

In the matter of

**Ministry for Primary Industries Discussion
Paper No: 2017/04**

Potential relocation of salmon farms in the Marlborough Sounds – Proposal to amend the Marlborough Sounds Resource Management Plan to enable the relocation of up to six existing salmon farms by regulations made under section 360A of the Resource Management Act 1991

**Memorandum to accompany summary of comments on the
proposed regulations by
Friends of Nelson Haven and Tasman Bay Inc. and Kenepuru
and Central Sounds Residents Association Inc.**

Dated 1 May 2017

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1. This memorandum accompanies summary comments by expert witnesses for Friends of Nelson Haven and Tasman Bay and the Kenepuru and Central Sounds Residents Association (collectively **the Societies**) who will make oral presentations to the Advisory Panel on 8 May 2017. The Societies have raised concerns about the proposal to amend the Marlborough Sounds Resource Management Plan (**MSRMP**) to enable the relocation of up to six salmon farms by regulations made under section 360A of the Resource Management Act 1991 (**RMA** or **Act**). This memorandum focuses on the essential points that the Societies' expert witnesses raise that are within the Panel's terms of reference.¹

A Will the MSRMP, as amended by the proposed regulations continue to give effect to the NZCPS?²

2. This is a requirement under section 360(2)(c)(iii)(B) of the RMA. It has particular importance in relation to the MSRMP because the MSRMP has not been reviewed to implement (give effect to) the NZCPS 2010.³

King Salmon

3. The importance of the NZCPS has been reinforced by the decision of the Supreme Court in *King Salmon*.⁴ A summary follows.
 - (i) The RMA was enacted as reforming legislation. It identified a specific overall objective (sustainable management of natural and physical resources) and established structures and processes designed to promote that objective.⁵
 - (ii) It introduced a three tiered management system (national, regional and district) and established a *hierarchy* of planning documents. At the top of the hierarchy are those planning documents that are the responsibility of central

¹ The Panel will provide an independent report and recommendation to the Minister on the comments received through this consultation process on the proposed regulations. Terms of Reference dated 21 February 2017, pages 4 and 5.

² New Zealand Coastal Policy Statement 2010, which came into force on 3 December 2010.

³ A requirement under section 67(3) and see the statement on page 7 of the NZCPS – *Application of this policy statement* (second bullet point).

⁴ *Environmental Defence Society v NZ King Salmon Co Ltd* [2014] NZSC 38. All references are to the majority decision at paragraphs [1] to [174] delivered by Arnold J.

⁵ *King Salmon* at [9]

government. That includes the NZCPS, whose purpose is to state policies in order to achieve the purpose of the Act in relation to New Zealand's coastal environment, and is within the functions of the Minister of Conservation.⁶ That Minister plays a key role in the management of the coastal environment through preparation and recommendation of the NZCPS, monitoring the effect and implementation of any current NZCPS, the approval of regional coastal plans, and a shared responsibility with regional councils for controlling use of the coastal marine area.⁷

- (iii) The RMA requires that the various planning documents be prepared through structured processes that provide considerable opportunities for public input. *Open processes and opportunities for public input were obviously seen as important values by the RMA's framers.*⁸
- (iv) The RMA envisages the formulation and promulgation of a cascade of planning documents, each intended to give effect to section 5 and Part 2 more generally. These documents form an integral part of the legislative framework of the RMA.⁹
- (v) Further emphasising the importance of the NZCPS is the statutory direction that there shall at all times be at least one NZCPS in existence prepared and recommended following a prescribed consultation process.¹⁰ The NZCPS may state objectives and policies about any of the matters specified in section 58. This includes:¹¹
 - (a) *National priorities for the preservation of the natural character of the coastal environment of New Zealand, including protection from inappropriate subdivision, use and development.*
- (vi) In relation to the challenge to the board of inquiry's decision to grant a change to the MSRMP to allow a salmon farm to be developed in Port Gore, the Supreme Court identified objectives 2 and 6 of the NZCPS as being particularly

⁶ Sections 28 and 56 of the Act.

