



Aquaculture Review Working Group

28 June 2019

Review Working Group

Dissenting Position – Trevor Offen and Hanneke Kroon representing the Kenepuru and Central Sounds Residents' Association (KCSRA)

This memorandum records the dissenting position and recommendations of Trevor Offen and Hanneke Kroon, representing the Kenepuru and Central Sounds Residents Association Inc, on the proposed aquaculture rules and Proposals for the Marlborough Environment Plan (MEP) that are to be presented to the Marlborough District Council (the Proposals). It is summary level only and records only our main points of dissension. Our dissension points highlight what we believe to be systemic and fundamental flaws in the Proposals.

For clarity we note that the scope of the Aquaculture Review Working Group (Group) discussions were expressly agreed to be confined to bi-valve marine farming.

In the following we firstly summarise what our recommendations are. Following that we briefly explain the reasons for our recommendations.

Our Recommendations :

1. That either:
 - a) The Proposals be amended to incorporate a fully discretionary activity consenting regime for each Aquaculture Management Area (AMA) through which cumulative effects can be fully and publicly assessed at 20 year intervals and from which appropriate thresholds for marine farming within the AMA can be determined. Allocations for resource consents within an AMA would then be determined by the thresholds determined by the AMA resource consent. This is KCSRA's preferred recommendation; *or*
 - b) AMAs be reconsidered in advance of notification of the Proposals having a full

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and proper regard to cumulative effects, including in particular the requirements of New Zealand Coastal Policy Statement 2010 (NZCPS) policies 13(1(b), 15(b), 7, 14 (among others).

If such a system is *not* adopted then in our view it will be necessary for the re-consenting of all existing marine farms to be fully discretionary - as these cumulative effect matters will otherwise need to be properly assessed and addressed at a farm consent level.

2. That if 1(b) above is adopted future consenting within AMA's is discretionary to accommodate the recognition of evolving public values in the Sounds.
3. That a case study based adaptive management regime be adopted to address water column effects in low flush intensively farmed Coastal Management Units (CMU) or AMA's – including in particular the effects of zooplankton depletion on the food web and biodiversity.
4. That AMA's be contained within a prescribed ribbon of between 100 and 250m from mean low water mark - rather than a 100 – 300m ribbon.
5. That there be no policy of relocating marine farming activity found to be inappropriate. In this regard AMA's should not extend outside of the prescribed ribbon in order to facilitate the relocation of existing farm space that is determined inappropriate elsewhere, or because existing farm space in the 50 – 100m ribbon cannot be relocated to the outside of the farm or elsewhere.
6. That the absolute protection from marine farming as proposed for Queen Charlotte Sound be extended to, at the least, all of the existing Coastal Marine Zone 1 areas in the Kenepuru and Pelorus Sound.
7. That a threshold of extraordinary activity be included for plan change applications within the Kenepuru and Pelorus Sound.
8. That spatial limits or thresholds be put on applications for open coast marine farming.
9. That resource consent allocations for marine farm space within AMAs be publicly tendered.
10. That this dissenting position be included in any Marlborough District Council (MDC) public consultation documentation.

Background and Reasons for Recommendations

Recommendation 1 - Aquaculture Management Areas and Cumulative Effects

We support the use of AMAs to the end that they stand to facilitate much greater efficacy in the assessment and management of the environmental effects of aquaculture activity - namely by a disciplined focus at an AMA scale rather than at a farm by farm scale.

Unfortunately, whilst we formally proposed ongoing environmental effect assessments under the MEP at an AMA level very early on in the Group, this was not picked up on by industry or MDC participants. As a result the utility of AMAs under the Proposals is limited to that of spatial delineation. They simply function as lines in the water – rather than as areas that are appropriate for consideration of the activity and where properly determined environmental thresholds can be efficiently applied.

Baseline

The AMAs have been developed subject to the baseline premise put up by the MDC that all existing marine farming can be accommodated within the enclosed waters of the Sounds. As a consequence AMAs were set out through a process of MDC mapping around the existing farming activity - but starting at 100m and going out to 300m (or more if an existing farm already extended beyond 300m). Almost all space that might be considered appropriate for marine farming within the Sounds has already been applied for. As a result there were limited relocation options and only a small number of adjustments were made to existing farm density for farm specific issues and for outstanding natural landscape value issues.

It is important to note that whilst the Group's framework was set up to facilitate values based assessments of CMU's, the process of determining a discrete and comprehensive set of values for all CMU's was abandoned early on by the Group, it proceeding with a core set of generic values perceived as common throughout the Sounds. Moreover, in our view the process of setting AMA's was not driven by these core values. Rather, and as noted, it was significantly constrained by the MDC principle of fitting in all existing farms. Whilst values were periodically raised, their recognition was generally taken as contingent on alternative space being found for the infringing marine farming consent(s).

