

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

ENV-2020-CHC-51

IN THE MATTER of the Resource Management Act 1991 (RMA)

AND

IN THE MATTER of Appeals under Clause 14 of the First Schedule of the Act

BETWEEN **THE NEW ZEALAND KING SALMON CO. LIMITED**

Appellant

(Continued next page)

**FOR THE NEW ZEALAND KING SALMON CO. LIMITED: MEP APPEALS CASE
MANAGEMENT MEMORANDUM NO. 1
Dated this 14th day of August 2020**

Next Event Date: 28 August 2020

**GASCOIGNE WICKS
LAWYERS
BLLENHEIM**

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AND MARLBOROUGH DISTRICT COUNCIL

Respondent

**AND ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED ENV-2020-CHC-67,
THE ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED ENV-2020-CHC-64,
FRIENDS OF NELSON HAVEN & TASMAN BAY (INC) ENV-2020-CHC-33,
EAST BAY CONSERVATION SOCIETY INCORPORATED ENV-2020-CHC-78,
MINISTER OF CONSERVATION ENV-2020-CHC-42,
EAST BAY CONSERVATION SOCIETY INCORPORATED ENV-2020-CHC-78,
MCGUINNESS INSTITUTE ENV-2020-CHC-48,
TRUSTPOWER LIMITED ENV-2020-CHC-50,
KIWIRAIL HOLDINGS LIMITED ENV-2020-CHC-57,
PORT MARLBOROUGH NEW ZEALAND LIMITED ENV-2020-CHC-49,
MARINE FARMING ASSOCIATION AND AQUACULTURE NEW ZEALAND ENV-2020-CHC-74**

Appeals to Which The New Zealand King Salmon Co. Limited is a s274 Party

May it Please the Court:

- 1 The New Zealand King Salmon Co. Limited (NZ King Salmon) adopts the comments contained with the Aquaculture Interests Memorandum which will be filed separately.
- 2 NZ King Salmon has reviewed the Respondent's Topics and Sub-Topics list of 31 July. A list of potential corrections in respect of matters to which NZ King Salmon is involved are set out in the attached **Schedule 1**. This is a tentative list from an initial review of the Council's list and we propose to work through this with the Respondent's Counsel as:
 - (a) Some of the aspects identified might simply require clarity on expression;
 - (b) Some might be errors in the list; and
 - (c) Some might be linked to a lack of clarity in a particular aspect in s274 notices.
- 3 Additionally, NZ King Salmon wishes to raise a jurisdictional matter in respect of the McGuinness Institute appeal (ENV-2020-CHC-48). NZ King Salmon's view is that the Court lacks the jurisdiction to hear the McGuinness Institute Appeal. There are multiple reasons for that submission:
 - (a) The McGuinness Institute Appeal concerns the absence of aquaculture provisions. The aquaculture provisions of the plan were expressly excluded from the notified version of the plan.¹ It follows that in a *Motor Machinist* sense² the submission was not "on" the proposed plan.
 - (b) The Notice of Appeal seeks different relief that was sought in the submission of the McGuinness Institute.
 - (c) The appeal seeks the withdrawal of the entire proposed plan, contrary to Clause 14(2)(b) of Schedule 1 of the Act.
 - (d) The Act does not enable a Regional Coastal Plan to require "permit information" to be stated in annual financial statements of consent holders.
 - (e) The plan already includes coastal occupation charges (refer paragraph 8.1). There is no ability under the Act to impose a tax.

¹ See words to that effect in the Public Notification of the proposed Marlborough Environment Plan (attached) as **Schedule 2**.

² *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290

- (f) Paragraph 8.3 to 8.6 are vague.
- 4 The appeal would not survive a strike out application. Nevertheless, an alternative approach is to wait for the aquaculture variations and then invite the McGuinness Institute to withdraw its appeal. Some of the points which it makes could form the basis of submissions in that process.
- 5 If the appeal is not withdrawn NZ King Salmon will apply to strike it out. There seems to be no pressing need to do so at this time.

