

27 October, 2022

Manager, Resource Consents  
Marlborough District Council  
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Blenheim 7240  
Email: mdc@marlborough.govt.nz



Dear Sir/Madam

**Kenepuru and Central Sounds Residents' Association  
Submission on Resource Consent Application U220718 -  
Te Puraka Bay, Beatrix Bay – Marine Farming Association Incorporated**

I write in my capacity as a Committee member of the Kenepuru and Central Sounds Residents' Association Inc., (**Association**).

**1. Introduction**

- 1.1 The Association was established in 1991 and currently has approximately 316 household members who live full time or part time in the Kenepuru and Pelorus Sounds. The Association's objectives 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 8264. The farm area (31.97 ha) has an expiry date of 9 May 2023. The initial farm area did not extend beyond the 200 metre off-shore limit set in the Proposed Marlborough Sounds Maritime Planning Scheme. The farm licence U941075 for an 18.82 ha farm was approved on 22 December 1994 by Consent Order. Since then the farm has been extended by 13.14 ha when licence U001483 was granted on 8 May 2003.
- 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. 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 note that the Application the subject of this submission is located in Te Puraka Bay, the bay situated between the headlands Te Puraka Point and Waimaru Point. The land surrounding Te Puraka Bay and Waimaru Bay is the Waimaru Recreation & Scenic reserve and is administered by the Department of Conservation (DOC).
- 2.4 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 shifting the farm seawards. The proposed Variation 1 of the Marlborough Environment Plan defines Aquaculture Marine Areas (AMAs), to be situated between 100 to 300 m from mean low water springs (MLWS). The existing farm already extends 30 to 100 m beyond the sea side boundary of the AMA, while the proposed farm area extends 90 to 160 m beyond 300 m from MLWS, to make up for the 50 m wide area lost on the land side boundary.
- 2.5 There are three marine farms in Te 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 sea surface area of the bay. These three mussel farms, completely and unacceptably, we submit, dominate the natural character, sea views and the ecology of Te Puraka Bay. Nowhere can one look out from the beaches in 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.

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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).*

### 3. Other Matters

3.1 We have had the benefit of having read the submission from the Clova Bay Residents Association. We endorse and support their submission.

#### 3.2 Landscape and Natural Character:

3.3 The Application the subject of this submission is located in Puraka Bay, a small 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 (DOC).

DOC commented in the initial Application in 1996 that<sup>2</sup>:

12. The reserve is covered in regenerating bush at a young stage, which in its present state has relatively low scenic value.

13. The Department of Conservation recognises the importance of this site to the industry as a spat holding area and supports the proposal. It does note however, that this support should not be regarded as a precedent for marine farms adjacent to areas of significant natural values and scenic reserves.

3.4 In other words, such natural and scenic values can change over time, as they have in this case.

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 Notified Marlborough Environment Plan (**MEP**). Clearly the strict rules of the NZCPS 2010 apply under the MSRMP and MEP for this area, which is to **avoid any adverse effects**. This is best achieved in this instance by declining the application.

3.5 The site is located north of a significant headland (Waimaru Point) and also includes a 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>3</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. The proposed growing structure exclusion zone of 0.87 ha is insufficient to protect the reef. The whole reef area has to be excluded from the AMA.

#### 3.6 MEP Provision Evaluation

Under the MEP, areas where marine farms are appropriate are identified as AMAs in accordance with Policies 13.21.3 and 13.21.4.

Policy 13.21.3 – AMA establishment, lists preferable and avoidable conditions to take into account, when selecting suitable AMA locations. The list below is reduced to what is applicable Te Puraka Bay.

Applying MEP Policy 13.21.3 to AMA4 in Te Puraka Bay, it should be generally located:

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<sup>2</sup> U941075 Notification.pdf – MDC website – page 3

<sup>3</sup> Davidson family trust v. MDC [2016] NZEnvC 81

- (a) In the coastal ribbon between 100 and 300 metres from mean low water;
  - AMA4 is located between 100 and 460 metres from mean low water.
- (b) Away from reefs and other areas of significant marine biodiversity value;
  - AMA4 overlaps a reef area.
- (c) Away from publicly accessible beaches, anchorages of refuge;
  - AMA4 overlaps an anchorage and is adjacent to a publicly accessible beach.
- (d) Outside areas having high levels of natural character and outstanding natural landscapes;
  - AMA4 is in an area with high natural character and outstanding natural landscape, the Waimaru Recreational Reserve.
- (e) Outside areas known to provide significant feeding or breeding habitat for the King Shag;
  - AMA4 has water depths suitable for King Shag foraging. The recently established Tawhitinui colony is only 5 km away from AMA4.
- (f) Outside ecologically significant marine sites.
  - AMA4 is 130 metres distant from the Gannet Colony, ESMS 3.13 at Waimaru peninsula.

The applicant's evaluation is: The location of the farm generally meets the principles for location of AMAs. We wonder which principles did it meet? Our analysis above, clearly shows that Te Puraka Bay is not an appropriate location for AMA4.

### 3.7 **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.

### 3.8 **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 cannot be used any more by the public for that purpose. The continuous ribbon of the three marine farms along the entire 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.

### 3.10 **Cumulative Effects - Indigenous biodiversity – King Shag:** The application area is located some 5 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>4</sup>. In his concluding words at paragraphs 299 and 300 Judge

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<sup>4</sup> See above

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.

3.11 **Cumulative Effects - Plastics**

Marine farming causes plastic pollution in the Sounds. While the plastic floats, the backbone lines and mussel growing lines are visible and can pollute the foreshore, the worst effect is from the micro- and nano plastics. Every time the backbone flexes and stretches, micro and nano plastics are released. In turn they are filtered and ingested by mussels and enter the food chain. The plastic pollution is a cumulative effect, which has been largely ignored by the Aquaculture industry. A few beach clean-ups is totally insufficient to fix the plastic pollution problem.

3.12 It is telling that both the application and the Robertson 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**.

3.13 **Activity Status** – As parts of the proposed farm are located beyond 300 metres from the mean low water mark, the proposal constitutes a **non-complying activity** under Rule 35.5 of the Sounds Plan. The proposal fails to comply with regulation 35(2)(c)(iv) of the National Environmental Standards for Marine Aquaculture (NES-MA) and cannot be considered under NES-MA provisions. The application should therefore **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 maintain or enhance amenity values [section 7(c) of the RMA].
- (f) Did not maintain or enhance the quality of the environment [section 7(f) of the RMA].

The Association is of the view that 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

A handwritten signature in black ink, appearing to read 'Hanneke Kroon', with a long horizontal flourish extending to the right.

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