
TRANSCRIPT OF PROCEEDINGS

**MARLBOROUGH SALMON FARM RELOCATION ADVISORY PANEL
PUBLIC HEARING**

**HELD AT
MARLBOROUGH CONVENTION CENTRE,
42A ALFRED ST, BLENHEIM,
ON 9 MAY 2017**

Appointed Panel Members:
Professor Peter Skelton, CNZM (Chairperson)
Mr Ron Crosby
Mr Alan Dormer, MNZM

[9.11 am]

5 CHAIRPERSON: Good morning and welcome to this resumed hearing. We begin the hearing this morning with a presentation by Jim Goulding. Mr Goulding, if you'd come over here, please.

MR GOULDING: Yes.

10 CHAIRPERSON: I'm just bringing up your original written comments. Have you got anything else, have you prepared anything in addition to that today?

MR GOULDING: Yes, I've got submissions here. Yes, would you like me to ...?

15 CHAIRPERSON: Could you hand that out to us, please?

MR GOULDING: Yes.

CHAIRPERSON: All right, if you wouldn't mind reading that, thank you.

20 MR GOULDING: My name is Jim Goulding and I've been a mussel farmer in the Pelorus Sounds for about 38 years.

CHAIRPERSON: Can everybody hear Mr Goulding?

25 MALE SPEAKER: Not very well.

CHAIRPERSON: No.

MR GOULDING: Is there -- speak up louder.

30 CHAIRPERSON: I don't know whether that's the sound technical problem or whether it's here.

MR GOULDING: I will speak louder.

35 CHAIRPERSON: That might be helpful. Thank you very much.

MR GOULDING: Right. My name is Jim Goulding and I've been a mussel farmer in the Pelorus Sounds for about 38 years. I've worked on various industry organisations during those years and I am still currently a member of the executive of the Marine Farming Association. My family and I own property in Waitata Bay and I operate the family mussel farming business from there. Our farms are mainly in Waitata Bay and Port Ligar with one in Horseshoe Bay and a couple of others. We also have farms in Tasman and Golden Bays.

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My submission is focussed on the New Zealand King Salmon Horseshoe Bay application. I support in general the principle to relocate marine farms that are not appropriately located, for environmental or other planning reasons, providing legitimate and suitable sites can be identified and achieved without overriding other people's rights and staying within historic and current coastal plan parameters. While I do support the principles of these New Zealand King Salmon applications I am strongly opposed to New Zealand King Salmon applying over the top of my site of my existing marine farm at Horseshoe Bay, which is farm number 8207.

I've had some discussions with King Salmon regarding their Horseshoe Bay application but without actual or meaningful conclusions.

[9.15 am]

I've tried to be supportive of their ambitions and have discussed with them moving my farm to another King Salmon site of equivalent size and productivity but it appears that this is not possible due to the no additional new space rule indicated by MPI. There appear to be no viable or equivalent alternative sites available to relocate my existing farm. I have had thoughts about areas that I'm aware of and have a link to that would be suitable to relocate that are not part of the King Salmon application process. So if there was a mechanism within this plan to approve, it would be an additional area so that I could vacate the area that King Salmon are keen on; that would be one way of solving a problem. There's some history around that which I will expand on if you're interested.

I'm not interested in selling my farm. It seems to me that King Salmon have chosen to step outside conventional Resource Management Act process by using ministerial intervention to override some of the RMA and District Plan rights and processes. I believe this creates a controversial precedent. I believe that other high value species other than salmon could be farmed in the Sounds but these species will likely require specific site conditions similar to the King Salmon site requirements. If King Salmon applications are successful the Government and District Council need to be prepared to plan to allow for other aquaculture ventures outside the existing mussel industry.

New Zealand King Salmon have won. They've applied over the top of my existing consent for farm 8207, they've applied for an area not available for aquaculture in the past for navigational reasons, they've applied within 50 metres of my existing consent and they've applied in an area previously declined for aquaculture, in this case mussels, for environment reasons, which is on the north-west corner of my site.

So, in more detail, I am deeply concerned that King Salmon found it appropriate to even apply over the top of my existing and valid RMA consent. I'm not aware of this happening before in the Sounds. This indicates to me that King Salmon have some sort of expectation that the ministerial intervention will somehow override my rights or at least put me under undue pressure to vacate the site. I see no other reason why they would make the application unless they thought their application would be successful.

Point 2, the application extends several hundred metres offshore across the entrance of Horseshoe Bay; this will obviously have navigational implications. Although the proposed site is within the main navigational route of Waitata Reach, it would impact on vessels operating into and out of Horseshoe Bay. If this is an acceptable location for aquaculture the District Plan would have indicated that, however the plan shows that the limit for aquaculture is generally restricted to 250 - 300 metres offshore. If this is to change then the plan needs to allow for all aquaculture to extend offshore. This may not be acceptable to some other Sounds users.

Point 3, the plan provides for a minimum of 50 metres between aquaculture sites for environmental and navigational reasons. New Zealand King Salmon's application obviously does not comply with that rule.

