

# Kenepuru & Central Sounds



Kenepuru & Central Sounds Residents Association Inc.

Manager, Review of Marlborough RPS/RM Plans  
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Dear Sir

## Kenepuru and Central Sounds Residents' Association

### Submission on Proposed Framework for Coastal Occupation Charges

I write in my capacity as Chair of the Kenepuru and Central Sounds Residents' Association Inc.

#### 1. Introduction

- 1.1 The Association was established in 1991 and currently has 260 household members whose residents 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 promote the interests of residents of Kenepuru Sound and adjacent areas and to promote and act in the best interests of residents, ratepayers and persons associated with the Kenepuru and Central Sounds area. AGMs of the Association are well attended.
- 1.2 On 1 July 2014 the Marlborough District Council ("Council") released for public consultation its proposed framework to introduce coastal occupation charges. The Committee of the Association reviewed and discussed this document at some length. The supporting papers referred to in that document were also reviewed by the Committee. In due course it was decided to prepare and circulate an explanatory note to our members briefly explaining the proposal and seeking

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feedback on the above. A copy of that note is attached to this submission as Schedule 1.

- 1.3 For many of our members without road access, having a mooring or a jetty is pretty much a fact of life, not unlike a parking space outside your typical urban house. It is fair to say that the response from members (both in writing and informally) was **overwhelmingly negative**. Our members rejected the proposition that holders of resource consents for moorings, jetties and boat sheds should be required to pay a fee for their occupation of the coastal marine area.

## 2. Structure of Submission

2.1 We have structured the balance of this submission as follows:

- A brief discussion as to why our members have rejected coastal occupation charges for moorings, jetties and boat sheds with an alternative funding proposal – see paragraph 3;
- Whilst the members of the Association are strongly opposed to the proposal to introduce coastal occupation charges for moorings, jetties and boat sheds, the Association acknowledges that nonetheless the Council may decide to push through occupation charges for such fixtures. Accordingly, we make comments and submissions as to what we perceive as inadequacies and inequities inherent in the proposed regime of charges for such fixtures – see paragraph 4;
- A comment on the opportunity to clarify the nature of the rights of mooring holders in the reviewed RPS/RM Plans as being exclusive to the consent holder – see paragraph 5.

## 3. No Occupation Charges for Moorings, Jetties or Boat Sheds

3.1 Our members expressed a number of reasons as to why there should be no such charges and we outline some of these below.

3.2 **Breach of Faith by Council:** Some of our members were quite clear as to their recollection that a decade or so ago, the Council first raised the spectre of annual occupation charges for moorings, jetties and boat sheds. Following discussion with ratepayers, the Council agreed it would not pursue this path. Accordingly, this proposal is seen as a gross breach of trust. A former President of the Association (Mr. G Clarke) has confirmed that he was present when such an undertaking in relation to moorings was given. The Association **submits** the proposed regime for moorings should be **rejected** on this basis alone.

3.3 **Jetties:** Members expressed concern that the Council and its consultants have failed to adequately understand and recognise the importance of the transport link and use by the public (travelling boaties) of “private jetties” in the Sounds. The Association understands that the Council is of the view that, at law, the public can, so long as they do not impede the jetty owner’s own use of the jetty, use that structure to offload/pick up passengers. In other words, the public appears not to have to ask permission or pay for the use of these structures.