⁷ *King Salmon* at [13]

⁸ *King Salmon* at [15]

⁹ *King Salmon* at [30]

¹⁰ Section 57 of the Act.

¹¹ Section 58(a) and see the discussion in *King Salmon* at [47].

relevant. Objective 2 is concerned with preservation of natural character, and protection of natural features and landscape values by recognising their contributing characteristics and qualities and their location and distribution within the coastal environment. It also contemplates that some areas may require protection from inappropriate subdivision, use and development.¹²

- (vii) Objective 6 recognises that some developments that are important to social, cultural and economic wellbeing can only occur in the coastal environment. Further, that protection of the values of the coastal environment does not preclude use and development *in appropriate places and forms* and *within appropriate limits*, thereby recognising that there will be places that are appropriate for development and others that are not. Objective 6 also recognises that only a small proportion of the coastal marine area is under formal protection and management under the RMA is an important means by which the natural resources of the coastal marine area can be protected.¹³
- (viii) The Supreme Court then identified that four of the 29 policies of the NZCPS were particularly relevant to their consideration. These were policies 7 (strategic planning), policy 8 (aquaculture), policy 13 (preservation of natural character) and policy 15 (natural features and natural landscapes).
- (ix) Policy 7 has as its focus strategic planning. It requires a regional (or district-wide) planning assessment by local authorities to identify areas of the coastal environment where particular activities and forms of subdivision, use and development are inappropriate, or may be inappropriate without consideration of effects through a resource consent, notice of requirement, or Schedule 1 plan change process.¹⁴ Protection of such areas is to be provided through objectives, policies and rules. There is also a

¹² *King Salmon* at [49]. Although not specifically mentioned, objective 2 also refers to preservation of natural character and protection of natural features and landscape values through encouraging restoration of the coastal environment.

¹³ *King Salmon* at [50] and [51]. Although not specifically mentioned at [51], objective 6 also recognises that protection of habitats of living marine resources contributes to social, economic and cultural wellbeing.

¹⁴ All other references to *strategic planning* in this memorandum are intended to be understood in this context.

requirement to identify in planning instruments coastal processes, resources and values that are under threat or at risk from adverse cumulative effects and (where practicable) to include measures to assist in determining when activities causing adverse cumulative effects are to be avoided.¹⁵

- (x) Policy 8 requires recognition of the significant existing and potential contribution of aquaculture to social, economic and cultural wellbeing by including in relevant plans provision for aquaculture in appropriate places in the coastal environment, and by ensuring other development in the coastal environment does not make water quality unfit for aquaculture activities in areas approved for such use.¹⁶
- (xi) Policies 13 and 15 were considered together. The Supreme Court noted that policies 13(1)(a) and (b) and 15(a) and (b) have a similar focus and structure. Local authorities are directed to avoid adverse effects of activities on natural character in areas of outstanding natural character (policy 13(1)(a)), or on outstanding natural features and outstanding natural landscapes (policy 15(a)). In other contexts, they are to avoid *significant* adverse effects and to *avoid, remedy or mitigate* other adverse effects of activities (policies 13(1)(b) and 15(b)).¹⁷
- (xii) The Supreme Court then commented that the overall purpose of these provisions of the NZCPS is to preserve the natural character of the coastal environment and to protect it from inappropriate subdivision and development;¹⁸ or to protect natural features and natural landscapes (including seascapes) from inappropriate subdivision, use and development.¹⁹ Areas which are outstanding receive the greatest protection (the requirement being to avoid adverse effects). Areas that are not outstanding receive less protection (the requirement being to avoid significant adverse effects and avoid,

¹⁵ *King Salmon* at [53] – [55]. An example of a plan proscribing *inappropriate* development in the coastal marine area in the context of the MSRMP is the prohibition on new marine farms being established in coastal marine zone 1 (**CMZ 1**) through a combination of chapter 9 policy provisions and chapter 35 rules. See also *King Salmon* at [71].