Point 4, my application to extend the size of the site of 8207 in March 2007 was modified during the application process to take into account the benthic report done for that application. I suggest that the effects of mussel farm anchors and warps would have less effect than an established fish farm at the same location. The reason why King Salmon want to establish a fish farm at the site is the same reason as why it is important to me; it is a highly productive mussel farm because of the high water flow at the site. Mussel harvesting restrictions are low because it is in MSQP area 1508 which has a high rainfall closure level which is 55 metres compared to 15 millimetres of rain in the Waitata and Port Ligar area.

Over the years council and mussel industry have discussed ways for the industry to develop with the least possible effect on other Sounds users and the environment. One substantial discussion that we've had revolved around the existing farms moving their inshore boundary 50 metres further offshore to 100 metres offshore and adding 100 metres to the outside boundary. I think this idea has a great deal of merit, particularly in the less populated areas of the Sounds, as it would move the farms further away from the more ecologically sensitive inshore zone and add up to 30 per cent in the less sensitive offshore ecological area. This would allow for modest expansion of the mussel industry over time without venturing into new areas and all of the issues around that process.

- 5 This proposed salmon farm would eliminate my existing farm from any seaward extension in the future. Other than a few exceptions it has been accepted by industry and council that applications are not lodged or approved seaward of existing farms. This New Zealand King Salmon application goes against that long-established situation. Thank you.
- 10 CHAIRPERSON: Thank you, Mr Goulding. Mr Goulding, could you come and show us where your farm is in relation to -- I think it's number 5, isn't it?
- MR GOULDING: Yes, correct. It doesn't show on there but I've got an existing farm there so that application is actually referred at the top of my existing farm.
- 15 CHAIRPERSON: So, what is it, the northern --
- MR GOULDING: Sorry?
- CHAIRPERSON: The north-eastern tip?
- 20 MR GOULDING: I should have clarified, yes.
- CHAIRPERSON: Towards whatever that point is I can't read.
- 25 MR CROSBY: Te Kaingapihi Point, yes.
- MR GOULDING: Yes, so my farm is basically along there like that.
- CHAIRPERSON: Yes.
- 30 MR CROSBY: Go back to -- we're recording your voice too, Mr Goulding. We had evidence from Sanfords expressing similar sorts of concerns to those expressed by yourself in relation to a farm at that location. Where is their farm in relation to yours?
- 35 MR GOULDING: Sanfords?
- MR CROSBY: Yes.
- 40 MR GOULDING: I'm not aware that Sanford have an interest in Horseshoe Bay.
- MR CROSBY: I'd need to check the transcript but it may be one that they're managing, they may not own it.
- 45 MR GOULDING: The farm adjacent to mine is owned by Talleys and beyond that I'm a little unsure who manages them there now but they would be at least 500 or 600 metres from my farm and from the salmon farm.
- MR CROSBY: Yes, I think that's what they were saying.

- MR GOULDING: Okay, well theirs is probably the third farm in the bay then.
- 5 MR CROSBY: Right. So Sanfords could be at the third farm in, you're saying?
- MR GOULDING: Yes.
- MR CROSBY: How long have you owned that farm?
- 10 MR GOULDING: The extension application was in 2007 and I owned the original base farm for probably, I would say since 2000 or somewhere around there maybe even 1998 or 1999. I didn't look that up on the chart before I came.
- 15 MR CROSBY: Have you got anything?
- CHAIRPERSON: Yes, I have. Well you might as well continue.
- 20 MR CROSBY: Okay. There's really three options, I suppose, if this proposal at this location was to proceed. One would either be that you dig your toes in and nothing happens.
- MR GOULDING: Correct, yes.
- 25 MR CROSBY: Second would be a sale, which you've discussed and you're not interested in, and the third opportunity might be a joint venture arrangement between yourself and New Zealand King Salmon. Has that been part of your discussion?
- 30 MR GOULDING: Yes, we have talked about both using the same site but for practical reasons it would still be a disadvantage to my farm even if the King Salmon anchors were underneath my farm. Because of the extreme current flow on that site all of the gear is tested to its max and there's a fair amount of movement of the lines sideways. Mark and I did some
- 35 calculations on water depth, depth to dropper submerged lines, anchor warp ratios and all that and if the application went ahead as proposed it would still affect at least the outside half of my farm which means I would have to reduce dropper lengths or farming methods or something like that.
- 40 MR CROSBY: Mark being Mark Preece?
- MR GOULDING: Mark Gillard from King Salmon.
- 45 MR CROSBY: Oh, Mark Gillard. Sorry, yes.

MR GOULDING: Yes. I support in principle what they're trying to achieve and so we've approached this issue on a constructive basis and to the point where I'm quite open minded about moving to a different location but it has to be of an equal site, reasonably accessible from my farming operation base at Waitata Bay and equally productive. As I said when I was ad libbing a bit there, there is a site that I'm aware of that I've had an application over and involved with for more than 20 years on the outskirts of Waitata Bay and there's been controversy over that application on and off for many years. But if the rules did allow for additional space, and I think that's really the stumbling block and to be quite honest I don't see the logic behind that, within reason.

If we could relocate my farm to a new site and King Salmon then got the part of the site that was necessary for their application then everybody's a winner. The site that I'm aware of is a site that I applied for in 1995 and then various activities happened and it hasn't been able to be used.

MR CROSBY: Where is it?

MR GOULDING: It's on the outskirts of Waitata Bay, Yellow Cliffs is the ...

