

In the matter of

the Resource Management Act 1991

Variation 1 and Variation 1A to the proposed
Marlborough Environment Plan

**Summary observations to accompany evidence to be given by
Kenepuru and Central Sounds Residents Association Inc, Clova Bay
Residents Association Inc, and Guardians of the Sounds Inc**

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Introduction

1. These initial observations accompany evidence to be given by Kenepuru and Central Sounds Residents Association, Clova Bay Residents Association and Guardians of the Sounds (**the Societies**) on Variation 1: marine farming; and Variation 1A: finfish farming. In doing so the intention is to highlight the principal concerns that the Societies raise concerning the development and proposed implementation of the variations.
2. The Societies and their members have taken a keen interest in the development of the marine farming provisions as part of the proposed Marlborough Environment Plan (MEP). They were disappointed by the Council's decision not to notify the marine farming provisions at the same time as the proposed MEP was notified in June 2016. The lack of integration between important environmental protection values, and impacts of marine farming in determining how those values should be provided for in the MEP, has been a frustrating experience. Their collective experience is that those frustrations have continued through into the Variation 1 and 1A processes.

Variation 1

Appropriate places and appropriate scale of marine farming within enclosed waters CMUs

(i) Generally

3. As the introduction to the marine farming provisions to be included in chapter 13 states:

There is continuing and growing demand for coastal space and resources for commercial activities such as marine farming. While recognising the benefits of marine farming in Marlborough, it is important to make sure that this activity occurs in appropriate locations and is well managed to ensure the sustainable management purpose of the RMA is achieved.

4. That is a key requirement of a regional coastal plan making provision for aquaculture activities. However, the approach adopted by the Council takes a very narrow focus to the question of what constitutes appropriate places for aquaculture activities. Closely linked is the scale of development that has been allowed to occur within some parts of the Pelorus Sound, particularly Beatrix Bay, Clova Bay, Crail Bay and parts of the Kenepuru Sound. The opportunity to consider whether all existing marine farming development is appropriate (initially developed through pre-RMA legislation and then expanded through individual resource

consent applications) has not been taken up. Rather, the Council explains its approach in the introduction as follows:

The Council has taken the opportunity to reconsider the existing current spatial allocation of marine farms in the enclosed waters of the Marlborough Sounds. The proposed new spatial layout is aiming to strike a balance between maintaining the current amount of marine farming (measured by consented surface area) so that the benefits of that existing investment can continue to be received by the community, but to layout those marine farms in a more optimal manner. In most cases this means moving marine farms further seaward away from the inshore photic zone, and relocating some marine farms away from sensitive environmental features or to improve amenity or recreational values of the sounds.

5. The Council's approach has been to develop planning provisions that validate the existing level of development, and to make adjustments in sensitive locations by providing marine farming space elsewhere. That is the basis upon which the MARWG deliberated, and was a principal factor in the dissenting view by Mr Offen for two of the Societies. The relatively rapid expansion of marine farming development in the Pelorus Sound from approximately 1000ha in 2000 to approximately 2500ha in 2014 ¹ without monitoring obligations and no comprehensive assessment of cumulative impacts, calls into question the underlying assumptions on which Variation 1 is based.
6. The Societies say that that Variation 1 provisions should acknowledge the uncertainty and lack of information about cumulative impacts of the current level of marine farming, particularly within the Pelorus Sound. Through policy 13.22.1, the Council has signalled an intention to establish monitoring sites for determining cumulative impacts on benthic environments, which is in accordance with principle 2.1 of the ASC Bivalve Standard. But the equivalent standard for water column impacts (the pelagic standard) which is more directed at cumulative impacts is not adopted. ² The Associations say this is a major failing in the policy. They say that both principles (monitoring of benthic and water column impacts) should form part of the Variation 1 provisions. The relatively rapid increase in marine farming over the past 20 years should have been associated with measures for assessing cumulative impacts on the water column. It is past time to keep kicking this particular can down the road.
7. As there is the potential consequence that some bays are exceeding the standard, then it is appropriate for development of the AMAs to be

¹ See Handley (2015) NEL2015-001

² ASC Bivalve Standard Version 1.1, March 2019; principle 2.2

subject to the standard. Some AMAs may not be able to be fully developed. The Societies refer particularly to the AMAs in Clova Bay, Crail Bay, Beatrix Bay and Kauauroa Bay. Dr Mead's evidence explains the application of the standard more fully. This is entirely in accordance with policy 3 of the NZCPS.

8. It is no answer to say that a more developed set of parameters for monitoring water column impacts will be included in the future. If the activity is to continue in the AMAs, then the obligation is to address the acknowledged uncertainty through the adoption of the standard now. Managing the rate at which natural and physical resources are used is an important component of sustainable management. There is also an obligation to safeguard the life-supporting capacity of water and ecosystems. These are pre-eminent considerations. They should be applied to proposed, new and offshore CMUs.
9. The benthic standards that are to be applied through monitoring and adaptive management require a management response if the ES level is elevated (4 or greater), or *a significant adverse ecosystem effect is occurring*.³ It is hard to understand the justification for a policy that determines that a management response should be delayed until an ecosystem is significantly adversely affected. An earlier threshold for expert advice and intervention should be required. The policy should be directed at *avoiding* the occurrence of significant adverse effects.⁴

(ii) AMA 1 Clova Bay

10. The AMAs proceed on the basis that they should be generally located between 100m and 300m from mean low water. AMA 1 in Clova Bay is a mid-Bay AMA that is not an appropriate place for aquaculture, in accordance with policy 8 of the NZCPS. Mr Offen will explain in more detail, but it is in direct view of a number of residences, close to two public boat ramps, two jetties and a number of moorings. Its use for spat catching is sporadic and somewhat ad hoc, as its consenting history demonstrates. Dr Steven comments on it being an inappropriate location under policies 13 and 15. It should not be endorsed as an AMA.

