

SUBMISSION ON APPLICATIONS FOR A RESOURCE CONSENT

SUBMITTER DETAILS

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APPLICATION DETAILS

Application numbers: U140391 and U140392

Name of Applicant: The Swampy Mussel Company Limited

Application Site Address: Pig Bay, Port Gore

Description of Proposals:

New coastal permit to operate and maintain an existing 4.0 hectare marine farm (replacing U950881, MPE733 and U000264) to cultivate and harvest Green Shell Mussels (*Perna canaliculus*) and Blue Shell Mussels (*Mytilus galloprovincialis*); to disturb the seabed with anchoring devices; to take and discharge coastal water associated with harvesting; to discharge biodegradable and organic waste associated with harvesting at Pig Bay. Site no. 8166.

New coastal permit to operate and maintain an existing 2.0 hectare marine farm (replacing U950880, MPE670 and U000263) to cultivate and harvest Green Shell Mussels (*Perna canaliculus*), Blue Shell Mussels (*Mytilus galloprovincialis*) and Dredge Oysters (*Tiostrea chilensis*); to disturb the seabed with anchoring devices; to take and discharge coastal water associated with harvesting; to discharge biodegradable and organic waste associated with harvesting at Pig Bay. Site no. 8165.

SUBMISSION DETAILS

EDS opposes the applications. EDS requests that Council declines the applications for resource consent for the reasons set out below.

Objectives and policies

The applications are located in CMZ1 and would be prohibited activities if not for the application of Appendix D2 which provides an exception for these existing marine farms. It is noted that many existing farms in CMZ1 have controlled activity status and the listing of these marine farms in Appendix D2 recognises the need to undertake a full assessment of effects and the potential for consent to be declined.

Application U140392 has discretionary activity status. Application U140391 has non-complying activity status by virtue of its location.

The applications do not discuss the relevant objectives and policies contained in the Sounds Plan. In relation to Application U140391, there is no discussion of whether the activity will “not be contrary to the objectives and policies” of the Sounds Plan, as required by section 104D of the RMA.

EDS requests that Council requires the applicant to provide an assessment of applications against the relevant objectives and policies of the Sounds Plan. EDS reserves the right to comment on the objectives and policies of the Sounds Plan at the hearing.

Existing environment

In *Port Gore Marine Farms v Marlborough District Council* [2012] NZEnvC 72 the Environment Court considered whether coastal permits for three mussel farms in Port Gore should be renewed. The permits had expired but were running on under s 165ZH of the RMA while the appeals were resolved. The Environment Court noted that, since the coastal permits had expired, the existing environment has to be imagined as if the farms were not there.¹ Similarly, these applications relate to renewal of coastal permits which will expire in the very near future (31 August and 1 September respectively). The decision-maker will need to consider the existing environment as if the farms were not there.

There is one exception to this. Under section 104(2A) of the RMA, the consent authority must have regard to the value of the investment of the existing consent holder. The application contains no information as to this requirement. EDS reserves the right to comment on this at the hearing.

Figure 2 refers to “other marine farm consents in the area”. The two marine farms in the bottom right of the figure applied for consent renewals and were declined. They no longer exist. The marine farmers in the bottom left of the figure are located in CMZ2 and are subject to a different policy and rule framework.

Landscape effects

The applications state that the sites are in an area identified as an outstanding natural landscape. Policy 15(a) of the New Zealand Coastal Policy Statement 2010 is therefore applicable. This requires adverse effects of activities on outstanding natural landscapes in the coastal environment to be avoided. The Supreme Court has recently stated that “avoid” means “not allow” or “prevent the occurrence of”.²

It is expected that the marine farms will have adverse effects on the outstanding natural landscape. However, the applications are not accompanied by a landscape assessment. There is no assessment of the extent of effects the marine farms would have on the outstanding natural landscape. EDS requests that the Council requires the applicant to provide an assessment of the landscape effects of the proposed marine farms and that this is peer reviewed by an expert for the Council. EDS reserves the right to comment on landscape effects at the hearing.

¹ [34] and [140]

² *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZKS 38

Natural character effects

Section 6(a) of the RMA requires decision-makers, as a matter of national importance, recognise and provide for the preservation of the natural character of the coastal environment and its protection from inappropriate use and development. The New Zealand Coastal Policy Statement 2010 builds on this requirement. Policy 13 requires that adverse effects on areas of outstanding natural character are avoided and significant adverse effects on other areas of natural character are avoided. As set out above, “avoid” means “not allow” or “prevent the occurrence of”.

It is expected that the natural character of the area is outstanding (or at the very least high) and the marine farms will have adverse effects on the natural character of the area. However, the applications do not assess the level of natural character in the area. Neither do the applications assess the extent of effects the marine farms would have on the natural character of the coastal environment (although the Ecological Report would be relevant to this). EDS requests that the Council requires the applicant to undertake an assessment of natural character and the effects of the applications and that this is peer reviewed by an expert for the Council. EDS reserves the right to comment on natural character assessment and effects at the hearing.

The applications do include a brief discussion of section 6(a). However, the author appears to confuse natural character with public access and navigation issues. In relation to section 6(a) the applications state “The site has been positioned to allow access along the northern coastline of Port Gore without impediment. The main travel routes are well beyond the northern boundary of the proposed extension. Access between the shore and structures has been maintained.”

It is unclear what the “proposed extension” is in reference to. The application states that “No change to the present location or boundaries of the consent are sought” (Ecological Report, p3). EDS reserves the right to comment on any extension of the marine farm area at the hearing.

SUBMISSION AT THE HEARING

EDS wishes to speak in support of its submission.

A handwritten signature in blue ink that reads "Nde Wit". The signature is written in a cursive, flowing style.

2 July 2014