Most importantly, no assessment of the *cumulative effects* of the existing aquaculture activity on landscape or natural character (including ecological) values was undertaken in determining the AMAs.

Our position is that the AMAs in the Proposals have thus not been properly determined, notably on a cumulative natural character (including ecological) and landscape level. This plan development dilemma has been exacerbated by the process of notifying landscape and natural character Proposals to be included within the MEP without a proper understanding of how those Proposals could be impacted by the aquaculture Proposals.

Recommendation 2 – Activity Status

If recommendation 1(b) is adopted then the Proposed adoption of controlled activity status for future consenting is inappropriate. This is because there will remain a need to facilitate the consideration of effects of AMA's as public values in the Sounds change in the future.

Controlled activity status means that resource consent applications cannot be denied, irrespective of effects. The adoption of controlled activity status for existing marine farming was proposed by MDC from the outset of the Group and was never an agenda item for Group discussion. Moreover, a basis for the adoption of controlled activity status for existing marine farming has never been formally proffered to the Group. Indications are that it is seen by MDC as a means of affording consenting efficiency and certainty to the industry.

In our view adopting a regime that sacrifices the proper assessment and testing of public values in the coastal marine area, because that is more efficient and certain, frustrates core Resource Management Act 1991 (RMA) principles.

This is exacerbated by the failure of the Proposals to address the cumulative effects of the existing level of farming. In parts of the Sounds marine farming should not proceed at the

existing levels, let alone be locked in for the future at this level.

The failure of the Group to consider using AMAs as the ongoing focus for disciplined environmental impact assessments, rather than individual farms, stands as a missed opportunity to effect a much more efficient consenting regime without sacrificing the ongoing consideration of publicly held values in the Sounds.

Controlled activity status is also inappropriate at a higher public policy level. The coastal marine area is a public asset that must be used optimally. Public values will evolve in highly valued areas such as the Marlborough Sounds and these values should not be disregarded through controlled activity status. That can only frustrate the optimal use of what are highly valued public resources. Citing certainty for industry investment is no answer to this. It may be a consideration for the assessment of the appropriateness of marine farming, but it is not a reason for not properly assessing it at all.

We note that similar proposals for controlled activity status for aquaculture were recommended to Government by the Sir Doug Kidd led *Aquaculture Advisory Ministerial Panel* in 2010 in the lead up to the 2011 RMA aquaculture provision reforms. The recommendation was not accepted by the then Government.

Recommendations 1a and 1b afford efficacy in the re-consenting process whilst enabling cumulative effects to be properly assessed, considered and managed on an on-going basis. However, in our view, a fully discretionary farm by farm consenting regime is the only appropriate planning approach if cumulative effects are not otherwise properly assessed, considered and managed on an on-going basis.

Recommendation 3 - Cumulative Effects - Zooplankton

Cumulate effects on ecological natural character values warrant a particular focus. There are still some large information gaps in mussel farming ecological effects. Nonetheless the existing science, including the recent NIWA Biophysical Model (NBPM), raise what we consider to be serious red flags around the existing level of marine farming activity, in particular in low flush intensively farmed areas. Most significant are the NBPM predicted effects of existing farming on zooplankton¹. We raised this matter with the Group early on, including the tabling of an expert opinion that ecological carrying capacity is likely being exceeded in some central Sounds areas, and reiterated our concerns at various points throughout the Group process. We were advised by MDC that these matters would be addressed by way of adaptive management in the Proposals.

Written questions to the ecological Technical Advisory Group (TAG) directed squarely at the impact of zooplankton depletion were responded to in writing by Dr Ulrich, the then MDC Coastal Scientist. His response, with all due respect, did not answer the questions raised.

The result is that the Proposals make no attempt at all to do any of the following fundamental requirements of an adaptive management regime, namely:

- identify the impact of existing marine farming on zooplankton, and thus the food web, in at risk areas; and
- identify how this transgresses into changes in biodiversity; and
- identify an acceptable level of change to biodiversity from marine farming activities in these areas; and
- identify the change in marine farming activity required (if any) in these at risk areas so as to fall within that band of acceptable level of biodiversity effect; and

¹ See also the pages 3-4 of the Rob Schuckard paper included with the ARWG Recommendations *Issues – a brief analysis of 'effect of mussel farming'* 15 April 2019

- Provide a mechanism to adapt to the level of marine farming change required (if any).

Monitoring is instead promoted as a solution to information gaps. However, it must be understood that no amount of ‘monitoring’ from now on is ever going to identify what impact the existing level of marine farming is already having on the ecosystems in these at risk areas. This is because there is no baseline data to compare future monitoring data to. Monitoring will only ever report variations in the likes of zooplankton levels over what they are already with the existing marine farming activity.