MR CROSBY: Is that what's been described often in some cases as the Trio Point location?

MR GOULDING: No. It's along this face here.

MR CROSBY: Oh, right, Yellow Cliffs.

MR GOULDING: Yes. I've still got a valid application on that site although I've discussed with council how to make sure things don't turn pear-shaped with that application and it's basically been on hold for quite some time.

MR CROSBY: How many years?

MR GOULDING: If that could be validated and turned into an actual farm I see that as a win-win for everyone but it is new water space.

[9.30 am]

MR CROSBY: So why haven't you pursued that application in the past?

MR GOULDING: I have pursued it a number of times. It's a complicated situation not so much to do with the site but more to do with - it's kind of awkward - process. It was originally approved under the Resource Management Act and then there was complications through the fisheries process and I sort of dug my toes in at that point and I've had my toes dug in for the last 20 years on that site. I think there's some wrong things done.

CHAIRPERSON: When you say complications with the fishery process is that a process where, in addition to getting consent for the farm, there's a competition from the fishing industry as well?

5 MR GOULDING: Yes, both the fishing industry, the commercial and the recreational activities and I - don't quote me exactly - but I think in those early days there were two separate processes which are now more combined. But in that period of time the resource consent was approved and then the fisheries process took place and we reached an agreement with the commercial fishers and were given a verbal to establish the farm and then other things happened from the recreational sector and it turned pear-shaped after that and we were not allowed to occupy the site.

10
15 I actually had a couple of lines on the farm by that stage and we left them there for probably ten years or something but with our crop on and eventually took them out to try and keep the peace. I still have a valid application on the site.

20 CHAIRPERSON: Well, you've got a consent but you haven't exercised it.

MR GOULDING: We can't exercise it and this is where it gets quite complicated --

CHAIRPERSON: I'll say.

25 MR GOULDING: -- and I would need legal help to --

CHAIRPERSON: I'm sure you would.

30 MR GOULDING: -- advise but it's a messy situation. But at the bottom end of the line that site was once approved for aquaculture. Through the resource consent process it was approved by the commercial fishers and then there was some reaction from the recreational fishing groups of that period.

35 CHAIRPERSON: Yes, and presumably that would happen again.

MR GOULDING: No.

40 CHAIRPERSON: Why not?

MR GOULDING: I don't think the recreational fishers' objections were valid and they probably were taken -- other things were considered at the time by what was the ministry of fisheries. But since that point in time that area of Yellow Cliffs has featured in discussions about landscape values and it was raised and discussed at some length I think during the King Salmon applications at Boat Rock and the Waitata Reach area.

45 Since that application I've also bought that land so I'm now the adjacent landowner.

CHAIRPERSON: Are you involved in submissions on the environment plan?

MR GOULDING: Yes.

CHAIRPERSON: In respect of this area?

MR GOULDING: Well, yes.

CHAIRPERSON: On landscapes, yes? What is your submission about?

MR GOULDING: With the District Plan?

CHAIRPERSON: Yes.

MR GOULDING: It will involve -- you've caught me on the hop to be quite honest.

CHAIRPERSON: That's all right, if you can't remember it doesn't matter.

MR GOULDING: Yes. But I have made a great deal of effort to be involved in that whole process primarily through the mussel industry but also in my own right which will involve my thoughts about the landscape values of the area.

CHAIRPERSON: Right.

MR GOULDING: We do own quite a large block of land in Waitata and we have serious concerns about that whole area; we're very interested in it.

MR CROSBY: All right. When you say you bought the adjacent block of land, how big an area is that?

MR GOULDING: That block was probably I think 70 or 80 hectares. I'll show you on the map again if you like. We already own some other land in Waitata around here we bought. Our boundary goes up there and across there and down to there so we bought that face all across the end.

MR CROSBY: Right.

MR GOULDING: And also we already owned quite a bit down here.

MR CROSBY: Was that the Plaisier property?

MR GOULDING: No, they own the top of the ridge and the eastern side and so we own the end of the peninsula and the western side of the peninsula.

MR CROSBY: The only other question I had, Mr Goulding, was that at paragraph 2 on page 2, if you were to have a look at that.

MR GOULDING: Yes.

- MR CROSBY: You said, "This will obviously have navigational implications" and your typing says, "Although the proposed site is within the main navigational route of Waitata Reach".
- 5 MR GOULDING: That's incorrect, isn't it?
- MR CROSBY: Well I rather took it from the thrust of what you were saying that you weren't saying that but that's what your written material says.
- 10 MR GOULDING: Yes. No, that's absolutely wrong; it's adjacent to the navigational route but outside the navigational route.
- MR CROSBY: So do you wish to correct that error --
- 15 MR GOULDING: Yes, please.
- MR CROSBY: -- and say, "is not within"?
- 20 MR GOULDING: Yes, it is not within the main navigational route of Waitata Reach.
- MR CROSBY: Right. Yes, well that was what I understood the thrust of what you were saying but it wasn't what you -- thank you.
- 25 MR GOULDING: I should have some professional advice, shouldn't I?
- CHAIRPERSON: No, that's cleared it up for us. Thank you.
- MR DORMER: It's not really up to us to give you legal advice of course but I would have thought that NZ King Salmon can get all the consents, approvals, whatever they like but you were there first and you've got a further grant. I would have thought you had little to fear from them getting one which goes over the top of yours because they couldn't exercise it.
- 30 MR GOULDING: Well that's where I'm so confused because nobody else has done it, nobody else would do it, so why have they done it? They wouldn't do it unless they had some expectation of a result.
- 35 MR DORMER: I suppose we could ask them but I would have thought --
- 40 MR GOULDING: Yes, well I have.
- MR DORMER: -- that they might have done it so that in the event that they reach a successful commercial deal with yourself they have their consent. And if they don't reach a successful deal with yourself then they have to flag it. But they can't even start beginning to talk commercial deals with you unless and until they know they're going to be able to use it for a salmon farm.
- 45

MR GOULDING: Yes, I understand what you're saying.

