

From: Morgan Slyfield
Sent: 2 Dec 2022 17:12:24 +1300
To: Sue Bulfield-Johnston-5141
Subject: FW: McGuinness Institute appeal
Attachments: Notice of Appeal (McGuinness Institute).pdf

Hi Sue,

Please see attached appeal from the McGuinness Institute. I emailed it to Barbara just before 5pm, as I thought she was still the right person to serve it on.

Thanks,

Morgan

Morgan Slyfield
Barrister
Stout Street Chambers

P. 04 9159277
M. 021 915927

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From: Barbara Mead <Barbara.Mead@marlborough.govt.nz>
Date: Friday, 2 December 2022 at 4:56 PM
To: Morgan Slyfield <Morgan.Slyfield@stoutstreet.co.nz>
Subject: Automatic reply: McGuinness Institute appeal

Hello

Thank you for your email. I am no longer working with Council and accordingly this email account will not be cleared.

I apologise for the inconvenience.

Please re-send you email to the relevant team manager, Sue Bulfield-Johnson or Gina Ferguson who will assist you until my position is filled.

Kind regards

Barbara Mead
Advocacy and Practice Integration Manager

Marlborough District Council

This email, including any attachments, is confidential and may contain legally privileged material and is only for the use of the intended recipient. If you are not the intended recipient then any use, dissemination, distribution or copying of this message is strictly prohibited. If you have received this email in error please notify us immediately and delete the original message. This email does not necessarily represent the views of the Marlborough District Council. Thank you.

In the Environment Court
At Christchurch

I Te Kōti Taiaio o Aotearoa
Ōtautahi

ENV-2022-CHC-.....

Under	the Resource Management Act 1991
In the matter of	an appeal under s 120 against a decision of a consent authority
Between	The McGuinness Institute Appellant
And	Marlborough District Council Respondent

NOTICE OF APPEAL

2 December 2022

(Counsel Acting)
M J Slyfield
Barrister
Stout Street Chambers

DDI: (04) 915 9277
PO Box 117
Wellington 6140
morgan.slyfield@stoutstreet.co.nz
mjs0574

**To: The Registrar
Environment Court
Christchurch**

1. The McGuinness Institute (**the Institute**) appeals a decision granting to the New Zealand King Salmon Company Limited (**NZKS**) a new coastal permit to establish and operate two salmon farms within a 1,000 hectare site North of Te Uku/Cape Lambert, Northern Marlborough.
2. The Institute made a submission on the application for the permit.
3. The Institute received notice of the decision on 11 November 2022.
4. The decision was made on behalf of Marlborough District Council (Council) by independent hearing commissioners Craig Welsh, Liz Burge and Rob Enright acting under delegated authority.
5. The Institute has a right to appeal the decision under section 120 of the Resource Management Act 1991 (**the Act**). The decision to which this appeal relates is not one of those activities excluded by section 120(1A) or (1B) of the Act.
6. The Institute is not a trade competitor for the purposes of section 308D of the Act.
7. The Institute appeals the decision to grant the coastal permit.
8. The reasons for the appeal are:

Effects on Seabirds

- 8.1 There is an absence of information and lack of understanding of the impact of the project on seabirds known to frequent the area, or likely to do so. No appropriate baseline survey of seabird activity for the site has been carried out. The belated survey effort lacked an appropriate methodology and was untargeted and insufficient.
- 8.2 Attempts to quantify the use of the area by any seabird species were inadequate. No proper assessment was carried out of the relative importance of the area for seabirds, or any particular species.
- 8.3 There is insufficient information to make an informed assessment of risk to, or effects on seabird species known to frequent the area, or likely to do so. In light of this uncertainty a precautionary approach should have been adopted. There was no proper basis to conclude

that seabird conditions would avoid, remedy or mitigate adverse effects on seabirds. The seabird conditions do not adequately address the information deficits, make unsupported assumptions about potential impacts on seabirds, are unworkable and do not adequately address fundamental environmental conditions faced by seabirds known to frequent the area, or likely to do so.

- 8.4 The lack of detailed, systematic and quantitative information on the at-sea distribution of seabird species meant that it was not possible to adequately address impacts on species that are threatened or at risk. For example, Flesh-footed Shearwater breed on Titi Island, which is the most southern distribution of the breeding range for this species. The decision to grant consent in light of this uncertainty is unsupportable.
- 8.5 The experimental nature of the conditions in relation to underwater lighting and the conditions relating to mitigation of adverse effects of harm to seabirds should not have been imposed and cannot rationally be supported.