- 3.4 In order to put a “private” jetty in place, the applicant must obtain resource consent, engage an engineer, construct and then maintain the jetty. At regular intervals, the jetty consent holder must arrange and pay for an engineer’s inspection report as to safety and other matters for all users. Understandably, our members **reject** the notion that on top of all of this, they should pay an annual charge as if it was an exclusive use. Rather, jetty owners should receive better recognition of the service they are freely providing for all in the Sounds. In addition, hundreds of tourists visit the Sounds on the mail boat every year and the handing over of the mailbag to Sounds’ residents on their jetty is a huge part of that tourist experience.
- 3.5 **The Problem Being Addressed:** The Association accepts as per our explanatory note to members, there is a clear need to start filling the large scientific holes in terms of our knowledge of the negative impacts of marine farming of all types in the Sounds. It is clear to the Association that what emerged from the King Salmon Board of Inquiry (to our extreme surprise) was that we know little about the hydrological dynamics of the Sounds. This view has been reinforced recently by an independent RMA Commissioner (see the decision in U130797).
- 3.6 As a result of at least a decade of oversight/neglect it is clear the Council is well behind in terms of properly discharging and fulfilling its guardianship duties and statutory obligations under the Resource Management Act (“RMA”) in terms of its scientific understanding and monitoring of the negative impacts of marine farming in the Sounds.
- 3.7 In other words, the source of the problem and the need to fund catch-up scientific and associated projects can largely be attributed to the burgeoning marine farm industry in the Sounds. Accordingly it should come as no surprise that a number of our members expressed outrage that consent holders of moorings, jetties and boat sheds should be looked to as a source of funding, given that they have made little or no contribution to the main problem. The Association **submits** that the proposed occupation charges for these fixtures should be rejected on this basis.
- 3.8 **Alternative Funding Proposal:** Currently the proposal splits the source of funding 25% from the community, 25% from the likes of mooring consent holders and the balance from the marine farming industry. The Association **submits** that the source of the funding is more equitably split between the marine farming sector and the community on a 70/30 basis. This acknowledges that the community (ratepayers) gains a clear benefit in all sorts of ways from the “jewel in the crown” that an environmentally sustainable Sounds represents. At the same time, it acknowledges the primary source of the problem.
- 3.8 **Production Based:** The Association understands from the Executive Finesse Ltd report that the Council has wide discretion as to how coastal occupation charges are determined and applied. Rather than use the blunt instrument of an area basis, the Association **submits** the levy payable by the marine farming sector should be calculated on a production (tonnage) basis.

#### 4. Submissions on the Proposed Charging Regime

- 4.1 As noted above, our members reject the proposed occupation charging regime for non-commercial fixtures in the coastal marine area such as moorings, jetties and boat sheds. However, should the Council decide nevertheless to proceed with an

occupational charging regime, we identify below a number of failings we see with the proposed charging regime.

- 4.2 **Equity Between Users:** The Council's consultants have taken an area-based approach to their proposed charging regime. Thus for a mooring, an average swing radius of 28 metres was assumed and from this the total area "occupied" by the 2,831 moorings was calculated – 7.93 hectares. Then using the net private benefit calculation, a percentage of the proposed annual expenditure budget was allocated to moorings. However, on an area basis (divide the anticipated expenditure allocation of \$124,800 by the area), private moorings are being charged out at an equivalent of \$15,700 per hectare. This contrasts with marine farms. Marine farms are said to occupy an area of 4,295 hectares. On a per hectare basis, this equates to just \$116 (the anticipated expenditure allocation of \$499,200 divided by the area).
- 4.3 To look at this from another angle, you could say that a mooring (swing or pile) is equivalent to the various anchor points underneath a mussel farm. In a recent application for a mussel farm that the Association made a submission on, the surface area involved was approximately 9 hectares. Based on the design plan supplied by the applicant, the configuration required 40 seabed anchor points. Under the proposed charging regime, a mussel farm with that surface area would pay \$1,200 per annum. However, the mooring consent holder with 40 moorings (or anchor points) would pay \$2,200 per annum.
- 4.4 In short, the Association **submits** that the proposed charging regime for moorings is excessive and should be reduced to \$30 per annum. Alternatively, for equity reasons, the annual charging fee proposed for mussel farms needs to be doubled.
- 4.5 **Public Versus Private Benefit:** The Council in its consultation document refers to two reports it had prepared on this topic by consultants. One of these reports (a report prepared back in 1999) the Council referred to as "historical", setting out earlier assessments of why the Council proposed to introduce a charging regime. However, the second consultant (Executive Finesse Ltd) was of the view that this report was still relevant and in particular adopted the early approach to setting public/private benefits. Unfortunately this approach is a key reason as to why the inequities between users (e.g. marine farms/mooring consent holders) are so marked.
- 4.6 For some reason (lost in the mists of time), the first set of consultants was able to arrive at the conclusion that the net private benefit for a mooring consent holder was greater than for a marine farmer. Each party uses the coastal marine area but the marine farmer uses it and the water column for a profit motive. The mooring consent holder may use it on a periodic basis but the marine farmer uses it on a continual basis (24/7) for the express purpose of taking a product to market. The Association cannot accept that this somehow results in a greater private benefit to a mooring consent holder than to a marine farmer. The Association **submits** that the proposed charging regime is fundamentally flawed in that it results in an excessive charge to the likes of mooring and jetty owners and should be reviewed downwards by a factor of two (halved).
- 4.7 **Increases in Charges:** A number of members raised legitimate concerns that the category of proposed uses for revenue collected was vague and liable to unchecked increases. In particular, the reference to "formal RMA planning and strategic planning" should come out of general rates rather than a special charge.