Where there is no baseline information available, such as we face with the existing marine farming in the Sounds, then computer modelling must necessarily become a focus. The NBPM is the most recent and comprehensive tool available in this respect. It reports zooplankton depletion of up to 90% or more in some at risk areas.

Our position is that positive and effective steps *must* be taken to address these existing marine farming effects now in areas identified as of concern by the NBPM.

Our recommendation is that the effects of marine farming in the at risk areas be empirically determined. This could be done initially on a case study basis, rather than through a broad application across all at risk areas. For example:

- A representative low flush intensively farmed area would be selected.
- A base level survey of biodiversity and water column characteristics in the case study area would be undertaken.
- A safe level of marine farming for the selected area would be determined using modern models and tools, such as the NBPM and calculations prescribed by the Aquaculture Stewardship Council Bivalve Standard¹.
- Marine farming in the case study area would then be managed down to the safe levels determined by the modern models and calculations.
- Changes in biodiversity and water quality characteristics post the adoption of safe farming levels would be measured and calibrated against concurrent before and after control site surveys to eliminate non-aquaculture causation.

The result would be much needed empirical evidence of the cumulative effects of intensive mussel farming on ecosystem values in the at risk low flush areas of the Sounds.

Recommendation 4 – Ribbon Size

The existing plan indicates a ribbon appropriate for marine farm development of 50 to 200m from mean low water mark – a 150m wide ribbon². It was put to the Group by MDC from the outset that this be extended in the MEP to a 200m wide ribbon – a 33% increase in area appropriate for marine farming. Whilst some farms have been consented beyond 200m under the existing plan, in our view many, if not most of these, have been so consented without any proper regard to cumulative effects and before the introduction of the environmental standards now promulgated by the NZCPS.

If recommendations 1a or 1b are adopted then ribbon size will be properly determined and our recommendation 4 becomes redundant. Failing that, and given the existing level of marine farming cannot be taken as appropriate without a proper assessment and management of cumulative effects, it follows that a 33% increase in area indicated as appropriate for marine farming by the MEP must also be inappropriate.

¹ ASC Bivalve Standard – version 1.0 Jan 2012. This was recommended to the Group by TAG as an effective triage tool.

² This is promulgated in the existing plan through marine farming being a discretionary activity within the 150m ribbon and a non-complying activity otherwise.

Recommendation 5 – Relocation Policy

A resource consent holder has no right to a renewal of that resource consent and as far as we are aware there is no RMA or other legal mandate for MDC to assume that such an entitlement exists. A policy of relocating inappropriate marine farm consents is thus difficult to rationalise. We acknowledge that recognising the social and economic values of marine farming is appropriate, but that does not elevate the consideration of the relocation of existing activity to something that is above that of a proposal for new activity.

In our view this misconceived policy has further frustrated an appropriate determination of AMA's by the Group, notably through the perceived need to relocate inappropriate consents in an approach of 'less inappropriate development is appropriate development'. This approach manifested itself in various ways including:

- AMAs being extended beyond 300m to accommodate existing but inappropriate consents from elsewhere; and
- AMAs being extended beyond 300m to accommodate lines of a farm within the 50-100m zone; and
- AMAs being proposed in some existing Coastal Marine Zone One areas only because space was 'needed' to accommodate existing consents or because existing consents could not be relocated; and
- Some parts of an AMA being left at 50m from shore notwithstanding that all other farms in the AMA are set out at 100m.

Recommendation 6 – Absolute Protection

The Proposals afford absolute protection from aquaculture development to Queen Charlotte Sound to protect '*the particularly high recreational, scenic, and amenity values present in that area.*'

This policy suggests that no parts of the Pelorus or Kenepuru Sound holds such values. We see this policy basis as both factually flawed and inappropriately sacrificial to the Pelorus and Kenepuru Sounds.

The existing Marlborough Sounds Resource Management Plan (MSRMP) recognises that there are such areas in the Pelorus and Kenepuru Sounds, notably the Coastal Marine Zone One areas. The current MSRMP identifies these areas "*as being where marine farming will have a significant adverse effect on navigational safety, recreational opportunities, natural character, ecological systems, or cultural, residential or amenity values.*"¹

Existing resource consents within these areas are recognised as a planning anomaly².

No basis was made out to the Group for failing to afford to these areas the same absolute protection that is afforded to Queen Charlotte Sound. In our view this was inappropriately driven by the MDC's position of fitting all existing resource consents in.