¹⁶ *King Salmon* at [56] – [57]

¹⁷ *King Salmon* at [61]

¹⁸ Policy 13

¹⁹ Policy 15

remedy or mitigate other adverse effects). The word *avoid* in this context has its ordinary meaning of *not allow* or *prevent the occurrence of*.²⁰

- (xiii) Policies 13 and 15 also reinforce the approach to strategic planning at a regional level required by policy 7. Policy 13(1)(c) and (d) require local authorities to assess the natural character of the region's coastal environment by *identifying at least areas of high natural character*, and ensuring that regional policy statements and plans include objectives policies and rules where they are required to preserve the natural character of particular areas. Policy 15(d) and (e) are to similar effect in relation to natural features and natural landscapes requiring protection.²¹
- (xiv) Where the term *inappropriate* is used in the context of protecting areas from inappropriate use and development, then its natural meaning is that it should be assessed by reference to what it is that is sought to be protected.²² Its meaning in the context of the NZCPS emerges from the way in which particular objectives and policies are expressed. By reference to objective 2, the requirement to identify particular areas in the context of preserving the natural character of the coastal environment and protecting natural features and landscape values, makes it clear that what is to be regarded as inappropriate use and development relates back to the natural character and other attributes that are to be preserved or protected, adopting a strategic, region-wide approach. Use of the term *inappropriate* in policies 13(1)(a) and (b) and 15(a) and (b) bears the same meaning.²³
- (xv) Similar comments were made in relation to use of the word *appropriate* in objective 6 and policies 6 and 8 of the NZCPS. Where policy 8 refers to making provision for aquaculture activities *in appropriate places in the coastal environment*, the context suggests that *appropriate* is referring to suitability for the needs of aquaculture in a technical sense (for example, water quality). By contrast, its use in objective 6 in the context of recognising that the

²⁰ *King Salmon* at [62] and [96]

²¹ *King Salmon* at [63]

²² *King Salmon* at [101]

²³ *King Salmon* at [102]

protection of the values of the coastal environment does not preclude use and development *in appropriate places and within appropriate limits*, suggests that *appropriate* is not concerned simply with technical suitability for the particular activity but with a broader concept that encompasses other (environmental) considerations.²⁴

- (xvi) The Supreme Court summarised its views on interpretation of the NZCPS by stating that the language of the relevant policies is significant and that the various policies are expressed in deliberately different ways. Some policies give decision-makers more flexibility or are less prescriptive than others. By contrast other policies are expressed in more specific and directive terms, such as policies 13 and 15. The Supreme Court confirmed that these differences matter.²⁵
- (xvii) The Supreme Court then went on to say that when dealing with a plan change, a decision-maker must first identify those policies that are relevant, paying careful attention to the way in which they are expressed. Those expressed in more directive terms will carry greater weight and it may be that a policy is stated in such directive terms that the decision-maker has no option but to implement it. *Avoid* is a stronger direction than *take account of*.²⁶
- (xviii) And at [132], the Supreme Court said this:

[132] Policies 13(1)(a) and (b) and 15(a) and (b) do, in our view, provide something in the nature of a bottom line. We consider that this is consistent with the definition of sustainable management in s 5(2), which, as we have said contemplates protection as well as use and development. It is also consistent with classification of activities set out in s 87A of the RMA, the last of which is activities that are prohibited. The RMA contemplates that district plans may prohibit particular activities, either absolutely or in particular localities. If that is so, there is no obvious reason why a planning document which is higher in the hierarchy of planning documents should not contain policies which

²⁴ *King Salmon* at [100]

²⁵ *King Salmon* at [127]

²⁶ *King Salmon* at [129]

contemplate the prohibition of particular activities in certain localities.