Effects on Marine Mammals

- 8.6 There is an absence of information and lack of understanding of the impact of the project on marine mammals known to frequent the area, or likely to do so. No appropriate baseline survey of marine mammal activity for the site has been carried out.
- 8.7 Attempts to quantify the use of the area by any marine mammal species have been inadequate. No proper assessment was carried out of the relative importance of the area for marine mammals, or any particular species.
- 8.8 There is insufficient information to make an informed assessment of risk to, or effects on marine mammal species known to frequent the area, or likely to do so. In light of this uncertainty a precautionary approach should have been adopted. There was no proper basis to conclude that marine mammal conditions would avoid, remedy or mitigate adverse effects on marine mammals. The marine mammal conditions do not adequately address the information deficits, make unsupported assumptions about potential impacts on marine mammals, are unworkable and do not adequately address fundamental environmental conditions faced by marine mammals known to frequent the area, or likely to do so.
- 8.9 The lack of detailed, systematic and quantitative information on the at-sea distribution of marine mammal species meant that it was not possible to adequately address impacts on species that are

threatened or at risk. The decision to grant consent in light of this uncertainty is unsupportable.

Emissions Effects

- 8.10 The full emissions effects of the project have not been properly assessed or taken into account in the decision to grant the permit.

Effects of Climate Change

- 8.11 The project's vulnerability to the effects of climate change (including, but not limited to, rising sea levels, more frequent and severe storms and rising water temperatures) have not been properly assessed, which calls into question whether the claimed benefits of the project may be realised.

Eutrophication Effects

- 8.12 Eutrophication effects have not been sufficiently assessed to enable a decision to be made with confidence about the potential eutrophication effects of the proposal.

Water quality and benthic effects

- 8.13 The project will have adverse effects on water quality and benthic ecosystems that have not been adequately assessed, or will not be avoided, remedied or mitigated by the proposed conditions.

Biodiversity

- 8.14 The project will have adverse effects on biodiversity that have not been adequately assessed, or will not be avoided, remedied or mitigated by the proposed conditions.

Biosecurity

- 8.15 The project gives rise to potential biosecurity risks which will impact on the surrounding marine environment. These risks have not been adequately identified, or addressed in the proposed conditions.

Natural Character, landscape and visual effects

- 8.16 The project will have adverse effects on natural character, landscape and visual amenities. There is a lack of information which

makes it difficult to determine the full extent of these impacts, but these effects have not been addressed by the proposed conditions.

Risks to other marine activity

- 8.17 The project will have adverse effects on other uses of the site and the area, including recreational and commercial marine activity.

Cumulative effects

- 8.18 The effects outlined above are cumulative upon each other, and the full extent of the effects cumulatively has not been taken into account.

Benefits

- 8.19 Potential benefits of the project have been over-stated in reliance on incomplete information. For example, but without limitation, the applicant has experienced significant mortality and decreased productivity at its other sites, and the potential for the wider climate crisis and its environmental impacts to undermine the viability of the project, or reduce the potential benefits of the project, has not been taken into account.

Conditions

- 8.20 In addition to specific issues with conditions relating to the topics identified above, the conditions are insufficient to properly manage the effects of the project.

Section 104D Gateway

- 8.21 The adverse effects of the project will be more than minor, and the project is contrary to relevant objectives and policies of the MSRMP and PMP.

Lapse

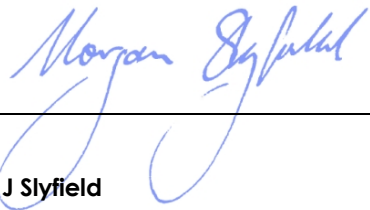
- 8.22 A 10 year lapse period for the project is inappropriate.

Part 2

- 8.23 For the various reasons outlined above, the requirement is contrary to the purpose and principles of the Act.

9. The Institute seeks
 - 9.1 That the coastal permit is declined; or
 - 9.2 That the coastal permit is granted subject to such modifications and/or subject to such conditions, as may be able to address the matters listed in paragraph 8.

10. Attached to this notice are:
 - 10.1 A list of names and addresses of persons to be served with a copy of this notice.
 - 10.2 A copy of the Institute's submission;
 - 10.3 A copy of the decision.