Recommendation 7 – Plan Change Threshold

The Proposals contradict themselves by declaring that the Sounds are "full or approaching

¹ Policies 9.2.1.1.1 and 9.2.1.1.6 and Method 9.2.2

² Paragraph 233 - *Port Gore Marine Farms Ltd v Marlborough District Council* Decision No. [2012] NZEnvC 72 – "*Because the activity is discretionary the council considered that the Sounds Plan recognised and anticipated marine farming at this site (provided the effects could be mitigated) and therefore a farm was in keeping with the objectives and policies of the planning framework. With respect that was rather facile. The site is in the middle of the CMZ1 where all marine farming is prohibited, presumably because it does not meet the objectives and policies of the various planning instruments. The fact that mussel farming on the site is (anomalously) a discretionary activity must mean that just as there is no presumption that a farm on it does not meet the relevant objectives and policies, similarly there is no presumption that it does. The application should be considered on its merits and the council failed to do that.*"

full” yet facilitate plan changes adding further AMAs in the inner Sounds without any substantial policy threshold beyond that as is required for marine farming consents within existing AMAs.

This is all the more alarming given there is no policy whatsoever addressing the cumulative effect of marine farming on biodiversity values through zooplankton depletion, food web disruption and other water column effects.

Given the inner Sounds are recognised as “full or approaching full” it must follow, in our view, that a plan change application for yet further AMA’s would need to meet an extraordinary activity test. For example, this could require that the plan change is required to facilitate a marine farming activity that could not, if space was available, be undertaken within existing AMA areas.

Recommendation 8 - Open Coastal Marine Farming

We were open to the consideration of open coastal marine farming but only on the basis that the areas were appropriate for marine farming *and* would be used only to replace some of the existing inappropriate mussel farming in intensively farmed low flush/low current inner sounds areas. This is not reflected in the Proposals.

The identification of virtually the entire outer Sounds environment as open for marine farming applications is a huge shift in policy position that in our view was promoted within the Group without any assessment of the environmental risks or other wider implications, such as the uncertainties it will impose on other users holding values in this vast area. There is also a risk of a gold rush of speculators seeking consent rights in this vast area.

Because of this there should, at the least, be limits imposed on applications for marine farming activity in open coastal waters. The objective being to enable applications and development to be contained and controlled whilst both the potential effects, and the public’s appreciation of such on their values in the area, are well settled in.

Recommendation 9 - Allocation of Resource Consent Application Rights

There are significant issues of public equity and fairness around the law and practice of existing consent holders having pre-emptive rights to the free use of public marine resources.

This pre-emptive right is also the cause of much of the conflict around marine farming consenting in the Marlborough Sounds. This is because consent holders stand to lose the benefit of their pre-emptive right to free use of the public resource if marine farming activity is found to be inappropriate. Thus, existing consent holders have as an incentive the motivation to protect “their” consented space by doing whatever they can to argue that their existing activity is appropriate development.

The Proposals make no attempt to positively address these allocation issues. We do not support any allocation regime that simply grants existing consent holders pre-emptive rights to the free use of public marine resources.

No case was proffered to the Group for the adoption of the consent allocation system in the Proposals. Our position is that other allocation methods, such as a public tendering system¹, will address both the public equity issue and the consenting conflict issues that currently exist and should thus be the preferred option. In our view, a properly considered public tendering system will:

- Identify uneconomic farm areas.² Uneconomic farms or areas will not be tendered for.

¹ Tendering is the default consent right allocation system under the RMA - section 165H

² We requested marine farm yield data to facilitate this through the Group but were denied the information.

- Tendering of consent rights will not, of itself, affect available marine farm space or jobs. Tenderers will only pay up to what still leaves a fully viable business for them.
- Industry infrastructure would not be affected. If existing farmers are out-tendered then successful tenderers will still need access to infrastructure - and the market will allocate that infrastructure accordingly. Many marine farm consents are already leased or contracted out to other operators.
- It is fair in that the water space is public and so pre-emptive rights for marine farming resource consents should not be given to anybody.
- It would help financially facilitate a properly designed and implemented case study and monitoring protocol for existing (and future) marine farming activity in the Marlborough Sounds.
- It will eliminate the acrimonious nature of the current consenting process – applicants will not be motivated by the promise of super profits through the effective ownership of water space rights into the future if they are successful.

Recommendation 10 – Inclusion of Dissenting Position in Public Consultation

We believe our dissenting position raises important issues and offers considered comment and alternative recommendations in key areas. In our view it is important that our dissenting position be incorporated into any public consultation process to ensure that that process is open, balanced and objective.

Section 32 Report

The Association requires that this dissenting memorandum also form part of the Section 32 materials when that report is prepared.

Further Information

KCSRA would be happy speak to councillors before or when the Proposals are tabled or to field any questions or queries from any councillor on this memorandum. To this end please feel free to contact KCSRA through the email given below.

For and on behalf of the Kenepuru and Central Sounds Residents' Association Inc

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