Davidson and policy 11

4. A further relevant policy in relation to this proposal is policy 11. That is because the Waitata Reach comprises foraging habitat for the King Shag, which as a species (taxon) is endemic to the Marlborough Sounds and listed as threatened and at risk in relevant national and international threat classification lists.²⁷
5. The application of policy 11 in relation to habitat of the King Shag in another part of the Pelorus Sound was recently considered by the Environment Court in *RJ Davidson Family Trust*, an appeal against the refusal to grant consent for a marine (mussel) farm off an unnamed promontory at the head of Beatrix Bay.²⁸ The Court referred to a number of key issues identified in the Preamble to the NZCPS and stated:²⁹

These issues recognise that in their current state some areas in the coastal environment are not necessarily being managed sustainably.

6. In relation to policy 11, the Court identified that it directs that certain adverse effects of activities are simply to be avoided. This includes adverse effects on certain threatened categories of taxa **and** on certain classes of habitat of indigenous fauna. Adverse effects of activities on a taxon would include injury to or death of individuals (and reduction in population), but may also include reductions in the extent of occurrence or area of occupancy,³⁰ and reduction in habitat area or quality.³¹
7. The Court concluded that consideration of adverse effects on the King Shag is required under both policy 11(a)(i) and (ii). Policy

²⁷ See Schuckard para 36.

²⁸ *RJ Davidson Family Trust v MDC* [2016] NZEnvC 81. All references are to the reasons of the majority (Jackson EJ and Commissioner Mills) at paragraphs [1] to [300]. An appeal to the High Court against the decision on four grounds was dismissed by Cull J in *RJ Davidson v MDC* [2017] NZHC 52. Leave to appeal to the Court of Appeal has been sought on ground 1 (proper interpretation of the *subject to Part 2* requirement in section 104(1)) but no factual findings of the Environment Court are challenged.

²⁹ *Davidson* at [156]

³⁰ The extent of occurrence and area of occupancy are used to define the geographic range of taxa for the purpose of assessing whether they qualify for listing on the IUCN Red List Categories and Criteria (**Red List**). See *Davidson* at [98] and [99].

³¹ *Davidson* at [162]

11(a)(iv) was also applicable and recognises that reduction in the quality or quantity of habitat may itself have consequences for a qualifying species, even if the consequences for individuals and/or populations are not yet known. These effects are to be avoided.³²

8. The Court recorded the evidence that the closest main colony to Beatrix Bay is the Duffers Reef colony. This is also the closest colony to the Waitata Reach. A small colony was also recorded as having established at Tawhitinui Bay point.³³ The Court also referred to Dr Fisher's evidence that he considered the whole of the Marlborough Sounds to be *significant habitat* for King Shags (inferring that this was in reliance on the IUCN *Red List* and policy 11(a)(i)(iv)) and that Pelorus Sound (or at least those parts mapped by Mr Schuckard in a 1991/92 study) are the core feeding areas for birds from the Duffers Reef colony.³⁴
9. In the section discussing effects on King Shag habitat and population,³⁵ the Court recorded its earlier findings that the habitat of King Shags has been degraded (mainly by land uses causing sedimentation and pollution, and by dredging) and reduced by installation of mussel farms. While acknowledging that the impact of a further mussel farm by itself will generally have less than minor impacts on that habitat, the cumulative effect of activities which have led to a degraded and reduced habitat are adverse and more than minor, *and the Trust's application can only add to those adverse effects on habitat.*³⁶
10. The Court also recorded Dr Fisher's view that benthic changes resulting from the scale of (existing) mussel farming reduce the availability of significant feeding habitat. The Court confirmed that Dr Fisher's approach was consistent with policy 11, *which is to avoid any adverse effect on threatened species and in particular to avoid adverse effects on the habitats of indigenous species (at the limit of their natural range).*³⁷
11. Later, the Court referred to a lack of information about population dynamics for this species and stated:³⁸

³² Davidson at [165]

³³ Davidson at [103]

³⁴ Davidson at [135]

³⁵ Section 4.4, [196] – [210]

³⁶ Davidson at [197]

³⁷ Davidson at [209]

³⁸ Davidson at [284]

The information given to us was completely inadequate to allow us to detect any trend in the population. At present data on the number of breeding pairs, breeding success rates, or even of the age and sex ratio of birds is almost completely lacking. In particular there is no data on the survival rates and population trends of mature female King Shags. These last are particularly important because it is the likely preferred foraging grounds of females which mussel farms have been extended into over the last 10 to 15 years.

