

Decision No. A **045** /2006

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of three appeals under section 120 of the Act

**BETWEEN**

**SOUTH KAIPARA HARBOUR**

**ENVIRONMENT TRUST**

(RMA 1205/01)

**BRITTA HIETZ**

(RMA 1208/01)

**ROYAL FOREST AND BIRD**

**PROTECTION SOCIETY**

**OF NEW ZEALAND INC**

(RMA 1219/01)

**TE RUNANGA O NGATI WHATUA**

(RMA 1175/01)

**KAKANUI MARAE TRUST BOARD**

(RMA 1212/01)

Appellants

**AND**

**AUCKLAND REGIONAL COUNCIL**

Respondent

**AND**

**BIOMARINE LIMITED**

Applicant

**BEFORE THE ENVIRONMENT COURT**

Environment Judge L J Newhook (presiding)

Environment Commissioner K A Edmonds



Environment Commissioner H A McConachy

**HEARING** at Auckland on 27, 28, 30 September 2005 and 31 January 2006, site visits on 29 September 2005 (by land and water) and 1 February 2006 (by land)

**APPEARANCES**

S L Fraser and J A Burns for respondent

P F Majurey and T L Hovell for applicant

S Hedley for Te Runanga O Ngati Whatua and the Kakanui Marae Trust Board

K R M Littlejohn for other appellants

**DECISION**

**Introduction**

[1] Biomarine Limited (“Biomarine”) was granted consent by the Auckland Regional Council to construct and operate a mussel farm within a 30 ha area in the Kaipara Harbour, close to the coastline between Te Kawau Point and Omokoiti Bay, approximately 4km south-east of South Head. These appeals are against that decision.

[2] The Biomarine applications were not caught by the Resource Management (Aquaculture Moratorium) Amendment Act 2002. Accordingly, the applications fall to be determined under the RMA as if the Resource Management Amendment Act (No 2) 2004 had not been passed. (Refer section 50(2) Aquaculture Reform (Repeals and Transitional Provisions) Act 2004).

[3] After notification of the applications, a slight modification was made to the location of the proposal, shifting it some 50 metres east and 100 metres north from the site originally applied for. This was said to be to address navigational concerns raised by submitters. There was no suggestion that the changing of the location took the proposal outside the jurisdictional scope of the original application.

[4] Mr Hedley advised us on behalf of Te Runanga O Ngati Whatua (“Ngati Whatua”) and Kakanui Marae Trust, that draft conditions contained in a “consent memorandum” lodged in Court would resolve their concerns.



### **Issues in the case**

Issues that we identified as requiring to be resolved in the case, stated in no particular order, are :

- **Effects on the environment :**
  - effects on people and communities
  - economic
  - cultural
  - social
  - aesthetic
  - amenity
  - landscape
  - natural character
  - ecological
  - navigation
  - effects on recreation and tourism
- **Permitted baseline**
- **Precedent**
- **Alternatives**



- **Part II assessment**

**The site and its environment**

[5] The Kaipara is New Zealand's largest enclosed harbour and estuarine system, covering some 94,700 ha, and having over 800km of coastline. The harbour is an important habitat for large numbers of migratory waterfowl, including several threatened species. It is internationally recognised for that feature. It is also a major breeding area and resting site for migrating wading birds.

[6] The Okahukura (Taporā) Peninsula divides the harbour into two, creating what are sometimes called the north Kaipara and the south Kaipara. On the inland or eastern side of the harbour there is an intricate pattern of flooded tributary valleys, contrasting with the expansive open areas of the main harbour in which the proposal is found. Within the open harbour there are defined channels separated by extensive sand banks and tidal flats. There are no marine farms in the south Kaipara, although there are some small-scale oyster farms in the north Kaipara.

[7] The land surrounding the harbour is relatively low and rolling, with the hills on the South Head Peninsula rising to (generally) about 100m, but at a few higher points to around 180m. The harbour as a whole is characterised by low and long horizons, which accentuate the feeling of sky, weather, and the expansiveness of the harbour. Access to South Head is by a winding road from Parakai, near Helensville, that provides occasional vantage points over the harbour.

[8] The site of the proposed mussel farm is adjacent to a line of cliffs 30 to 50m high, with farmland, pine plantations, eucalypts, and shelter-belts on the rolling land behind. The cliffs are being actively eroded, with parts supporting colonising plants. There is deer fencing on land near the north end of the site. There is a scattering of houses and farm buildings in the area. These include a house above Mosquito Bay approximately 1.2 km to the north-west, two farmsteads, and a house under construction near South Head Road some 300m inland of the cliffs to the west of the site. There are a farmstead and buildings associated with a former prawn farm at Omokoiti Bay near the southern end of the site and a house on a knoll behind Omokoiti Bay approximately 800m to the south-west. There are also several houses on a hill south-west of Omokoiti Bay, 1.5km – 2.5km