Dated this 14th day of August 2020



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Quentin Alexander Muir Davies
Solicitor for Appellant

**Schedule 1: List of Potential Corrections to the Respondent's Topics and Sub-Topics List
of 31 July 2020**

- 1 As Appellant:
- (a) NZ King Salmon needs to be added to the appeals for policy 13.2.1. That is subtopic 11.1.
 - (b) New topics needed may need to be added for:
 - (i) The definition of 'recognised navigational route' in chapter 25, volume 2. NZ King Salmon has appealed in respect of that point. It is not in the table.
 - (ii) Topics that relate to the new provisions that NZ King Salmon sought (new objective 4.3A, new issue 4D, new policy 4.41, 4.1.1A, 4.1.2A, 4.1.2B) should be in separate subtopic?
 - (iii) Policy 13.7.2 doesn't seem to be in the table. Is it intended to be caught by a catchall somewhere?
 - (iv) NZ King Salmon has appealed the volume 4 map of the 'national transportation route'. That does not seem to be included within the topics chart. Is it meant to be under topic 16.4 which deals with shipping activity and the national transportation route?
 - (c) NZ King Salmon appear to have been incorrectly added to subtopic 5.8 as an s274 party. It has not appealed volume 1 policy 8.2.2 or method 8.M.3 (unless, these subtopics fall into a consequential change or other appeal point i.e. one of the catch-all sections in his appeal notice)?
 - (d) Subtopic 10.19 – NZ King Salmon should be listed as a s274 party, not as an appellant.
 - (e) Ecologically Significant Marine Sites (ESMS) 5.4, 5.6 and 5.8 need to be specifically added.
 - (f) NZ King Salmon hasn't appealed 13.3.1/13.3.2 (but has appealed 13.3.4) – see subtopic 10.2. Likewise it hasn't appealed 13.M.4 but that is lumped into subtopic 10.1 where NZKS has appealed 13.2.3, and is therefore listed as an appellant.
 - (g) NZ King Salmon 'overarching policies' in chapter 4 of Vol 1 are not listed in the table – unless that is supposed to be part of subtopic 10.19?
- 2 As a s274 party:

- (a) NZ King Salmon to be added to subtopic 13.8, as it has appealed policy 15.1.23 as an s274 party?
- (b) NZ King Salmon needs to be added to subtopic 22.1 as a s274 party, regarding the appeal of the Introduction of Chapter 1 of Volume 1.
- (c) NZ King Salmon presumes the following are captured by various catchalls in the table? It might be expressed more clearly:
 - (i) Policy 6.2.9
 - (ii) Policy 6.2.X
 - (iii) Policy 7.2.X
 - (iv) New map Marlborough Sounds Bird Area
 - (v) Appendix 4
- (d) It is unclear why NZ King Salmon is included in appeals for transport, and energy and use/development. See subtopics 16.1 – 16.4 and 17.1 – 17.4.
- (e) NZ King Salmon also needs to be removed from subtopic 5.8, as it has not appealed policy 8.2.2 or method 8.M.3?
- (f) NZ King Salmon is listed twice as s274 party in subtopic 5.6, and also listed twice in subtopic 5.10 s274 list. Is there a reason?

3 Other:

- (a) “NZKD” is typo instead of “NZKS” in subtopic 10.19 as s274.
- (b) Need to clarify whether NZ King Salmon intended to be interested in specific ESMS sites at subtopic 5.2? NZ King Salmon is interested in overlays generally in that regard.

Schedule 2



PUBLIC NOTIFICATION OF THE PROPOSED MARLBOROUGH ENVIRONMENT PLAN

Marlborough District Council has prepared the Proposed Marlborough Environment Plan which is a combined Regional Policy Statement, Regional Coastal Plan, Regional Plan, and District Plan. It follows the completion of a review of the Marlborough Regional Policy Statement, and most of the Marlborough Sounds Resource Management Plan and Wairau/Awatere Resource Management Plan except provisions managing marine farming. Consequently, provisions relating to marine farming are beyond the scope of this notified plan.

The Marlborough District Council is now publicly notifying the Proposed Marlborough Environment Plan for submission pursuant to Clause 5, Schedule 1 of the Resource Management Act 1991(RMA).

The Proposed Marlborough Environment Plan consists of four volumes:

- Volume One: Issues, Objectives, Policies and Methods
- Volume Two: Rules
- Volume Three: Appendices
- Volume Four: Maps

The Proposed Marlborough Environment Plan does not replace the provisions of the operative planning documents managing marine farming. The provisions listed in Table 1 below from the Marlborough Sounds Resource Management Plan and the Wairau/Awatere Resource Management Plan relating to marine farming remain under review. The outcome of that review will be given in a separate public notice.

WHERE TO GO TO SEE THE PROPOSED PLAN

Printed copies of the Proposed Marlborough Environment Plan and reports prepared under Section 32 of the RMA are available for inspection at:

- The Council's Office, Seymour Street, Blenheim
- The Marlborough Library, Arthur Street, Blenheim
- The Council's Picton Office and the Picton Library, High Street, Picton
- The Havelock, Seddon, Ward and Rai Valley Community Libraries

To better understand how the Proposed Marlborough Environment Plan may affect you, we encourage you to go to Council's website www.marlborough.govt.nz to view the full version.