12. The Court then explained that the King Shag satisfies the IUCN criteria for inclusion on the *Red List* based on a population of less than 1000 individuals *and* is restricted to four core breeding colonies.³⁹ The Court's conclusion on the application of policy 11 was that because of the risk of stochastic events ***waiting for a reduction in population is no longer regarded as an appropriate trigger for protecting the taxon.***⁴⁰
13. The King Shag is already subject to adverse effects of degradation and reduction in its habitat. Locating additional salmon farms in the Waitata Reach will not give effect to policy 11 of the NZCPS. Further, the existing salmon farms in the Waitata Reach are required to adhere to a King Shag Management Plan as part of their staged development. It would be inconsistent with policy 3 of the NZCPS to add further risk to a threatened species which is currently under observational management, before that staged development has reached maximum permissible levels. Mr Schuckard will address you further on this matter.

Policies 13 and 15 – Hudson Associates

13. It is no exaggeration to say that on the fundamental question whether the MSRMP as amended by the proposed regulations will continue to give effect to policies 13 and 15 of the NZCPS, the proposal is entirely reliant on the Hudson Associates review.⁴¹ For that assessment to provide a secure basis for a decision seeking to introduce salmon farming into areas of the Marlborough Sounds where it is currently prohibited, there would need to be a high

³⁹ Recorded in Dr Fisher's evidence at paragraph [100]. It is also consistent with Dr Fisher's evidence for this proposal, which refers to the extent of the Marlborough Sounds Important Bird Area based on the foraging range and bathymetry of King Shags and encompasses other species as well. See Fisher at paras. 8-17.

⁴⁰ Davidson at [285]

⁴¹ Review of Proposed Marine Farm Sites for the Ministry for Primary Industries, Hudson Associates Landscape Architects, 20 December 2016.

degree of confidence in its validity and reliability. That degree of validity and reliability simply does not exist.

14. For example, the peer review by Drakeford Williams expresses significant concerns about some of the Hudson assessments. This is particularly the case in relation to adverse effects arising from development of the two proposed Blowhole Point sites and the close proximity (to each other) of the Richmond South and Horseshoe Bay sites.⁴² There is also a difference in opinion over the natural character rating for the mid-channel Waitata site, and the extent of adverse effects on both natural character and landscape values for this site.⁴³ There is also some difference in opinion over the rating of landscape values for the Tio Point site, and the proper assessment of this site in the context of the existing salmon farms at Te Pangu and Clay Point.⁴⁴
15. Complicating matters further is the fact that MDC has embarked upon a strategic planning exercise of the kind contemplated by policy 7 and policies 13(1)(c) and (d) and 15(d) and (e) of the NZCPS to provide a comprehensive, integrated set of maps, objectives, policies and rules intended to give effect to policies 13 and 15 of the current NZCPS. The MSRMP was prepared when the NZCPS 1994 was in force and has not previously been reviewed to implement the NZCPS 2010.⁴⁵ The Council's strategic planning response is to implement the NZCPS 2010 through a new integrated RMA plan, incorporating a regional policy statement, regional coastal plan, and regional and district plans (the **MEP**).⁴⁶ Significant effort has gone into preparing and notifying the MEP, (primary) submissions have closed, and a summary of those submissions is about to be notified. This proposal to change the MSRMP by regulations does not have any rational link with the Schedule 1 process currently underway for the MEP and risks undermining the integrated planning process that the Council has embarked on.
16. Although the aquaculture provisions were not part of the MEP as notified, those provisions have been advanced and are currently the subject of further pre-notification consultation. It is the Council's intention that the aquaculture provisions be included in

⁴² See the Drakeford Williams peer review dated September 2016 at pages 18-19 (Blowhole Point sites) and pages 26-27 (Richmond South and Horseshoe Bay).

