

Kenepuru & Central Sounds



Kenepuru & Central Sounds Residents Association Inc.

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Dear Sir/Madam

10 December 2021

Kenepuru and Central Sounds Residents' Association
Submission on Resource Consent Applications
U210739 - and U210796 - Kenepuru Sound (McMahon Point)
- KPF Investments Ltd and McMahon /Smith.

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 310 household members living full 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 referred to in the proposed Marlborough Environment Plan as a unique and iconic New Zealand marine 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 and other values of some of these sites.
- 1.3 These applications represent the worst of all worlds. They are a continuation application for a farm located in an inappropriate area for aquaculture. Its continued presence is to the significant detriment of the likes of the high public amenity, visual amenity, naturalness and recreational values of the area. After review we submit that the hearing panel should exercise their discretion and **decline the applications.**

Preliminary Matter – Why are these applications being processed?

- 2.1 These applications were accepted by the Council after pMEP Variation1 (Marine Farming was formally notified. Accordingly, we submit that Policy 16.8.1 of Variation 1 (which mirrors the wording of section 165F of the RMA) is a bar to these applications being heard until the requirements of that policy (which has legal effect) are satisfied. Preliminary discussion with Council suggests that they are relying on Section165J of the RMA to avoid this outcome.
- 2.2 With all due respect we submit that the Council is incorrectly relying on an irrelevant section. For example, the applicants do not hold an authorization as contemplated by that section. Accordingly, we request the hearing panel obtain independent legal advice on that point and, prior to any proposed hearing, advise the applicant and submitters of its view. In the interim, we reserve our position on this fundamental issue but for efficacy sake put this apparent bar to one side and look (briefly) at the applicants' proposals.

Background Context

- 3.1 The applications the subject of this submission concern a site located in Kenepuru Sound, on one side of a prominent headland - McMahon Point. It can be easily viewed from Kenepuru Road. It is located in the vicinity of a significant ecological marine site 3.21, the Kenepuru Estuary at the eastern end of the Kenepuru¹ The landscape backdrop includes extensive areas of regenerating indigenous forest.
- 3.2 The total area sought is approximately 8.9 hectares. The applicants propose some 27 backbones varying in length between 50 and 170 meters. From the backbones will hang the dropper lines upon which the mussel spat is attached and, the applicant hopes, grow.
- 3.3 The Robertson drop camera survey data establishes the very shallow nature of the site. On average the applied for area appears to be in waters of around **three meters** in depth. Accordingly, we estimate available dropper line length for actually growing mussels to be around **two meters** on average, the height of a tall person. This is grossly out of kilter with the average mussel marine farm operating in waters around 20 meters in depth. In other words this farm is about 17 % as efficient as a standard farm in 20 m depth waters occupying the same area! How could this be said to be an efficient use of the Common marine space?
- 3.4 Further, the applicants give no details as to the current or proposed spacing of these dropper lines. The applicants gives no data as to the productivity of the site in terms of production per hectare or growing cycle time. Due to the small lengths of growing space on the dropper lines we believe productivity to be very low.
- 3.5 The current consents are valid until mid 2025. We note the applicants are seeking new consents (but with a deferred starting date of three years - which we oppose) and are thus suggesting an expiry date of 2044. It is also useful to note when reading the applicants commissioned Assessment of Ecological Effects (Robertson Environmental July 2021) reports it, for some reason, covers considerably more area than the actual applied for area.

¹ Davidson et al, Ecologically significant marine sites in Marlborough, New Zealand. 2011.

Extension or New Application ?

- 4.1. As noted, it is proposed by the applicants that the existing consents will be replaced by new consents with a deferred start date of three years. Accordingly, as we understand it at law the applications are fact to be treated as if they were new applications.
- 4.2 In other words the fact that there is are existing consents should not be a factor when considering the adverse effects -including cumulative effects - arising from these applications (*section 104(1)(a) of the RMA as applied by Judge Jackson in the Port Gore decision of the Environment Court*²). In other words the test for renewal activity is the same as for new activity. Would we put new activity here now today ? **We say no.**

New Zealand Coastal Policy Statement (NZCPS)

