that it would be pragmatic to have all farms in Clova Bay reassessed concurrently, at least from a cumulative effects perspective. Indeed, we note that as at this date there are at least six live and as yet unheard marine farm renewal applications in Clova Bay. However, we are not presented with any ability to collectively consider these applications. Rather, we are presented with yet another individual application which we must assess naked of the other applications. As we note, this application

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<sup>2</sup> This is particularly the case in Marlborough, which is now one of the only places in the world where market rent is not charged for the use of public marine space for aquaculture.

<sup>3</sup> This is under section 165ZH of the Resource Management Act 1991 - but it only applies if a consent right allocation system is not in place. There is currently no such system in Marlborough - although an allocation system is proposed under the Marlborough Environment Plan.

cannot be approved as it stands because, we submit, as matters stand, there are unacceptable cumulative effects in Clova Bay.

- 5.6 It is expected that cumulative effect issues will be addressed through the Schedule 1 process for the aquaculture chapter of the MEP<sup>4</sup>. This is expected, through a public and independently adjudicated process, to determine appropriate areas and densities of aquaculture for Clova Bay.
- 5.7 We appreciate that some degree of aquaculture at Site 8556 is likely to be found appropriate under this MEP process. However, this does not mean that the existing intensity can be considered appropriate and consented for 20 more years in the meantime.
- 5.8 To this end **we submit** that an **agreed transitional area and intensity** of marine farming on site 8556 might be consented as a transitional measure, along with a consent condition or a consent term that effectively required the adaption to what is operatively determined as the appropriate location, area and density for existing activity in relation to Site 8556 under the MEP Schedule 1 process (if that turns to be different). We would welcome the opportunity to discuss this further, including what we would see as an **agreed transitional area and intensity** of marine farming for Site 8556.
- 5.2 In the following sections we provide more specific comment on cumulative and site specific issues with this application. We group our concerns into Natural Character and Indigenous Biodiversity, Landscape, and Navigation and Recreation.

## **6. Natural Character and Indigenous Biodiversity**

- 6.1.** It is accepted that the present intensity of aquaculture has a significant adverse effect on the natural character values of the coastal marine area of Clova Bay. For example, Mr James Bentley (Boffa Miskell) in his S42A Hearings Report on Topic 5, Natural Character, for the MEP, records as follows:

*Both Crail Bay and Clova Bay are recognised areas of Pelorus Sound where aquaculture is present. **As a consequence of this, the marine environment of both of these bays is not rated at the Level 4 scale as holding high, very high or outstanding for natural character** (however some parts may retain higher levels of natural character at the more refined scale of mapping at Level 5).*

- 6.2.** Natural character extends also to indigenous biodiversity and to the ecological health of the benthic and water column environment. To this end aquaculture in Clova Bay is significantly above what is considered a safe intensity by the Aquaculture Stewardship Council (ASC)<sup>5</sup>.
- 6.3.** This result is corroborated by the NIWA Biophysical Model for the Pelorus Sound, which indicates that there would be as much as 10 times more zooplankton in Clova Bay without the existing aquaculture<sup>6</sup>.

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<sup>4</sup> The MEP aquaculture chapter proposes to determine appropriate areas and densities for aquaculture through a process of identifying and mapping 'Aquaculture Management Areas'.

<sup>5</sup> Aquaculture Stewardship Council Bivalve Standard Version 1.1.



- 6.4.** Almost all of the proposed farm structure is plastic, being ropes and buoys. Within the enclosed waters of just Clova Bay there is currently around 1,000 km of plastic structural marine farm rope consented, 8,000 plastic mussel buoys consented, and around 61,000 small 'dropper line' plastic tie ropes consented. There is a **heavy** loss of plastic into the environment from this, including microplastic from structural rope wear and a significant amount of plastic pollution onto the ecologically sensitive headlands and beaches of the bay. This is predominantly through dropped or discarded plastic tie ropes, although it extends to mussel buoys (whole or broken up) and other plastic debris from the existing marine farming activity.
- 6.5.** This Application, taken as a new application as it must be, stands to add to or sustain what are more likely than not already significant cumulative effects on biodiversity and natural character values in Clova Bay. This in turn amounts to a significant effect and as such it must be avoided under the New Zealand Coastal Policy Statement 2010 (NZCPS) – policies 13.1 (b) and 11 (b).

