

**Before Independent Commissioners  
Delegated by Marlborough District Council**

**Ref: U190438**

**Under** the Resource Management Act 1991

**In the matter of** an application by The New Zealand King Salmon Company Ltd, to establish and operated a new salmon farm within a 1,000 ha site located approximately 5km north of Cape Lambert (known as "Blue Endeavour")

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**MEMORANDUM OF COUNSEL FOR THE MCGUINNESS INSTITUTE  
18 FEBRUARY 2022**

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**Counsel Acting**  
M J Slyfield  
Stout Street Chambers

(04) 915 9277  
morgan.slyfield@stoutstreet.co.nz  
PO Box 117, Wellingto

1. The purpose of this memorandum is to clarify an aspect of the information provided by the McGuinness Institute (Submitter #54) during its presentations to the Commissioners. The Institute understands the hearing has not yet been closed, and requests that this clarification be received by the Commissioners and taken into account in due course in the Commissioners' deliberations.
2. To remind the Commissioners, the Institute's presentations included evidence from Ms McGuinness on 22 October 2021, in which Ms McGuinness referred, among other things, to the applicant's financial statements. Subsequently, when legal submissions for the Institute were presented by counsel on 2 December 2021, Commissioner Enright posed the question:


Would you accept that some of the information and evidence that Ms McGuinness gave us probably does fall outside the scope of what is relevant under the RMA, because for example she took us to financial statements for King Salmon and some other material – it's not really relevant is it?

To which, counsel responded:

I do accept that.

3. To be clear, it is not accepted that Ms McGuinness's specific references to financial statements are irrelevant to the application, and the above answer is retracted to the extent that it creates that impression. While it is not, generally, for a consent authority to assess whether a proposal will be a commercial success (which matter has already been covered in legal submissions) the economic costs and benefits of a proposal are a relevant consideration. The evidence of Mr Kaye-Blake concerning costs and benefits relied upon the applicant's financial information—see in particular, paragraphs 25 and 26 of Mr Kaye-Blake's evidence and the related footnote 4, which confirm that Mr Kaye-Blake's assessment relied upon financial data provided by the applicant.
4. The evidence of Ms McGuinness used the same type of financial data on which Mr Kaye-Blake relied, namely information contained in NZKS's Annual Report. To the extent that Mr Kaye-Blake's evidence relying on the financial data is relevant, so too must Ms McGuinness's critique of the same data be relevant. Equally, if Ms McGuinness's critique of financial data is not considered relevant, it would seem logical that Mr Kaye-Blake's evidence, given the significant role the same financial data had in his economic model, should also be considered irrelevant.
5. Ms McGuinness reviewed past financial data as a way of understanding the future. This future focus is required under the Resource Management Act 1991 (being an inherent aspect of, for example, ss 104 and 5).

6. Ms McGuinness went further than Mr Kaye-Blake in that she looked at emerging trends and how those trends might impact NZKS's profitability, and therefore its ability to meet its environmental obligations. A recent example that illustrates the pace of change is NZKS's announcement of reduced profitability on the NZSX as at 1 February 2022 due to climate change and in particular rising water temperatures.<sup>1</sup>
7. In summary, it is submitted that Ms McGuinness's critique should not be considered irrelevant on account of the type of data she has relied upon, as the same type of data has been relied upon by the applicant in Mr Kaye-Blake's evidence.

  
**M J Slyfield**  
Counsel for the McGuinness Institute

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<sup>1</sup> Retrieved in February 2022 at: <https://login.nzx.com/announcements/386678>