EXECUTIVE SUMMARY

EVIDENCE OF SYLVIA JEAN ALLAN

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1. This summary has been prepared as speaking notes in relation to the hearing of evidence by the appointed panel.

2. As will be understood from reading my full evidence, I have concerns that the use of regulations in the current circumstances to effectively provide for new salmon farms is a misuse of the Resource Management Act's regulatory powers in relation to aquaculture. Not only does it extend the powers of section 360A beyond their reasonable application[1], but the application makes changes to the operative Sounds Plan that are patently inconsistent with other recent decisions made under the RMA and that Plan applying to the Waitata Reach in Pelorus Sound where the proposed new sites are largely clustered.

3. The new farms enabled by this regulation cannot be characterised as anything other than new farms. They are in a different location, occupy more space, and the proposed discharges are at a much greater intensity than those they replace[2]. The fact that consents are still needed for farms to operate on the chosen sites is of little significance: the restricted discretionary status and non-notification provisions mean consenting is a straight-forward process of no risk to an applicant.

4. My evidence provides a description of the environment within which the majority of new sites are proposed to be inserted. The area is one of the few parts of the Sounds that is still largely natural, that is an important gateway into the Sounds, and is a treasured landscape with high values[3].

[1] In my opinion, the proposal goes well beyond the meaning of "management" in the context of statutory regulations. I note that the legal submissions for King Salmon draw on the meaning of "sustainable management" in RMA section 5 to justify their use. In my opinion "sustainable management" can only be read in relation to the whole **construct** of the RMA, whereas the management envisaged through regulatory powers can be likened to the use of the term in "construction management plans" in the RMA context.
[2] See paragraphs 16 to 20 of my evidence.
[3] See paragraphs 24 to 36 of my evidence.

5. The extent to which these values are RMA section 6 and 7 values and how the New Zealand Coastal Policy Statement 2010 (NZCPS 2010) applies is currently open, due to the current stage of the review of the Marlborough RPS and statutory plan provisions. In the meantime, in addition to the NZCPS 2010, the operative plan provisions in the Sounds Plan and RPS are the principal basis for evaluation[4].

6. Although King Salmon's legal counsel has pointed out a series of cases which indicate that the Courts have in some circumstances considered that the current RPS and Sounds Plan mean all things to all people, that comment has been applied only at policy level and it does not include the mapping, zoning and rules. It is notable that the regulations propose to change the zoning of parts of the coastal marine area[5] which are currently entirely off-limits for marine farming because the Sounds Plan has identified them as areas where *"marine farming will have a significant adverse effect"* on a range of environmental attributes. The Sounds Plan currently includes some mapped provisions which contribute to an understanding of this zoning[6]. Over-riding prohibited activity status is, in my opinion, a very significant matter that requires a RMA Schedule 1 (or, depending on the circumstances, a Part 6AA) process. This is even more the case given that the currently prohibited activity requires use of public space for occupation, access and to receive the discharges.

7. My evidence has set out what I have always understood to be the schema of the RMA. This is based on my long involvement as a practitioner using the legislation and the instruments developed under it, but is also based on the stated requirements of the RMA itself and case law which has developed under it. In particular my evidence emphasises the importance of the policy flow from RMA Part 2 to National Policy Statements (NPSs) through RPSs to regional and district plans[7]. The importance of NPSs is paramount, and in this case the relevant NPS is the NZCPS[8].

8. I have raised specific concerns in relation to the use of the regulations as in this proposal, in the wider RMA context[9]. These concerns include:

[4] Acknowledging that the proposed Marlborough Environment Plan has been publicly notified and its policy direction may have some relevance.
[5] All or part of all but one of the proposed six sites.
[6] See paragraphs 37 to 45 of my evidence.
[7] See paragraphs 55 to 67 of my evidence.
[8] See paragraph 62 of my evidence notes the expectation embedded in NZCPS that Schedule 1 processes will be applied when giving effect to the NZCPS 2010's policy requirements and directions.
[9] See paragraphs 71 to 73 of my evidence.

- use of the Minister of Aquaculture's power to usurp normal process of policy and plan development, particularly given that such a process is currently being undertaken by the responsible council[10];

- the narrow brief of the Minister of Aquaculture in the RMA and the limitation in relation to judgments which are needed to align regulations with substantive local policy and the proposed salmon farms' environmental implications within the RMA;

- the application of non-RMA government policy, without reconciliation with RMA government policy as expressed in the NZCPS;

- the undertaking of what is effectively a significant plan change, excising the Minister of Conservation's normal role in plan processes; and

- the inconsistency of this proposal with the decision of the RMA Board of Inquiry process on King Salmon's 2014 private plan change request (which is so recent that first monitoring results are not yet available).

All are important matters that raise issues of the integrity of the process and the acceptability of the outcome (if that is to proceed with any of the rezonings). I have strong concerns about precedent given the nature and extent of this proposal[11]

9. I have set out three options for approaches that, in my opinion would have been far preferable[12]. These are expanded in my evidence and are to:

- rely on the current plan review process, which I consider the most appropriate;

- initiate a private plan change to the operative plan. There are a number of ways by which this could be progressed. The main shortcoming would be the stage and the process which would dovetail this into the proposed plan – however, in this respect the process would be no worse than the current amendment to the operative plan and it may be better, depending on the timing; and

[10] I understand that it is King Salmon's stated intention to apply for consents before the aquaculture provisions in the proposed plan (currently being developed) are notified – notwithstanding that such consents are likely to have a bearing on the whole planning framework for aquaculture in the new plan for the foreseeable future.
[11] See paragraphs 82 and 83 of my evidence.
[12] See paragraph 74 of my evidence.

- seek consents for a more modest proposal.

10. I see no basis to provide special treatment for the sites to be phased out[13], or to use them as a lever for new salmon farms.

11. Under the heading of "the relevant statutory tests" I provide my expert opinion in relation to some of the conditions that the panel will have to report to the Minister on in terms of section 360B[14]. I raise concerns in terms of the planning application of all the matters my evidence covers, and particularly the matters which the NZCPS requires decision-makers to consider, many of which are directed to be given effect to in regional coastal plans. My evidence tabulates my opinions on these matters.

12. Finally, I have provided an RMA Part 2 assessment[15]. I consider the regulations to be inconsistent with a number of the matters discussed. It is not clear to me whether Part 2 is directly relevant, even though the proponents of the rezoning by regulation place heavy weight on Part 2 matters such as economic wellbeing and efficient use of resources.

13. My overall conclusion is that the proposal is a misuse of RMA regulatory provisions. It is so out-of-kilter with normal RMA processes (of which several are available to King Salmon) and of such significance that, in my opinion, the panel should not be recommending the use of regulations for this purpose.

Sylvia Allan
27th April 2017

[13] See paragraphs 79 to 81 of my evidence.
[14] See paragraphs 84 to 121 of my evidence – specifically relating to sections 360B 2(a), 2(c)(i), 2(c)(ii) and 2(c)(iii).
[15] See paragraphs 122 to 136 of my evidence.