

First time inclusion of climate change
review condition in resource consent

*Director-General of Conservation v
Marlborough District Council [2023]*

JT COURT

AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2023] NZEnvC 203

IN THE MATTER

of the Resource Management Act 1991

AND

appeals under s120 of the Act

BETWEEN

**DIRECTOR-GENERAL OF
CONSERVATION**

(ENV-2022-CHC-67)

AND

**MCGUINNESS INSTITUTE
LIMITED**

(ENV-2022-CHC-68)

Appellants

AND

**MARLBOROUGH DISTRICT
COUNCIL**

AND

**THE NEW ZEALAND KING
SALMON CO LIMITED**

Respondents

Environment Judge J J M Hassan – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 19 September 2023

CONSENT ORDER

Director-General of Conservation & McGuinness Institute Limited v MDC & The New Zealand
King Salmon Co Limited – Consent Order



A: Under s279(1)(b) RMA,¹ the Environment Court, by consent, orders that:

- (1) the appeal is allowed and the conditions of resource consent U190438.1 are amended as set out in Annexures 1 and 2, attached to and forming part of this order;
- (2) the appeal is otherwise dismissed.

B: Under s285 RMA, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns two appeals filed by the Director-General of Conservation and McGuinness Institute Limited against the grant of resource consent U190438 to The New Zealand King Salmon Co Limited ('NZKS') to establish two salmon farms known as 'Blue Endeavour'. The decision to grant resource consent was made on behalf of Marlborough District Council by an Independent Hearing Panel acting under delegated authority. The coastal permit authorises NZKS to establish and operate two salmon farms within a 1,000ha site north of Te Uku/Cape Lambert, Northern Marlborough.

[2] I have read and considered the consent memorandum of the parties dated 2 June 2023 which explains the parties, having participated in court-facilitated mediation, have agreed to a set of amended conditions. The agreement reached resolves the appeals.

Other relevant matters

[3] Minister for Oceans and Fisheries, Friends of Nelson Haven and Tasman Bay Incorporated and Guardians of the Sounds Incorporated each gave notice of

¹ Resource Management Act 1991.

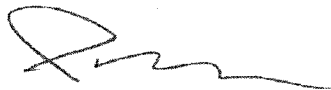
an intention to become a party to the appeals under s274 RMA, and have signed the memorandum setting out the relief sought.

[4] No party seeks costs, all parties agreeing that costs should lie where they fall.

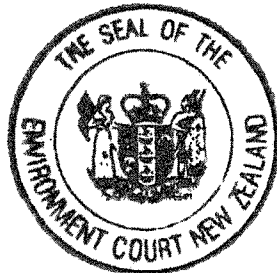
Outcome

[5] The court makes this order under s279(1) RMA, such order being by consent rather than representing a decision or determination on the merits pursuant to s297. The court understands for the present purposes that:

- (a) all parties to the proceeding have executed the memorandum requesting this orders;
- (b) all parties are satisfied that all matters for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the RMA, including in particular, pt 2.



J J M Hassan
Environment Judge



Certificate of Resource Consent

Consent Holder:	The New Zealand King Salmon Company Limited
Consent Type:	Coastal Permit
Consent Number:	U190438.1
Lapse Date:	This consent will lapse on 10 December 2032 unless given effect to prior to that date.
Expiry Date:	If this consent is given effect to, the consent will expire on 10 December 2057.
Part 3, Section	S12(1)(b), (c), (d); 12(2)(a),12(3)

Pursuant to sections 34A(1) and 104B and after having regard to Part 2 matters and sections 104D and 104 of the Resource Management Act 1991, the Marlborough District Council **grants** a coastal permit to establish and operate two new salmon farms (the north farm and the south farm) located approximately 5 kilometres to the north of Te Uku/Cape Lambert, in northern Marlborough as detailed on OCEL drawing SK-051103-521, Rev 5, dated 3 August 2021 (attached) subject to conditions imposed under section 108 of the Resource Management Act 1991 below.

Conditions

General

1. The consent holder shall always and only undertake the activity provided for by this resource consent in accordance with:
 - a) The conditions of this resource consent; and
 - b) A certified version of each Management Plan, Monitoring Plan, or Wild Fish Monitoring Method, required by the conditions of this resource consent.

In the event that there is an irreconcilable conflict between the conditions of this resource consent and a Management Plan, Plan or Method specified in (b), the conditions shall prevail. In the event of an inconsistency between Management Plans and Methods specified in (b), the more stringent requirement will prevail.
2. There shall be no use of Organohalogenated Contaminants (OHC's), therapeutics or antibiotics at either Salmon Farm.
3. No separate predator nets are to be installed as part of this consent.

Lapsing

4. This resource consent shall have been given effect to (in terms of section 125 RMA) once any Salmon Farm structure has been installed pursuant to this resource consent.

be adequately avoided, remedied or mitigated by any term or condition incorporated within the consent.	
To require the consent holder to adopt the best practical option to avoid, remedy or mitigate any adverse effect on the environment relating to the activity.	On any anniversary of the granting of this consent.
To address any matter which might be incorporated into or that is absent from any Management Plan prepared in accordance with this resource consent.	Within 90 working days of the Compliance Manager being provided with a Management Plan or revised Management Plan.
To address any matter which might arise from a notice of suspension of class or notice of withdrawal of class from a Recognised Organisation.	Within 90 working days of the Compliance Manager being provided with such a notice.
To address issues arising from an incident reported pursuant to conditions 74 and 90 of this resource consent	Within 90 working days of the Compliance Manager receiving an incident report pursuant to conditions 74 and 90.
To address issues arising from a review of Best Management Practice Guidelines relevant to this consent or any subsequent version of these guidelines.	Within 90 working days of revised best management practice guidelines being adopted by the Compliance Manager.
To address any issues arising from the Benthic Review Report.	Within 90 working days of the Compliance Manager receiving the Benthic Review Report.
To address any effects of the salmon farms that are different or more significant due to the effects of climate change, including due to a change in the importance of the location for indigenous biodiversity, and which are appropriate to deal with at a later stage.	During the years of the 150 th and 25 th anniversary of the granting of this consent and every 5 th year thereafter.
Ensuring the conditions of this consent are consistent with any National Environmental Standards, Regulations, relevant plans and/or the Regional Policy Statement.	As required.

Removal of Structures

~~404-105.~~ The consent holder shall, at its expense, remove all structures associated with the activity authorised by this resource consent and provide written confirmation of the removal to the Compliance Manager, within three months of any of the following events occurring:

- (a) The term of the resource consent(s) has expired and the consent holder has not lodged an application to renew the consent for those structures, or if such an application has been lodged the consent has been refused and all rights of appeal exhausted; or
- (b) The resource consent has been surrendered by the consent holder or cancelled by the Council; or
- (c) The structures in the opinion of the Compliance Manager are redundant or derelict.

Other Matters

~~405-106.~~ Pursuant to section 36 of the RMA and the Council's Schedule of Fees, the consent holder shall be responsible for all actual and reasonable costs associated with the administration, monitoring and review of this resource consent.

~~406-107.~~ The consent holder shall pay coastal occupation charges if they are imposed through Council's resource management plans.

~~407-108.~~ Where these resource consent conditions require a Management Plan, Monitoring Plan, or Wild Fish Monitoring Method to be 'certified' or a review of a