The Council's consultation document is silent as to how the Council will contain or prevent charge creep. The Association **submits** that the Council needs to do further work as to precisely what the monies collected will be used for. As a point of principle this should be project based as opposed to general administration/planning. The Association **recommends** the Council speedily commission studies for Beatrix, Kauauroa, Clova, Horseshoe and Crails Bays where marine farming is already at or beyond acceptable limits in terms of ecological cumulative impacts to say nothing of the adverse cumulative effects on natural character, landscape, public access, recreation and navigational perspectives.

## **5. Confirming the Rights of Mooring Consent Holders**

5.1 In the course of preparing this submission, the Association became aware of a potential anomaly in the rights of a mooring consent holder. A mooring consent holder must pay for the costs of applying for his/her consent, install the mooring, have the mooring line cleaned on a regular basis and every two years have the mooring inspected and maintained as necessary. It should follow that the mooring consent holder has exclusive possession of the mooring. However, it seems there is some doubt, at law, as to if a mooring consent holder can stop another person from using the mooring. If correct, this seems bizarre. Accordingly, the Association **submits** that the exclusive rights of a mooring consent holder need to be set down in the RPS/RM Plans and recorded in each consent.

## **6. Summary of Submission**

6.1 We set out below in brief the main points of the Association's submission:

- The response from members was overwhelmingly negative to the proposed introduction of occupation charges for moorings, jetties and boat sheds;
- The proposal goes against past assurances from Council to members that there would be no occupation charges and should be rejected on this basis alone;
- Jetties should not incur an additional charge given their semi-public status and importance for transport in the Sounds;
- The Association supports the need for Council to initiate various scientific projects in order to better understand the negative impacts of marine farming in the Sounds but believes the bulk of this work should be funded by the marine farm industry (70%) with the balance by the community (ratepayers);
- The Association submits that the marine farm component should be based upon the tonnage production from individual marine farms;
- The Association submits that the area based approach taken to set occupation charges is demonstrably weighted in favour of marine farms as opposed to consent holders of moorings, jetties and boat sheds;
- In essence if occupation charges for moorings, jetties and boat sheds is to proceed,

then the cost needs to be halved e.g. a mooring fee of \$30 is more appropriate. Alternatively the annual charging fee proposal for marine farms needs to be doubled;

- The Association submits that the 1999 exercise in calculating net private benefit is fundamentally flawed and defies logic by allocating a greater net private benefit to a mooring consent holder as opposed to a commercial profit driven marine farm operation;
- The Association submits that the Council should adopt the principle that the revenue collected from occupation charges should only be expended on defined projects and not diverted into general Council administrative and planning costs;
- Any anomaly as to the rights of a mooring consent holder in terms of exclusive possession should be addressed with express wording in the review of the RPS/RM Plan. Mooring consents should also contain express wording as to the exclusive rights of a mooring consent holder.

The Association would be happy to meet with the Council to talk through this submission.

Yours faithfully



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## **Schedule 1**

### **Copy of the Discussion Note circulated to members**

#### **Proposed Marine Occupancy Charges – Background Comment**

Dear Members

#### **Introduction**

In my last Chatline, I noted that the Marlborough District Council (Council) is reviewing its suite of planning documents. As part of that process, the Council has released a discussion paper and associated background information as to why it proposes to introduce Occupancy Charges for the private use of the coastal marine area by the likes of marine farmers, jetty/boat shed owners and private boat moorings. The Council has requested submissions on its proposal and charging regime.

On behalf of the Association, the Committee intends to make a submission. We would like to highlight the proposal and seek feedback from you. We also encourage you to consider making your own submission – the more the merrier!