(iii) AMAs 6-11 Kenepuru Sound

11. These AMAs in Kenepuru Sound are in less than 8 metres of water, with low currents and should not be endorsed as AMAs. An amendment is proposed for inclusion within policy 13.21.3 to ensure that good water depth and current speed, as well as good water quality, should be part of the establishment criteria. Variation 1 seeks to achieve well managed

³ Policy 13.22.1(v)

⁴ The Associations make similar observations in relation to the policy for the offshore CMU (policy 13.21.6) when considering impacts on natural character and amenity values.

marine farming. It does not serve the Act's purpose to confirm AMAs in places that are not appropriate for aquaculture.

(iv) No encroachment beyond 300m; certainty of 100m line

12. For Clova Bay, Beatrix Bay and Crail Bay, their natural character and landscape values and their important attributes for boating, recreation, and other uses, require strict application of the 300m establishment line, and may require curtailment of the 300m line where there is a conflict with navigation safety and convenience. If that is the preferred method for providing for AMAs, then it should be applied with appropriate rigour.
13. The right to occupy the coastal marine area for an activity requires the discipline of ensuring that other rights to use and enjoy coastal areas should not be unreasonably impeded. There are some modifications to the AMAs within Clova Bay and Beatrix Bay that are sought, principally for navigation safety and convenience. These will be explained by Mr Offen, but they are to address point to point navigation practices within the Sounds. Also raised is a concern that the appropriate use of navigable channels should not be restricted by the creation of AMAs.
14. Certainty over inshore development is also raised as a concern. A 100m clearance from shore is important to enhance public access to and along the coastal marine area. There would need to be a compelling reason to allow development within 100m of the low water mark. A clarifying amendment to policy 13.21.3 to confirm this prohibition is proposed.

(v) No additional AMAs

15. There are parts of Pelorus Sound that should have the protection of policy 13.21.4 against the creation of any future AMAs. An amendment to this policy is proposed to ensure that Hopai Bay (in Crail Bay), Tuhitarata Bay (in Beatrix Bay), the head of Clova Bay, and areas within Kenepuru Sound are not subject to future pressures for aquaculture development.
16. More generally, policy 13.21.5 should clarify that further development of AMAs within the enclosed waters CMUs is to be discouraged, if the activity sought to be developed is able to be carried out within an existing AMA.

(vi) Controlled activity status

17. This is not appropriate. The NES adopts limited discretionary activity status as the default status for development within the AMAs. That should be preserved. This is an activity that has undergone significant expansion without any co-ordinated monitoring programme. Controlled

activity status based on the advice of MARWG lacks integrity, for reasons set out earlier.

(vii) Removal; relocation; allocation methods

18. The underlying assumption for Variation 1 is that the existing current spatial allocation of marine farming in the enclosed waters of the Marlborough Sounds should be preserved. This commits the Council to a requirement to find alternative space for inappropriately located marine farms that is fundamentally at odds with the purpose of the Act.
19. If a marine farm is not in an appropriate place, it should not be provided for in the MEP. The question whether alternative locations may constitute appropriate places for marine farming is an entirely separate question. By conflating the two, as the MARWG and Council have done, the planning exercise has become invalid. It does not look afresh at alternative places, but proceeds on the basis that a certain amount of space *must* be found. This is the equivalent of separating out one component of section 5 (the developmental component) from the intergenerational and environmental component, which the Supreme Court has said is not a correct approach.⁵
20. If a site is not an appropriate place for marine farming, the question whether it can be located in an alternative location needs to be looked at as a separate consideration. There can be no presumption that relocation is appropriate, which is what Variation 1 seeks to endorse. The intergenerational and environmental protection components of sustainable management also need to be weighed.
21. What this means is that the language of Variation 1 needs to change to reflect the fact that there can be no presumptions about alternative places (removal rather than relocation). The policy and methods for allocation of space in new locations, or for existing locations that require reductions in the space able to be occupied for environmental protection reasons, also need to change. New space is new space. It should not be treated as already subject to some kind of occupation right. There is much that is fundamentally wrong with the *equivalent space* approach of Variation 1.
22. This permeates through into the allocation methods that have been adopted for Variation 1. There is no proper rationale for not adopting tendering as an allocation method, particularly for new space. This again highlights a lack of planning rigour, and a failure to assess the wider community benefit in such an allocation method. It is an ongoing policy failure in planning for marine farming in the Marlborough Sounds.

⁵ See *King Salmon* [2014] NZSC 8 at [24]

Variation 1A

23. As a zoning method, Variation 1A fails a validity test in relation to the creation of Finfish AMAs in the Waitata Reach CMU and the Maud Island CMU. The areas identified do not qualify as appropriate places for finfish (salmon) farming in terms of policy 8 of the NZCPS. The waters are too warm over the summer months. The proposed zoning does not appropriately take into account the effects of climate change, where seawater temperatures are predicted to increase.
24. Reliance on the Salmon Relocation Advisory Panel's recommendations, which have not been adopted by the responsible Minister, is antediluvian planning. Even the beneficiary of Variation 1A (NZKS) does not endorse the Panel's recommendations.
25. Policies 13.22.10 and 11 and the rules may have some utility in relation to existing finfish farms that have rudimentary conditions attached to their coastal permits and do not incorporate Council imposed management requirements (the self-managed farms). Otherwise, Variation 1A is the planning equivalent of engaging in the willing suspension of disbelief. The Panel's recommendation to the Council should be that the Finfish AMAs in the Waitata Reach and Maud Island CMUs should be withdrawn.



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