Kenepuru & Central Sounds Residents Association Inc.

Manager, Resource Consents
Marlborough District Council
PO Box 443
Blenheim 7240

Email: mdc@marlborough.govt.nz

Andrew Caddie
President KCSRA
C/- PO Box 5054
Springlands
Blenheim 7241
email: president@kcsra.org.nz
WWW: kcsra.org.nz

4 February 2019

Dear Sir/Madam

Kenepuru and Central Sounds Residents' Association
Submission on Resource Consent Application
U180983-Port Ligar – Goulding Trustees
U180986- Port Ligar – Shellfish Marine Farms Ltd

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

1. Introduction

1.1 The Association was established in 1991 and currently has approximately 280 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. 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.

1.3 We note the two applications the subject of this submission are both located in Port Ligar. They ultimately share a common ownership – being persons or entities part of or associated with Goulding Trustees. They all generate some similar issues around

concerns that they are an undesirable attempt to "beat the gun" in terms of what policy changes the Marlborough Environment Plan might bring for the treatment of marine mussel farm aquaculture in the Sounds. As a group in the same geographical area they also represent an opportunity to consider the adverse cumulative effects on matters such as cumulative impacts on the King Shag, cumulative adverse ecological effects, cumulative adverse landscape effects and so on. In total they represent an area of some 8.8 hectares.

1.4 **Not a Renewal:** As we understand it each of these applications are 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*[1]*.)*. In other words would we put a farm there now given what we now know? We say no.

1.5 **Treat Collectively:** Accordingly the Association sees a number of efficiencies in terms of treating these two applications collectively and submits accordingly. If this is seen as not permitted under the regulatory scheme or not appropriate for some reason then the submission can be easily separated into two.

2. Background Context – U180983

2.1 The subject application concerns a request to renew an existing farm consent/license referred to as MF 8062. The farm area (3.745 ha) has an expiry date of **2025.** For completeness sake we also note that there is a fisheries exclusion zone inshore and separate from the farm area.

3. Some Issues with U180983

3.1 **Cumulative Ecological Effects:** We submit that this application is timely in that it gives the opportunity to consider things have moved on from 2007 when the Council seemed to be of the view that marine farms had little effect on nutrient availability in the water column. As far as we can ascertain the applicant has not attempted to address in any substantive manner cumulative ecological effects on say, the adverse effects of depletion of phytoplankton and zooplankton from intensive farming of filter feeding bivalve shellfish. In passing we note with interest the substantial variations given by the applicant in terms of the typical production per farm for these applications. It ranges from a claimed 39 tonnes per hectare to 60 tonnes per hectare. This suggests some real adverse impacts on the water column nutrient levels due to the degree of intensive farming in the area.

3.2 We submit that now is the time for such a review. Pending such a review and development of a filtration budget for this farm (and the other farm the subject of the other application) then in the context of Port Ligar a precautionary stance should be

---

[1] **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).*

taken and the application **declined on that** basis. It is not enough given the findings of the likes of the NIWA Bio-physical model for this region to merely state there are no cumulative effects as the applicant has done. Bear in mind that the applicant has already increased the intensity of farming by lengthening the longlines since the granting of the farm in 1995 from 1010 meters to 1623 meters in 2007. As we calculate it that represents a 60% increase in farming intensity and associated cumulative adverse impacts since this farm was started. Measuring how much longline is actually in the water with Smart maps we put the total at 1700 meters. This exceeds the existing consent conditions by 5% (approximately 75 meters). We submit that this breach should be rectified by reducing the length of the longlines at a minimum.

3.3 **Offsite structures:** Several of the structures of the existing farm are off site by a country mile. For example all the warps on the North side of the existing farm are located outside the consented area. There are also at least 3 long lines that sit outside the consented area. More alarming, even with the suggested repositioning, we submit, that at least 3 of the long lines currently sitting outside the consented area will remain outside the new consent area the applicant is now seeking. This is we submit **unacceptable behavior**. It relies on a under resourced regulator to ignore such contumelious breaches. We submit the application **should be declined** on this basis alone.