- 5.1 The Marlborough planning regime is in a state of considerable flux at this point in time. The operative Marlborough Sounds Resource Management Plan (MSRMP) is in the process of being replaced by the proposed Marlborough Environment Plan (pMEP). That is at the Environment Court hearing phase. Following industry pressure the aquaculture components of the pMEP were, at the last minute, withdrawn. More consultation was required or so the Council thought. KCSRA participated in that consultation via the Council convened Aquaculture Review Working Group. KCSRA was most disappointed with that process and issued a dissenting opinion³. In essence the process of allocating AMA's should be more than just an exercise of drawing lines on the water around old consented areas. In any event Council proceeded to prepare and issue two Variations to the pMEP – Aquaculture Variations 1 and 1A. Council hearings on submissions to these proposed variations have been heard.
- 5.2 This situation makes we submit the Objectives (e.g., four and six) and Policies of the NZCPS even more important.
- 5.3 For example, Policy 8 of the NZCPS concerns the place of aquaculture in the Coastal Marine Area. Policy 8 requires recognition of the contribution aquaculture does or could make to the social, economic and cultural well being of people and communities by making provision for it in **appropriate** places. As we see it that necessarily requires some objective assessment as to the likely productivity of the proposed site and if that productivity (and resultant economic benefit) justifies the setting aside the intent of - Policy 6(2) (b), Policy 11(b), Policy 13(b), Policy 15(b) or ignoring opportunities to meet the intent of Policy 14 and Policy 18 of the NZCPS.
- 5.4 We submit that given the quite shallow waters, and associated very low productivity, of the area now sought by the applicants it must score very low against the criteria of policy 8. On the other hand declining the applications will enhance a range of public amenity,

² **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).

³

Appendix 3 of the Recommendations of the Marlborough Aquaculture Review Working Group

https://www.marlborough.govt.nz/repository/libraries/id:1w1mp50ir17q9sgxanf9/hierarchy/Documents/Your%20Council/Environmental%20Policy%20and%20Plans/MEP%20Variations/Background_Information_List/ARWAG_Recommendations.pdf

recreational and natural character values. Accordingly when viewed against such considerations, this farm is proposed to be located in an **inappropriate area** and thus does not comply with the objectives and policies of the NZCPS. Accordingly the applications should be **declined**.

- 5.5 We also submit that given the shallow waters then there is an increased likelihood of severe disturbance of the benthos and increased sedimentation effects as the dropper lines are dragged up to the harvesting vessel.

Applicants considerations under various provisions of the Resource Management Act

- 6.1 The applicants' agent - Aquaculture Direct Limited - in its Environmental Assessment reports also reviewed various sections of the RMA including Section 7. With all due respect to the authors we feel there has been no satisfactory explanation as to why this farm in such shallow waters objectively meets the likes of the requirements of Section 7 (a), (b) or (c). We submit that it is most unlikely a shallow low productivity site meets the section 7 requirement, for example, of the "*efficient use and development of natural and physical resources*". Particularly when weighed against the preservation and enhancement of public amenity and other values, should it be declined the opportunity to occupy the common marine space.

Biological Assessment

- 7.1 It is generally accepted that mussel farm activities will result in extensive adverse modification of the immediate and surrounding benthos from the likes of shell drop, discharges both natural and unnatural and the concentration of opportunistic predators such as 11-armed sea stars.
- 7.2 Unfortunately the drop camera footage in the Robertson reports is of such poor quality that no assessment can be made of the claims by the authors of that report as to the type and quality of the benthic communities in and on the benthos. In all fairness to those authors we suspect the poor quality of the images is due to the shallow nature of the water and consequential turbidity created by the survey boat and disturbance when inserting the drop cameras.

Interplay of pMEP Variation 1

- 8.1 There are several other existing mussel farms in this part of the Kenepuru Sound that are located in shallow water. Submissions have been made under pMEP Variation 1 that these areas, as well as the area at issue under these applications, are not appropriate areas for aquaculture – being too shallow. If these submissions are upheld then any further applications for mussel farming activity in these areas (new or renew) will become prohibited.
- 8.2 The existing consents for the area at issue here do not expire until 2025. There has been no compelling reason made for the consents being renewed early and approving these applications for a further 20 years will frustrate the intent and efficacy of the higher level pMEP Variation 1 process that is already in progress.
- 8.3 If this hearing panel is not of a mind to decline these applications then, at the least, it should look, we submit, under Section 123A (2), to impose a consent term that extends to the lesser of 20 years or the date that the appropriateness of the area under pMEP Variation 1 is operatively determined.

Request to Appear

- 8.1 The Association confirms that it would like to present/talk to this submission at the public hearing(s) and (Covid willing) will be represented.

Conclusion

The Association is of the view that the applications run contrary to the objectives and policies of the NZCPS, the relevant Marlborough Plans and the likes of section 7 of the RMA. For these reasons and the matters set out above the Association submits the applications **should be declined**.

Yours faithfully



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