A list of material incorporated in the Proposed Marlborough Environment Plan by reference, and details of where this material can be purchased, are available at www.marlborough.govt.nz. This material is also available for inspection free of charge at the Marlborough District Council Offices in Picton and Blenheim.

LEGAL EFFECT

In accordance with section 86B(3) of the RMA there are rules in the Proposed Marlborough Environment Plan that will have legal effect from the date of this notification. These rules have been specifically identified in the Plan.

In accordance with section 86B(1) of the RMA the remainder of the rules will not have legal effect until decisions have been made on submissions to the rule and the decision has been publicly notified.

NOTICE OF REQUIREMENT

The following propose either new or significant alterations to existing designations.

Minister of Education

St Mary's School, Blenheim for education purposes
St Joseph's School, Picton for education purposes

Marlborough Lines Limited

Nelson Street Zone Substation, Nelson Street, Blenheim – Substation

KiwiRail Holdings Limited

Extend the current designation to include rail corridor land owned by KiwiRail Holdings Limited that has not previously been designated.

Include crossings of roads and waterways in order to show the designated rail corridor as continuous.

SUBMISSIONS

Any person may make a submission on the Proposed Marlborough Environment Plan but if a person could gain an advantage in trade competition through the submission, then the person may do so only if the person is directly affected by an effect of the proposal that -

- Adversely affects the environment; and
- Does not relate to trade competition or the effects of trade competition

Submissions must be in the form prescribed (Form 5) by the Resource Management Act (Forms, Fees, and Procedure) Regulations 2003 and must state whether or not you wish to be heard on the submission.

Submission forms are available at the places listed above. An electronic submission form is available on the Marlborough District Council website. The closing date for making submissions is **5.00 pm on Thursday 1 September 2016**. Submissions can be lodged -

By delivery at:

Planning Technician
Marlborough District
Council
Seymour Street
Blenheim 7201

By mail to:

Attention: Planning
Technician
Marlborough District
Council
P O Box 443
Blenheim 7240

By email to:

mep@marlborough.govt.nz

By fax at:

(03) 520 7496

Once the closing date for lodging submissions has passed, all submissions received will be summarised, publicly notified and made available for public inspection. Any person who represents a relevant aspect of the public interest, or has an interest in the proposal greater than the general public may make a further submission in support or opposition to any submissions already made.

The Council will then hold hearings to consider submissions that have been lodged. Anyone who has made a submission and who has indicated that they wish to be heard will have the right to attend the hearing and to present their submissions.

The Council will then publicly notify a decision on the Proposed Plan. On receiving notice any person may refer the decision to the Environment Court for further

consideration if they are in disagreement with or are dissatisfied with the decision made by the Council.

For further information contact **Sue Bulfield-Johnston**, at Marlborough District Council on Ph 03 520 7400.

Dated at Blenheim at 8:00 am on the 9 June 2016.

MARK WHEELER
CHIEF EXECUTIVE

Table 1

Marlborough Sounds Resource Management Plan provisions not reviewed and not replaced by the Proposed MEP	Wairau/Awatere Resource Management Plan provisions not reviewed and not replaced by the Proposed MEP
Objective 8.3.1 (as it relates to marine farming) and Policies 8.3.1.2 and 8.3.1.3	Objective 9.12.1, Policies 9.12.1.1, 9.12.1.2 and 9.12.1.3
Objective 9.2.1.1 (as it relates to marine farming) and Policies 9.2.1.1.14 (as it relates to marine farming), 9.2.1.1.15, 9.2.1.1.16 and 9.2.1.1.17	Rule 39.3.1, bullet point 13 and Rule 39.3.3.12
Objective 9.4.1.1 (as it relates to marine farming) and Policies 9.4.1.1.7, 9.4.1.1.8, 9.4.1.1.9 and 9.4.1.1.11	
Rule 35.1, bullet point 7	
Rule 35.2, bullet point 4 and Rule 35.2.5	
Rule 35.2, bullet point 9 and Rule 35.2.8	
Rule 35.3.1	
Rule 35.4, bullet point 10 and Rule 35.4.2.9	
Rule 35.4, bullet point 11	
Rule 35.4, bullet point 19 and Rule 35.4.2.10	
Rule 35.5, bullet point 5	
Rule 35.5, bullet point 13	
Rule 35.6, bullet point 3	