5 MR DORMER: So, it would seem to me to be in your interest to promote their endeavours to secure approval for a salmon farm and that would increase the value of your holding, wouldn't it? But never mind that's not a relevant factor for our consideration.

MR CROSBY: No.

10 MR GOULDING: Yes, I understand exactly what you're saying and I've had discussions along those lines with King Salmon and, as I said, I support generally what they're trying to achieve but the method I'm confused about.

15 MR DORMER: Thank you very much.

CHAIRPERSON: Mr Goulding, do you know what, in terms of the operative plan that is -- not the current one that you've made submission on, the previous plan which is the one that we're working with.

20 MR GOULDING: Yes, we're still operating under. Yes.

CHAIRPERSON: Do you know what the zoning is for where you are?

25 MR GOULDING: CMZ2.

CHAIRPERSON: CMZ2, is it?

MR GOULDING: Correct, yes.

30 CHAIRPERSON: Yes. All right. Thank you very much.

MR GOULDING: Okay.

35 CHAIRPERSON: Thank you for coming.

MR GOULDING: Thank you.

40 CHAIRPERSON: Now, Katherine Saville-Smith. Over here, thank you. We've had something put in front of us this morning.

DR SAVILLE-SMITH: That's right. So this is the presentation so that you have it in front of you so you haven't got a awry neck.

45 CHAIRPERSON: So you're Dr Saville-Smith?

DR SAVILLE-SMITH: Yes. I'm a sociologist by trade and I have graduate degrees in history and sociology.

CHAIRPERSON: I'm sorry, could you keep your voice up a bit, please? You're an associate?

5 DR SAVILLE-SMITH: I'm a sociologist by trade and I have post-graduate degrees in history and sociology.

CHAIRPERSON: From?

10 DR SAVILLE-SMITH: Lancaster University, Canterbury University. The areas in which I work are both research but also in the areas of policy and so my comments really are around the issues that this raises, for me, around those issues and the implications of those. I've had quite considerable experience over the last 30-odd years - you must feel the same about
15 the length of -- as we all get older - in policy development, regulatory development and implementation starting off actually in the regional water board before the regional council ever existed at Canterbury. So, I was heavily involved in the Rakaia River issues, conservation orders and also dealing with groundwater --

20 CHAIRPERSON: So was I.

DR SAVILLE-SMITH: -- and a whole variety of other things. Yes, I remember.

25 CHAIRPERSON: Good to see you again. Yes. All right. Now, I'm just looking up your original comments, which is for 497, and I see there's an Elizabeth Saville-Smith here as well.

DR SAVILLE-SMITH: Yes, I'm not speaking on her behalf she prepared a different submission.
30

CHAIRPERSON: Yes, but she's related to you?

DR SAVILLE-SMITH: Mothers and children don't necessarily have the same views of the world.
35

CHAIRPERSON: She's one of your children?

DR SAVILLE-SMITH: No, she's one of my mothers, my only mother in fact, as far as I know.

40 CHAIRPERSON: Oh, your mother?

DR SAVILLE-SMITH: Yes. So she's 85 so she has strong views but she doesn't want to come here and express them.

45 CHAIRPERSON: All right, well we understand that but it would have been nice to see her. Some of us are getting close to that sort of era. Anyway, right, if you would continue then with what you've put in front of us today.

DR SAVILLE-SMITH: Right. Well I just wanted to raise the issues around regulation and some of the perspectives that I think no doubt you're going to be pondering. I was a commissioner for the Western Corridor transport hearings which dealt with Transmission Gully so I understand the difficulties of listening to, in that case, 7,000 submissions; we listened to about 3,000 of them. But it's a very complex area and I think this is a particularly complex area, and I think that there's no doubt that the Minister has the statutory right to issue regulation. I would say, however, that the use of regulation in this context seems to be quite questionable and I think that's evident in the regulatory impact assessment. No doubt you've read this at length a number of times but there's a certain ambivalence in there about the various options that the impact statement talks about.

[9.45 am]

I just want to raise the nature of this particular proposal, which is proposed to be implemented by regulation, in that it's really quite a peculiar beast really and I think that was indicated by Mr Goulding too. From a broader public policy point of view it really doesn't address any of the things that you would expect a regulatory proposal to address. There's no indication here of market failure which is one reason you might intervene in some way. It's clearly not protective nor precautionary. The protective process might have been around the compliance of existing consents rather than a proposal to shift and I'll come back to that issue.