3.4 **New Adverse effects:** We also submit that even on a stand-alone basis this application generates a number of new significant adverse effects. In essence they wish to occupy and farm an area currently not occupied, which will for example further reduce King Shag foraging habitat. We also note that the site of this new application is only 4 km from the major King Shag colony – Duffers Reef. This aspect is further exacerbated in that the proposed reposition **will not solve** any of the existing off site issues.

3.5 **Cumulative Effects - Indigenous biodiversity – King Shag**: The application area is located only some 4 km from the major colony of this endangered, iconic species. We note that the applicant's expert appears to argue that the application will have little impact on the survival of this critically endangered species but opines so on the basis that the effects of this application can be put to one side given the existing operation. This we submit is wrong at law and a precautionary approach should be adopted - to decline the application pending clarification, in due course, of a number of the points raised by the applicant. We also draw the attention to the leading 2014 Environment Court case on cumulative impact issues around the survival of the King Shag – the *Davidson Family Trust v MDC.*

3.6 **Impact on Landscape and Natural Character Values**: We note that the application area is labeled Outstanding Natural Features and Landscape (ONFL) in the MEP. Given that the current consented license does not expire until 2025. We submit that it must be inferred by the hearing panel that the applicant is trying to beat the implications of being in an ONFL area under the MEP. As noted the applicant is seeking a three-year deferral and, we submit, this further underlines why the applicant is "*jumping the gun*". This is unacceptable and the application should be declined on that basis alone.

3.7 **High value inshore are**a: We also note that under the Marlborough Sounds Resource Management Plan (**MSRMP**) the adjacent area is zoned: Conserv MSRMP. As far as we can ascertain the applicant has not addressed the implications of this zone designation. In other words, the land next to this application has special conservation value and the applicant has not addressed the impact on this area. We submit the applicant has to submit an assessment prior to the hearing.

3.8 **MEP Process compromise:** This application (and indeed the other associated application) also cuts across the plan change process currently underway in Marlborough. The Marlborough District Council Planning documents are presently under review. A notified Marlborough Environment Plan **(MEP**) is well advanced in the hearing process. However following severe central government and industry pressure the aquaculture chapter was withdrawn from the MEP and hearings have advanced without it.

3.9 Rather, the MDC decided more consultation was needed and convened an Aquaculture Review Working Group **(ARWG**) to look at marine farming (non finfish) from a spatial planning context.

3.10 The Association has sent representatives to this forum at considerable cost in terms of time, money and other resources. We understand from our representatives on the ARWG that Council is currently looking at allocating mussel farms within designated aquaculture marine management areas.

3.11 In the last little while there has been a wave of mussel farm re-consent applications (17 at last count that we are aware of) of which this application is one. It is fair to say that what is happening with this wave of applications is effectively industry looking to beat whatever the missing aquaculture chapter comes up with. We submit the MEP policy process will be severely compromised if this wave of consent applications is allowed to proceed.

3.12 In terms of how the MEP may treat adverse landscape and natural character effects we also note our comments above.

4. Decline Application U180983

4.1 This application appears to extend more than 200 meters from shore and as such the application would appear to be for a non-complying activity. 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-complying activity under Section 104D of the Resource Management Act 1991 (RMA) and that the application should be declined.

5 Background Context – Application U180986

5.1 This application concerns a request to **renew part** of an existing farm consent/license referred to as MF 8617. This marine farm has a total consented area (U090483) of around 7.47 hectares and an expiry date of 31 December 2024. However the application is only for the northern area of the marine farm, which is 5 ha.

6. Some Issues with U180986

6.1 **Cumulative Ecological Effects:** We submit that this application is timely in that it gives the opportunity to consider cumulative ecological effects on nutrient availability in the water column from the activity. As far as we can ascertain the applicant has not attempted to address in any substantive manner cumulative ecological effects on say, the adverse effects of depletion of phytoplankton and zooplankton from the water column from intensive farming of filter feeding bivalve shellfish in the bay.

6.2 We submit that now is the time for such a review. Pending such a review and

development of a filtration budget for this farm (and the other farm the subject of a similar application) in the context of Port Ligar a precautionary stance should be taken and the application (bearing in mind that it is to be at law treated as a new application the existence of the existing operation must be put to one side) **- declined on that** basis.