M J Slyfield
Counsel for the McGuinness Institute
2 December 2022

ADDRESS FOR SERVICE OF APPELLANT:

Morgan Slyfield
Barrister
Stout Street Chambers
PO Box 117
Wellington

Email: morgan.slyfield@stoutstreet.co.nz

Telephone: (04) 915 9277

ADVICE TO RECIPIENTS OF COPY OF NOTICE

How to become party to proceedings

You may be a party to this appeal if—

- (a) you made a submission on the matter of this appeal; and
- (b) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (c) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the documents listed at 10.2 to 10.4 above. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

NAMES AND ADDRESSES OF PERSONS TO BE SERVED WITH A COPY OF THIS NOTICE

Name	Address for Service
Hugh Cowan Angus	angusfamily51@xtra.co.nz
Owen Fisher	king_fisher88@hotmail.com
Barbara Jane Gordon	gordonbarbara538@gmail.com
Warren Tocker	warren.tocker@gmail.com
Seafood New Zealand Limited	karen.olver@seafood.org.nz
Jose & John Reyden	jareyden@gmail.com

Tony Downing	shelley@downing.nz
Carl Patrick Carrington	carlc0205@icloud.com
Karl Jamie Perrott	perrottkarl@hotmail.com
Chris Bowater	chris@bowatermotors.co.nz
Stuart Douglas Barnes	stuart.barnes@kingsalmon.co.nz
Warren & Carol Tilley	zigzag.com@xtra.co.nz
Andrew Desmond Stoneham	andrew.stoneham@yahoo.com
Ryan Thomas Goode	95goode@gmail.com
Meseret Hassan	meseret.olsen@kingsalmon.co.nz
Glenda Vera Robb	info@soundsreflection.co.nz
Richard John Bruno de Hamel	richard.dehamel@otago.ac.nz
Gabrielle Margaret Russell Hervey	gayhervey@gmail.com
William John Joy	billjoy111@gmail.com
Robert Schmuke	rschmuke@gmail.com
Department of Conservation	gdeavoll@doc.govt.nz
Grant Lovell	grant_jodie@hotmail.com
Ai Makino	makino-a@kohyoj.co.jp
Philip David Kennard	philk23@hotmail.com
Hannah Eileen Ellis	hannahellis456@gmail.com
Natural Pet Food Group	nhinton@k9natural.co.nz

Neil Ellis	suxess@xtra.co.nz
Boss Net Cleaning Limited	robwhite@bossaqua.com
The Marine Farming Association Incorporated	ned@marinefarming.co.nz
Friends of Nelson Haven & Tasman Bay (Inc)	rschckrd@xtra.co.nz
Bruce Hearn	apexhearn@xtra.co.nz
Ngati Kuia	tariwairau@ngatikuia.iwi.nz
Guardians of the Sounds Group	clarepinder@gmail.com
The Marlborough Chamber of Commerce Incorporated	pete@marlboroughchamber.nz
Allan & Jacob Bartrom	aab7aab@hotmail.com
John Reuhman	john@ecoworldnz.co.nz
The Global Aquaculture Alliance	kent.inglis@bapcertification.org
Andrej Kopusar	Kopusar.A@gmail.com
Marlborough Environment Centre Incorporated	timnewsham@xtra.co.nz bev.doole@icloud.com
New Zealand Trade and Enterprise	peter.chrisp@nzte.govt.nz Julie.Jackson@nzte.govt.nz
Kenepuru & Central Sounds Residents Association	president@kcsra.org.nz
Environmental Defence Society Incorporated	shay@eds.org.nz
Ministry for Primary Industries	Hamish.Wilson@mpi.govt.nz Michael.Nielsen@mpi.govt.nz
East Bay Conservation Society Incorporated	arapawa.denize@gmail.com
Sanford Limited	AUndorf-Lay@sanford.co.nz
Gibsons Limited	bluewave@mshop.co.nz
New Zealand Sport Fishing Council	secretary@nzsportfishing.org.nz
Clifford E Marchant	cliff.marchant@gmail.com

Sea Shepherd New Zealand	michael@seashepherd.org.nz
Royal Forest & Bird Protection Society of New Zealand Incorporated	w.jennings@forestandbird.org.nz
Tony & Susan Cooper	supercoop@xtra.co.nz
Aquaculture New Zealand	Steph.hopkins@aquaculture.org.nz
Southern Inshore Fisheries Management Company Ltd & Challenger Scallop Enhancement Company Ltd	cscott@southerninshore.co.nz
Nelson Tasman Chamber of Commerce	ali@commerce.org.nz
Te Ohu Kai Moana Trustee Limited	ika@teohu.maori.nz bianca.hampton@teohu.maori.nz