In terms of economic policy, in general regulation is not seen as a particularly useful way of going and in fact it is often seen as anti-competitive, it leads to inefficiencies and it often distorts markets. In fact some of the conversation that you were having previously today that I've listened to provides a really good example of what happens when you start trying to intervene in a regulatory way around particular business interests. So, economic and particular business interests can be in contradiction to each other. There are other commercial interests, there are other opportunities than those that have been tested.

The one place that I haven't talked about just on my overheads, but I do just want to raise the exception to that, is when things are too big to fail and we've seen some examples of when that's happened: the BNZ intervention many years ago that we'll all remember in the 1980s, Air New Zealand intervention and the buy-in by government into that company which they then tried to get rid of reasonably quickly. Those occurred because economically they were seen as too big to fail and that's why you have Deutsche Bank of course still there after the global financial crash.

Is the salmon industry too big to fail? Is New Zealand King Salmon too big to fail for Marlborough? I think if you look at the NZIER economic report the indications seem to be not. The NZIER is indicating that the contribution of salmon, not just King Salmon but salmon in general, to the GDP in Marlborough is 0.54 per cent in 2015. That may have increased over the last year but compare that with the mussel industry which is something in the region of over 3 per cent so there's a significant difference in the contribution of those two parts of the aquaculture industry into Marlborough's GDP.

So I personally can see why this has happened. I personally am confused by these mechanisms and why the choice for a regulatory intervention in this process rather than another process, which would open things out to other players in a different sort of way, has been chosen. I think what this does is it really chucks up the whole of the current planning rules and you effectively get the potential for a domino effect, pressure on areas that had been previously excluded, re-litigation of old decisions, re-litigation of the ground rules, if you like, in which commercial and other interests have been playing and to choose to go outside that framework of rules, outside the assumptions, I think that's a big step and it has economic implications. I think that we all have to be very careful about that so I guess I'm saying precaution is not just about the environmental impacts but precaution may also be needed around the economic impacts.

The other thing that I find a little bit anxious-making about this whole situation is the environmental rationale for the decision or the proposal that there is some relocation. Essentially there seem to me only three reasons why the arguments that this rationale rest on is firstly, it suggests non-compliance in existing sites, and, yes, I think everybody agrees that there is a problem around existing site. But those sites were debated, they were something that King Salmon and others at various times have put up and said, "We can do this, a deal was made" and it was a deal that was heard through a whole variety of different situations, through a whole variety of institutional mechanisms to try and get the best outcome for those sites, the best outcome for the applicant and the best outcome for other stakeholders. So, why then would we be rethinking that if the issue is really non-compliance?

The second issue is that it may be that we simply did not, at that time, have the knowledge around - whoops, we've lost the -- oh, no, it's come back - around the biophysical dynamics that we're talking about here. So we just didn't really understand so it was a sort of genuine error and in that case you ask yourself well, are we more advanced on this? You will know. You will be engaged in that debate. I can't speak on that I'm not a biophysical scientist but no doubt that's one of the things that you'll be looking at.

Then finally, the original decisions were generated out of misleading argument. Whether that was purposeful or not, there were claims that certain things could be done and in fact it's turned out that they can't be done and that there have been situations in which the original decision to allow salmon farming in those low-flow sites was actually just simply the wrong decision. Then the issue before you, I guess, is to ask is the remedy for that a relocation; is that the right way to go in terms of the swap? I think that's a very interesting and challenging problem for you in terms of this particular hearing, made all the more difficult because of the very high proportions of submissions with people with direct financial interest in NZKS. So I've spent a lot of time going through and just trying to get a handle on this and what this actually means.

I've been able to identify employees, very closely related suppliers and contractors, and then there's a whole lot of others some of whom actually on the submissions would say that they have a relationship with King Salmon including a financial relationship but it doesn't appear to be particularly close. So my analysis of that is that you've got, of these submissions, around 46 per cent or so that - and I've rounded these figures - that have some sort of direct relationship and that actually does have an impact on what these look like, what the support looks like.

So if you look at the so-called fors and against, which includes these direct financial interests, then you get an apparently very strong, 63, or there around, per cent of support. Support from others is 17 per cent, 46 per cent from those with a direct interest, hardly surprising. There's about 6 per cent who are conditional, who are talking about issues that need to be resolved so they're not in general maybe either against it in principle or for it in principle but they're looking for some conditions which would allow them a way out of those sorts of positions. There's a small set that are noncommittal and there's about 29 per cent that are opposed.

If you take out the direct financial interests of New Zealand King Salmon the picture looks very different, still with substantial support for this proposal around 31 per cent, that's a substantial number. The conditionals go up but the opposed is around 54 per cent. I'm not making comment on how you deal with that information, that's something that no doubt you will be thinking about: "How do we work our way through these sorts of submissions, not only in substance but the weight?"

CHAIRPERSON: Why would we do that? Why would we do it at all?

DR SAVILLE-SMITH: Because the issue that you've asked for is to get a sense of the weight of what both communities and particular interests might have and so the interests of King Salmon are expressed certainly in their submissions and they have every right to say that, there's no commentary against that. There's also, however, a difference in the sense that people that are dependent immediately on their company and whatever relationship that is.

CHAIRPERSON: Yes, I understand all that but this isn't a numbers game.