⁴³ See Drakeford Williams at pages 20-21.

⁴⁴ See Drakeford Williams at pages 32-33.

⁴⁵ See *Davidson* at [155].

⁴⁶ Marlborough Environment Plan, publicly notified June 2016.

the MEP (through a notified variation later this year) so that there will be a single, comprehensive and integrated planning instrument for the Marlborough region covering all of the Council's planning responsibilities under Part 5 of the Act. This achieves integrated management of natural and physical resources in the coastal environment and is consistent with policy 7 of the NZCPS.⁴⁷

17. Hudson Associates were not the authors of the two district-wide studies that underpin the natural character and landscape mapping exercise that has been included in the MEP.⁴⁸ Hudson Associates acknowledge these studies but state that:

This study is concerned for the main part with assessment at the localised site scale. Values identified for an area or feature at a district-scale or Level ¾ scale will often be more general than those identified for a specific site, and at the site-scale not all high-level/wider context values might apply.

The sites considered in this study fit within the District/Level ¾ framework provided by previous work, but are assessed here in greater detail at the site specific scale. Having said that, consideration has also been given within this assessment to possible effects on the larger-scale values identified in previous work.⁴⁹

18. By this approach, the Hudson Associates review fails to adopt an appropriate scale of reference for the assessment of landscape values. Dr Steven has explained this at paragraphs 36-44 of his evidence and in paragraphs 25–30 of his summary.⁵⁰ This is compounded by the use of a 7 point scale to *rate* landscape values (as opposed to assessing the effects of a proposal) through a process of scoring and averaging various components that contribute to an appreciation of those values. The approach is invalid and the resulting assessment unreliable.
19. Dr Steven also identifies fundamental misconceptions in the approach adopted to assessing natural character. The review

⁴⁷ See section 30(1)(a) of the Act.

⁴⁸ Natural Character of the Marlborough Coast , MDC June 2014; Marlborough Landscape Study , MDC August 2015.

⁴⁹ Hudson Associates 20 December 2016, page 5.

⁵⁰ At paragraph 43 of his evidence, Dr Steven attaches as Figure 1 the context (unit of analysis) that was applied by the NZKS board of inquiry to consider the effects of the salmon farms proposed for the Waitata Reach on natural character, landscape and visual amenity values.

notes: *This study considers marine and terrestrial environments together for the assessment of natural character baseline.*⁵¹ The assessment for each site also includes reference to aesthetic values. This approach fails at a fundamental level to comprehend what policy 13(2) requires of an assessment of natural character in the coastal environment: namely, that it is necessary to *recognise that natural character is not the same as natural features and landscapes or amenity values.*

20. The assessment of cumulative effects in the Hudson Associates review is so fundamentally flawed that it is surprising that the proposal has advanced this far, in light of the comments made in the Drakeford Williams peer review. The Hudson Associates review also makes the extraordinary statement that:⁵²

The cumulative effects of the five proposed salmon farms have been considered for potential effects on landscape, visual amenity and natural character values at the national, regional, Reach and localised scale.

21. How a consideration at the *national scale* has been achieved is not explained, nor why it is relevant.⁵³ However, it quickly becomes apparent that the Hudson Associates review focuses solely on the cumulative effects of the proposed new salmon farms in conjunction with existing salmon farms. It considers that it is able to do so by adopting the following reasoning.⁵⁴

Apart from the gateway and Maud surrounds, the waters of the Reach are entirely considered to have high amenity values. Mussel farms are located in many side bays, such as Waihinau, Port Ligar, Horseshoe and Blowhole (north and south), but these are generally absent from Waitata Reach itself, with marine farming being confined to the existing salmon farms. For this reason, mussel farms are not considered to contribute to the cumulative effects assessment within Waitata Reach, with this assessment focusing primarily on the effect of 5 salmon farms additional to those existing or consented.