6.3 It is not enough given the findings of the likes of the NIWA Bio-physical model for this region to merely state there are no cumulative effects as the applicant has done. Bear in mind that the applicant has already increased the intensity of farming by lengthening the longlines since the granting of the farm in 1995 from 640 m to 1623 meters in 2007. As we calculate it that represents a 270% increase in farming intensity and associated cumulative adverse effects since the farm was first granted. This increases to 1803 meters in the current application or an additional 10%. We also note the cumulative adverse effects given the increase in farming sought in respect of the other application in Port Ligar.

6.4 **High value inshore are**a: it is clear from the relevant MDC property file that the inshore area of the marine farm is a high value fish habitat area with reefs and cobble benthic structures. The applicant needs to explain why MF 8617 is only located 60 m offshore and not 100 m offshore as was proposed in an earlier biological report.[1] Loss of this valuable habitat is of great concern to the Association.

6.5 **Cumulative Effects - Indigenous biodiversity – King Shag**: The application area is located only some 7 km from the major colony of this endangered, iconic species. It is around 11 km distance from the smaller colony at Tawhitinui Bay. We note that the applicant's expert appears to argue that the application will have little impact on the survival of this critically endangered species but opines so on the basis that the effects of this application can be put to one side given the existing operation. This we submit is wrong at law and a precautionary approach should be adopted - to decline the application pending clarification/research, in due course, of a number of the points raised by the applicant.

6.6 We also draw the attention to the leading 2014 Environment Court case on cumulative impact issues around the survival of the King Shag – the *Davidson Family Trust v MDC.* Again we note the lack of cumulative impact assessment by the applicant bearing in mind the other application in this Bay.

6.7 **High value inshore are**a: We refer to our comments in 3.7 and note that similar concerns arise with this application. Again we submit the applicant needs to address this omission prior to the hearing.

6.8 **Impact on Landscape and Natural Character Values**: We note that the application area is labeled Outstanding Natural Features and Landscape (ONFL) in the MEP. Given that the current consented license does not expire until 2025, we submit that it must be inferred by the hearing panel that the applicant is trying to beat the implications of being in an ONFL area under the MEP. As noted the applicant is seeking a three-year deferral and, we submit, this further underlines why the applicant is "*jumping the gun*". This is unacceptable and the application should be declined on that basis alone.

---

[1] Davidson Environmental Consultants: Report number 104 - Description of the subtidal macrobenthic substratum and associated communities from a proposed marine farm in Port Ligar, Pelorus Sound – March1996.
http://data.marlborough.govt.nz/trim/api/trim/get?id=14212303&company=mdc&application=smtechreports

6.9 **MEP Process compromise:** The same issues, discussion and conclusions in paragraphs 3.8 to 3.12 above are equally, it is submitted, applicable for this application U180986.

7. Decline Application U180986

7.1 This application appears to extend more than 200 meters from shore and as such the application would appear to be for a non-complying activity. 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-complying activity under Section 104D of the Resource Management Act 1991 (RMA) and that the application should be declined.

8. Request to Appear

8.1 The Association confirms that it would like to present/talk to this submission in respect of each and all two applications covered in this submission at the public hearing and will be represented. The Association advises it is open to some form of pre-hearing meeting with MDC and the applicant.

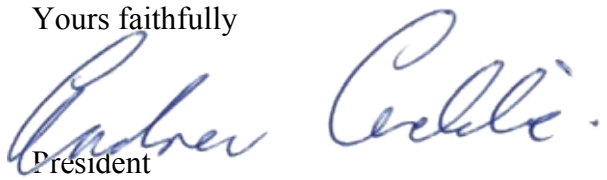
Conclusion

The Association is of the view that each of the two applications 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. They stand to have a more than minor cumulative environmental impact and fail 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 applications U180983 and U180986 **should be declined**.

The Association notes that each application is over 100 pages which is very difficult to analyse on a screen and we request that the **applicant be required to supply** free of charge a hard copy of each application to the physical PO Box address given below.

Yours faithfully



President
Kenepuru and Central Sounds Residents' Association
Email: president@kcsra.org.nz.
c/- PO Box 5054 Springlands, Blenheim 7241

CC Aquaculture Direct Limited
PO Box 213
Blenheim 7240
Bruce Cardwell
021 451 284
bruce@aquaculturedirect.co.nz