## **7. Landscape**

- 7.1.** Natural character is an aspect of the wider concept of landscape character. Both phenomena are the product of a reasoned, descriptive analyses of a landscape or an area of the coastal environment.
- 7.2.** The Clova Bay landscape, particularly through the outer reach of Clova Bay where this Application is located, is one of undeveloped hills cloaked in native or pine forest<sup>7</sup> plunging to a seascape that is largely unmodified but for marine farm structures. Beyond are vistas of unmodified seascape into the open Beatrix Basin area and out to Maud Island.
- 7.3.** The Clova Bay landscape has at the least a moderate degree of natural landscape value and as such qualifies for protection under NZCPS Policy 15. As noted, marine farm structures dominate the Clova Bay seascape and accordingly detract from the natural landscape values of Clova Bay *to a significant degree*. We note as an aside that this adverse effect is exacerbated further by the unconsented practice of clumping together large bundles of unused mussel buoys and attaching them to mussel farm structures as storage.
- 7.4.** The Application stands to add to or sustain the already significant adverse cumulative effects on natural landscape values that aquaculture is having in Clova Bay. This in turn amounts to a significant effect and as such it must be avoided under NZCPS Policy 15(b).

## **8. Navigation and Recreation**

- 8.1.** An appropriate marine farm location, size and configuration is one that facilitates unimpeded and safe navigational flow along the coastline inside the farm, through the bay on the outside of the farm, and into the coastline through the farm. The Application achieves none of the above.

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<sup>6</sup> Figure 5.14 NIWA - A biophysical model for the Marlborough Sounds Part 2: Pelorus Sound June 2015

<sup>7</sup> It is recognised that pine forest does not necessarily detract from natural landscape values. *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 14 7.

- 8.2 The Application is for surface area structures that will extend out to around 350M from shore – almost double that as contemplated by the MSRMP and further than the contiguous marine farm sites on either side. It will reduce the navigation channel through the bay down to around 420 meters – which is not enough for a single boat to safely pass through at more than 5 knots, and is certainly not enough for two boats to safely pass each other when navigating through the bay.
- 8.3 The farm will also be as close as 80m from the low tide mark on the inside. This is an improvement on the existing consent but is nonetheless still not acceptable. A clearance from the coast of at least 100m is required to afford adequate access to the coastline for larger recreational boats such as launches and yachts. The coastline inside of this farm is also colloquially known as ‘Top Tolley’ and is a well known and regularly used shore-based recreational fishing spot. This undoubtedly partly due to the rocky/cobbly sub-tidal seafloor that extends out and into the existing farm area.
- 8.4 We submit that on navigational, recreational and ecological grounds the inner boundary of a marine farm at this location should be no closer than 100m from the low tide mark. The outer boundary will be dictated by cumulative effect issues but *on recreation and navigational grounds alone* it should be no closer than 500 meters<sup>8</sup> to any existing marine farm or to any proposed aquaculture management area under the MEP on the opposite side of the bay.

## **9. Non-Complying Activity Gateway**

- 9.1 We would submit that as it stands the Application is clearly, and in some instances significantly, in breach of both key MSRMP and key PMP policies. As such, we would submit that, as it stands, the Application **fails** the non-complying activity gateway test under 104D of the Resource Management Act 1991.

## **10 Present at Hearing**

- 10.1 The CBRA would like to present to this submission at a **hearing**.

Please let us know if there is any further information that we can provide to assist.

Yours sincerely  
Clova Bay Residents Association Inc

Trevor Offen  
Chairman

cc [paul@rmco.co.nz](mailto:paul@rmco.co.nz)

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<sup>8</sup> This allows passing vessels to safely maintain a 50m distance from each other whilst also maintaining the required 200m clearance from any marine farm structures.