22. The Hudson Associates review then embarks on an evaluation of what the NZKS board of inquiry decided in relation to the proposal

⁵¹ Hudson Associates, page 20.

⁵² Hudson Associates, page 9.

⁵³ Policy 7 of the NZCPS and policies 13 and 15 require implementation at the regional or district level.

⁵⁴ Hudson Associates, page 9.

to establish five new salmon farms in the Waitata Reach. However, the basis for that evaluation is not that a threshold was established by that decision, but that the board's decision constitutes some form of permitted baseline for this proposal. It is an extraordinary piece of analysis.

23. First, it ignores what the board of inquiry actually said about the Waitata Reach as comprising one of the least modified parts of the Marlborough Sounds. This was in contrast to the many inlets and bays either side of Pelorus Sound where mussel farming has been developed.⁵⁵ In particular:

[575] Hardly surprising therefore, that some of the least modified parts of the Sounds – such as Port Gore, the Waitata Reach, and Queen Charlotte Sound approaching Picton from Cook Strait – remain in a fine state of balance. The question is - to what extent landscapes are able to withstand change and development, and at what scale?

[576] Most of the inlets and bays either side of Pelorus Sound, as well as in the vicinity of Port Gore, are already lined by a significant proportion of the 575 consented marine farms scattered throughout the Marlborough Sounds. Fortunately, few of these current operations extend beyond their more sheltered bay margins out into the Sounds' main channels.

24. It is simply not possible to ignore the effect of existing marine farm development in adjoining inlets and bays when assessing a proposal to extend marine farming development into less modified parts of the Marlborough Sounds, such as the Waitata Reach. Cumulative effects (properly understood) are always a relevant consideration and it is necessary to have a proper understanding of the *relative* importance of unmodified areas.
25. Perhaps more fundamentally, the analysis ignores the outcome of the board's decision. Apart from the White Horse Rock site, all of the other sites proposed for the Waitata Reach were within CMZ 1. By refusing the plan changes for the Kaitira and Tapiipi sites, the board was aware that those sites (and the remainder of the Waitata Reach) would remain zoned CMZ 1. No further salmon farming could occur there because of the CMZ 1 zoning. That is why the decision to refuse consent for the White Horse Rock site (a CMZ 2 site) is so significant. The board's decision was that even

⁵⁵ See in particular the paras. quoted at Steven 142 – 146.

that site within the Waitata Reach should remain undeveloped as a salmon farm.

26. In *King Salmon*, the Supreme Court referred to the zoning considerations that were before the board as follows:

[71]The Sounds Plan identifies certain areas within the coastal marine area of the Marlborough Sounds as Coastal Marine Zone One (CMZ1), where aquaculture is a prohibited activity, and others as Coastal Marine Zone Two (CMZ2), where aquaculture is either a controlled or discretionary activity. It describes areas designated CMZ1 as areas where marine farming will have a significant adverse effect on navigational safety, recreational opportunities, natural character, ecological systems, or cultural, residential or amenity values. The Board created a new zoning classification, Coastal Marine Zone Three (CMZ3), to apply to the four areas (previously zoned CMZ1) in respect of which it granted plan changes to permit salmon farming.

27. The board's decision cannot possibly be interpreted as somehow accepting that four salmon farms in the Waitata Reach was an appropriate level of development.⁵⁶ The cumulative effects assessment was apparently *re-reviewed* by Hudson associates following the Drakeford Williams peer review and amendments made to incorporate legal advice provided by MPI which post-dates the Drakeford Williams peer review.⁵⁷ It is not immediately apparent how the Hudson Associates review was influenced by the MPI advice, but to the extent that there was reliance placed on paragraph 13, in my view that paragraph fails to acknowledge the effect of the CMZ 1 zoning of the Waitata Reach, which (apart from the two CMZ 3 sites) remained in place following the board's decision.⁵⁸

⁵⁶ Hudson Associates, page 10.