DR SAVILLE-SMITH: No, it isn't a numbers game and that's why I'm just raising this so that you can reflect on that. More importantly, I think, is --

MALE SPEAKER: We're not going to.

DR SAVILLE-SMITH: Yes. Well maybe you're not going to that will be your --

CHAIRPERSON: It's not a numbers game.

DR SAVILLE-SMITH: -- that's your choice of course. So, if you don't want to think about that I think it is important, however, for me to be able to state I think there is an issue when interested parties who have a direct financial interest dominate a submission process. You can take that or leave that as you wish, you clearly have a --

CHAIRPERSON: Well, okay, we hear what you're saying.

DR SAVILLE-SMITH: -- view about that at this moment which you may or may not like to reflect on.

I think the three key issues around this is that there's no doubt at all, and I don't think anyone is arguing with this, that the Marlborough Sounds is a unique area and it has multiple uses. I've tried to go through the analysis as much as I can but I have to say that there's very poor analysis in the papers, at least I've been able to find, on the impact of other economic activities and other economic players including on navigational impact, including the potential for changing cost structure on other operators and I'll come back to that.

5 The second thing is that there is a desire that's been argued as part of
the law and the policy around resource management, is the
precautionary approach and really precaution demands that something
is not gone ahead unless there's really clear and unequivocal science
that says to go ahead. At the moment you may have access to other
material and I'm sure and I hope you do but at the moment there does
not seem to be a material amount of science which has changed from
previous decisions both around the plan, the coastal plans and the
current operating plans, and also in the periods of discussion about
10 previous consents. The science seems to be pretty similar really. There
needs to be, it seems to me, precaution unless there's a really
demonstrated track record which shows the capacity and the capability
and the willingness to monitor compliance on one hand and for users,
those that have got resource consent to meet compliance and in this
15 case the very fact that this proposal is being made demonstrates that
that is doubtful.

20 The third thing about precaution, it seems to me, is that it demonstrates
the ability to impose effective responses to remedy non-compliance
and this seems to me to be very doubtful too, and in fact I'm even more
in doubt about this after reading some comments which implied that it
was always known that these low-flow sites would be problematic and
that for ten years a particular company has been talking about trying to
get into these high-flow sites which actually have been prohibited and
25 other commercial players have respected that.

30 Finally, in terms of precaution, you would expect, if you were going to
go ahead with something, an ability to remediate impacts and return the
environment to conditions prior to use, and, again, there's a bit of a
silence on that. The proposal suggests that relocation is a swap and I'd
suggest to you that this is a mythical swap, that actually what it's
doing --

35 CHAIRPERSON: We've had quite a lot of stuff on that so you don't need to pursue that
anymore, thank you.

DR SAVILLE-SMITH: Nevertheless, I am submitting so I feel that I need to say this as a
submitter.

40 CHAIRPERSON: Well, we can tell you that you've made your point.

DR SAVILLE-SMITH: The pristine sites are going to be replacing essentially non-pristine
sites.

45 CHAIRPERSON: We can tell you you've made your point on that.

DR SAVILLE-SMITH: Thank you. I'm sure that you will take that into account.

CHAIRPERSON: Well, I've already indicated to you that we are.

DR SAVILLE-SMITH: The area which I'm concerned is that sites in which use is accepted have actually been degraded by the activity which has been shifted to other sites. Now, that may not be problematic if you feel confident that the consenting party, the party that is seeking consent, is actually able to manage that, and that comes back to the issue about track record.

[10.00 am]

In all, when I look at these proposals, I see some very uncomfortable silences and I just raise them for you to be thinking about and I'm sure you are already. One is the remediation of current sites and their future use if any. One is the mechanisms to address liabilities around negative environmental impacts through non-compliance on one hand but also unforeseen impacts which we haven't been able to discuss because limitations in understanding and knowledge, not only the biophysical dynamics but also the economic dynamics around this. There's pretty much a silence around mechanisms to address the costs of environmental monitoring. These are now going to be changed, we don't know how. There's a regulatory impact statement that makes some estimates on this but is pretty finger in the air, I would suggest to you.

Then finally there's the economics of the proposal which is clearly fundamentally anti-competitive otherwise it wouldn't go down the way of presenting an option for a single company, it would rather be looking at a sector or even a number of sectors in the aquaculture industry. The reports that I've seen in relation to this that say that they're dealing with economic impacts appear not in fact to do so. So the NZIER report talks for instance around the issues of reducing the surface use of the Sounds. It does not deal with this. It does not deal with the opportunity costs which might arise out of favouring or preferring one particular company versus others within the industry.

The discussion paper itself has some interesting problems around benefits and key indicators. So the employment, you will have this no doubt etched on your minds and your hearts, but the employment indicators for instance are carefully written as up to 518, from memory, FDEs. Up to might be zero and typically in this type of forecasting we would expect at least some clear boundaries and some sensitivity analysis or some confident statement in the provision of those economic benefits. So those are the silences I am concerned about and I would ask you to reflect on. Thank you.

CHAIRPERSON: Thank you very much, Dr Saville-Smith. Could you just remain there, please? Have you got any questions?

MR DORMER: Early on you suggested that salmon farming was 0.5 per cent of Marlborough's --

DR SAVILLE-SMITH: GDP.

MR DORMER: Yes, and you had a comparable for mussel farming.