#### **Why Now?**

Under the existing plans, the Council has the ability to introduce coastal Occupancy Charges. For various reasons the Council has held off. However, it seems any legal uncertainties have been resolved and with the assistance of consultants Council has finalised its proposed methodology, pricing regime, who will be caught and who will be exempt. The current planning review is thus seen as a suitable time to put the proposal before the community.

#### **Who Will Be Affected?**

Persons holding a permit/licence to occupy a specified part of the coastal marine area for a private mooring, boat shed, jetty or marine farm. There will be a range of exemptions for the likes of the Waikawa marina and public jetties. Community groups operating a jetty not already listed as exempt should seek a specific exemption.

#### **Annual Charges**

A range of annual charges has been proposed. For a mooring \$55, for a large jetty (greater than 84 sq metres) \$200, for a small boat shed \$250, for a large mussel farm (up to 16 hectares) \$1200. Charges have been essentially set on an area basis. Thus for a mooring a swing radius of 28 metres was used. Charges may be reviewed annually.

## **What Will Be Done With the Money?**

In a nutshell, the money collected will be used to promote the sustainable management of the coastal marine area (the seaward side of the shoreline). This could include various monitoring schemes, related research, education and the costs of the Council undertaking formal RMA and strategic planning.

## **Is This Work Necessary?**

The King Salmon inquiry process highlighted the disturbing lack of knowledge and science around the most basic hydrological aspects of the Sounds environment. To fill this gap the Council has commissioned NIWA to research and prepare a hydrodynamic model of the Sounds. In a recent resource consent application for a new mussel farm the Association and other submitters pointed to the lack of scientific data as to the adverse ecological impacts of marine farming. The Commissioner adjudicating the case noted that *“The opinions of all the ecologists in this case, together with the concerns felt by all the submitting organisations is a wake-up call (if any is needed) about the need for wide scale coordinated monitoring [of] the effects of marine farming in the Sounds”*.

## **Do We Agree?**

Clearly, the Council is well behind in this area and it will take time, effort and money to catch up. Accordingly, the Committee agrees, in principle, as to the use of coastal Occupancy Charges for the purpose of monitoring and research. However, we have a number of issues of fairness with the proposed charging regime.

## **Equity Between Users?**

You do not have to be a rocket scientist (although a calculator is handy) to work out that marine farmers are getting off quite lightly compared to private moorings or jetty permit holders. On an area basis, private moorings are being charged out at the equivalent of \$15,000 per hectare compared to marine farms at \$162 per hectare. If you were to assess it on the basis of points of anchors on the seabed, a similar proportionate discrepancy is highlighted. This difference is due in part to the fact that the Council’s consultants believe the net private benefit for a mooring is greater than the net private benefit for a marine farm (mussel and other).

We suggest that the likes of mooring charges be reduced to about \$30 or marine farmers pay more. Your views?

## **Who Should Pay the Bigger Share?**

As currently proposed, private coastal marine area permit holders will pay 75% of the proposed budgeted expenditure and Marlborough ratepayers will pay 25%.

We suggest this should be more like 50% each. After all, the Sounds is the jewel in the

Marlborough District crown! Your views?

### **Other issues**

In discussion members of the Committee have challenged the use of area as the basis for charging. Arguably a permit for a marine farm is akin to a pastoral lease. So why not charge based on the value of the property right - the transferable right to occupy the sea area for farming (marine)? After all the Council has a database of marine farm values. **Your views.** Others have questioned an annual charge for moorings. Wouldn't it be less administrative cost and hassle to the Council if, say, a fee of \$55 was charged every three years? You may have other comments/suggestions – **lets hear them.**

### **What You Can Do**

We recommend and urge you to read the Council's brochure on Occupancy Charges and the two supporting papers from the Council's consultants (Boffa Miskel and Executive Finesse Limited). These can be found on the Council's website at

<http://www.marlborough.govt.nz/Your-Council/RMA/Review-of-Resource-Management-Documents/Coastal-Occupation-Charges.aspx>

Then use the Council response form to make your own submission and/or let the Committee know what you think and why. A simple email to me or another Committee member is fine.

**Submissions close on Friday 22 August.**

Yours faithfully



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