⁵⁷ Drakeford Williams peer review with Hudson Associates comments dated 7 October 2016, page 25.

⁵⁸ Paragraph 13 is as follows: 13. *While neither the Court nor the Board's findings are binding, it is still important to refer to the [MSRMP]. If any limitation were to exist, it would be in the Plan itself (for example, if the Plan sets a limit on the number of farms within the Waitata Reach). We are not aware of this being the case.*

Because I provided an opinion dated 21 September 2016 on these matters to Mr Schuckard which was in turn provided to the Marlborough Salmon Working Group, I was asked to caucus with the author of the MPI advice and to comment on the MPI advice after receiving a copy in mid-October 2016. I provided a summary of my comments (including on paragraph 13 of the MPI advice) by email dated 21 October 2016. These comments are attached to this memorandum.

28. Other difficulties with the Hudson Associates cumulative effects assessment are referred to by Dr Steven. These include the fact that it is solely concerned with visual effects, and then only of salmon farms. I have already commented on the differing views expressed in the Drakeford Williams peer review, which finds that cumulatively there will be high to very high adverse effects on natural character arising from the five additional salmon farms in the Waitata Reach.
29. To the extent that there are areas identified as having high or very high natural character in the MEP, Dr Steven identifies that policy 6.2.3 becomes a highly relevant consideration. This implements policy 13(1)(b) and establishes a threshold whereby any reduction in the degree of natural character for such areas should be avoided. While the Hudson Associates review does not classify any of the sites as having high natural character, the MEP does classify the two Blowhole Point sites as within an area of high natural character. The Richmond South and Horsehoe Bay sites appear to be close to areas identified as having high natural character and face the area of outstanding natural character that surrounds Maud Island. The Drakeford Williams peer review would assess the mid-channel Waitata site as within an area having high natural character (as would Dr Steven).
30. What this points to is that the Waitata Reach and these sites will be the subject of further evaluation through the Schedule 1 process. A major focus is likely to be whether the natural character of the coastal marine area is sufficiently identified for the purposes of policy 13(1)(c) and (d), and whether there has been a sufficient recognition of natural landscapes (including seascapes) within the MEP for the purposes of policy 15(d) and (e). Ms Allan is right to caution against allowing this process to have an undermining and confounding effect on that process and to conclude that the regulation making power conferred by section 360A should not be used where it will interfere with a strategic planning exercise that is currently underway.
31. There is nothing in policy 7, policy 13 or policy 15 which endorses the site specific evaluation carried out by Hudson Associates, and nor has the Environment Court endorsed such assessments.⁵⁹ The Hudson Associates review does not provide a valid and

⁵⁹ See Steven paragraphs 36-44 and 66-75.

reliable basis for implementing policies 13 and 15 of the NZCPS in relation to the MSRMP.

B Other matters raised by the Societies

(i) Economics

32. The Societies dispute the net annual economic benefit of the relocation proposal. This is referred to in the report by Mr Offen and peer review by Mr Henderson of Tailrisk Economics dated 26 March 2017 (Appendix 3, written comment 0485). It is acknowledged that these matters will be the subject of expert caucusing.

(ii) Disease risks

33. The concerns are set out in a document headed *Review of disease issues of the proposal to create up to five new salmon farms in the Waitata Reach of the Marlborough Sounds* (pages 121 – 130, written comment 0485). There will be further comment by Ms Kroon on these matters.

(iii) Recreational amenity and boating safety implications

34. Discussion of these matters is at paragraphs 91 – 123 of the combined KCSRA and Pelorus Boating Club submission dated 26 March 2017 (written comment 0485).

Dated 1 May 2017



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Kenepuru and Central Sounds Residents Association Inc.