DR SAVILLE-SMITH: Yes.

MR DORMER: What was it?

DR SAVILLE-SMITH: 3.19 per cent.

MR DORMER: I wrote down 8 I didn't think that was right.

DR SAVILLE-SMITH: I'm sure the mussel farming sector would love it if they were doing 8 per cent GDP.

MR DORMER: I'll put down 3.2.

DR SAVILLE-SMITH: Yes, 3.2 is a very -- I guess once you get to ...

MR DORMER: Thank you very much.

DR SAVILLE-SMITH: Thank you.

CHAIRPERSON: Ron?

MR CROSBY: No particular questions, thank you.

CHAIRPERSON: Doctor, I just want to canvass with you your earlier statements about this process, the regulatory process, that is, because that certainly is exercising our minds. The things that you say about that, antithetical, diverse practice and so on and so forth, supposing the King Salmon company had applied for a private plan change, wouldn't the same issues arise?

DR SAVILLE-SMITH: There are processes around that and you're the lawyers you know the intricacies of the law in relation to private plan change. We've seen attempts to get private plan change in terms of district planning, as opposed to coastal planning, in this jurisdiction and there was quite a long and complex process related to that and rightly so, I think.

5 The impact regulatory statement says that there is a difference between
a private plan change or going to EPA or this process. I think the
difference between this is that we're sort of in a territory of ministerial
intervention as opposed to argument that's made in a much more, if you
like, open - I'm not saying you're not open - but an opportunity to
actually have a debate and think around the broader planning processes.
I'm not sure whether your RFP - you'll have views on this I'm not asking
the question - I'm not sure how much you see yourself as being
10 constrained by what is a relatively narrow set of requirements around
the RFP.

15 So I think I don't like private applications for planning changes either I
think they're problematic but I think this is at the extreme of problem
because of the ministerial and central government intervention in what
is essentially the company, or providing an environment for a particular
company to operate. So I recognise they're there. I still have anxieties
about it but I think this takes it one step up.

20 CHAIRPERSON: So, although parliament has provided the Minister with quite specific
regulatory power --

DR SAVILLE-SMITH: Absolutely.

25 CHAIRPERSON: -- you would never support its use.

DR SAVILLE-SMITH: No, I would support its use actually. I would support its use under
some very significant threats or a situation in which there is very clear
and profound environmental threat, economic threat or social threat and
I think that's the point of ministerial intervention. I don't know the view
30 of parliament on this and my --

CHAIRPERSON: Have you read the parliamentary debates on the bill?

35 DR SAVILLE-SMITH: I have read the parliamentary debate but I have to say my experience
in parliamentary debate is what people thought they were debating and
what they actually were debating may be quite different.

CHAIRPERSON: Yes.

40 DR SAVILLE-SMITH: And certainly their memory of that debate can change over the years.
So, I think that you have to treat this with caution. I'm not saying the
Minister doesn't have the power, I'm not saying he shouldn't rightfully
use the power but I think the power here is questionable and it's
particularly questionable because of the content and the reasons that
45 I've identified.

CHAIRPERSON: All right. There was just one other question. You've asked about
what's changed since these sites were originally selected. What about
the good management, the benthic guidelines, isn't that a change?

DR SAVILLE-SMITH: Well, but no one's complying with them. The problem seems to be is the compliance with them.

5 CHAIRPERSON: Well, yes, but first of all isn't that a change?

DR SAVILLE-SMITH: It is an opportunity to do better.

CHAIRPERSON: Yes.

10

DR SAVILLE-SMITH: But the problem that I think that you have here and the reason why this is in fact so problematic is that -- and I'm not saying that this is what New Zealand King Salmon are doing but from a broader perspective you need to think about the opportunities for gaming here and that's an economic issue and it's about how our environmental policy and our economic policy relate to each other. If you --

15

CHAIRPERSON: I'm sorry, I don't understand. I asked isn't the good management benthic guidelines a change from what was the position --

20

DR SAVILLE-SMITH: It provides an opportunity. The problem that I think we have here is that this allows a situation which signals to people, "Well, you've got an opportunity to do better". If you, however, want to get your foot in the door and do badly and then that provides you an opportunity to do better somewhere else, provides you an argument to go somewhere else and to do better, then you have a problem. The benthic guidelines, there's no doubt there's an opportunity there. The issue is why do we need a relocation to meet those? Why was an agreement around, or arguments made that there was very low environmental impacts in the existing sites and therefore what is the justification of transferring those?

25

30

The economic problem here is that that gives a signal to the market to say, "Go to a site that you know that you may fail in and then you will have an opportunity for the Minister to regulate access to other sites". I'm not saying that's what King Salmon is doing but I'm --

35

CHAIRPERSON: That's a pretty long bow you're drawing, isn't it?

40 DR SAVILLE-SMITH: I think not. I think the whole point about markets and regulation is transparency and equal application of regulation to all. So once you start fiddling with the rules you'll always have that risk that's well established in the economic literature around these sorts of things.

45 CHAIRPERSON: So you're saying that this will lead to other aquaculture activities going for poor sites knowing that if they fail there they can get the same remedy?

DR SAVILLE-SMITH: I'm saying that that is a signal that may be given to the market and there may be some players that take that up.

5 CHAIRPERSON: All right. I think that was all I wanted to ask you. So, thank you very much and thank you for coming.

DR SAVILLE-SMITH: Thank you very much.

10 CHAIRPERSON: Now, Environmental Defence Society. I'm sorry we were a bit late, Mr Enright, but it's better late than never.

MR ENRIGHT: Thank you. With me I have Ms Wright, W-R-I-G-H-T, who's a solicitor working for EDS and --

15 CHAIRPERSON: Good morning.

MR ENRIGHT: -- before going through the written submissions we just had a few starting points for you. The first one is that EDS agrees that the Minister is entitled to use the regulations, so that power does exist.

20 CHAIRPERSON: Could you just wait a minute, please?

MR ENRIGHT: Sorry.

25 CHAIRPERSON: We've got -- do you want to do what you've got in this piece of paper?

MR ENRIGHT: Yes. I was going to ask if you've had the opportunity to read, because we don't want to --

30 CHAIRPERSON: We have but we've read so much stuff in the last four weeks that it might help us if you could take us through it again.

MR ENRIGHT: Sure, understood, I will. I'm happy to do that.

35 CHAIRPERSON: And we've got the time to do it.

MR ENRIGHT: Thank you. But if I might just make a couple of high level points before going through the written submissions.

40 CHAIRPERSON: All right, yes.

MR ENRIGHT: The first one is that EDS the Minister is entitled to use the regulations. The power is there. It must be able to be used.

45 CHAIRPERSON: Yes.

MR ENRIGHT: But there are constraints that apply, and these are both expressed in the statute and matters of common law as to validity and natural justice.

CHAIRPERSON: This is not in your written stuff.

MR ENRIGHT: Well, it is but we're trying to give you a sort of summary just to assist you, if I may.

5

CHAIRPERSON: All right, so, we'll note that.

MR ENRIGHT: So, at the high level -- and this point is in the written submissions. At the high level --

10

CHAIRPERSON: I want you to deal with that.

MR ENRIGHT: Yes.

15 CHAIRPERSON: Because we're going to ask for a response.

MR ENRIGHT: Thank you. The first point being regulations cannot be used to advantage a particular applicant in relation to a particular site.

20 CHAIRPERSON: That's your second high point.

MR ENRIGHT: Yes, regulation cannot be used to advantage a particular applicant for a particular site. This goes to the validity of the exercise of power. It's not just a merits question.

25

CHAIRPERSON: ... particular site, and that goes to validity.

MR ENRIGHT: Not just merits. Our rationale for that is the wording in 360A(1) and the statutory phrase, "Management of aquaculture activities in the CMA". We say that doesn't allow you to select a particular applicant - advantage that applicant by way of the regulations here.

30

We tried to give you some examples, think up some examples of what would be appropriate use of the regulations. The first one is to introduce general benthic guidelines. By way of example, proposed policy 9321(12), which is at page 72 of the index.

35

CHAIRPERSON: Of the proposal?

MR ENRIGHT: Yes, that's right. That refers to salmon farming in the Marlborough Sounds will be used to achieve the following ... and then it lists, as you know, the water quality minimum requirement. We say that's an appropriate use of regulatory power, provided that our understanding is that policy applies generally to salmon farming and is not limited to the six farms here. That is an appropriate use of the power.

45

Other examples would be efficiency or general operational requirements. For example, to take advantage of changes in technology such as the submerged pens, which obviously mitigate the effects on landscape. Other examples would be generic adaptive management conditions, generic information requirements and site selection criteria. Those are some of the examples that came to mind this morning.

[10.15 am]

Another legitimate use of the regulatory power would be to alter the method of allocation, so, altering it from, as you now, the common-law principle of first in first served. It might be, for example, by way of tender, lottery, by use of a test of efficiency of use of site et cetera. Or even preferential access for particular species.

Those would be generic and legitimate uses of the regulatory power. But in contrast, most of the proposed regulations here offend the principle of validity because they are specific to a particular applicant and particular sites.

Just two other high level points and then we will go through the written submission. The third point is we say that MPI has chosen the wrong horse by seeking to amend the operative plan. Problematically, the current operative plan does not give effect to the Coastal Policy Statement. That is a bar to your making further amendments which will also not give effect to the Coastal Policy Statement.

The statutory basis for that is in section 360C(iii) and if you refer to that, you will see it reads, "The regional coastal plan to be amended by the proposed regulations" the key words "will continue" to give effect to ..." and thereafter follows CPS and other instruments. We say (a) it currently doesn't give effect, and (b) by way of amendment, it still won't give effect.

CHAIRPERSON: Of course, you've got reasons for saying why it won't give effect.

MR ENRIGHT: Indeed. Those are evidential matters.

CHAIRPERSON: Yes.

MR ENRIGHT: Yes, that's right.

CHAIRPERSON: But you say that's a --

MR ENRIGHT: It's also a matter of validity because --

CHAIRPERSON: A king hit?

MR ENRIGHT: Yes. Because again, as you know, it predates the New Zealand Coastal Policy Statement. It doesn't currently give effect --

CHAIRPERSON: Well, there was a New Zealand Coastal Policy Statement.

5

MR ENRIGHT: Yes, sorry, you're right. The 2010, I should say.

CHAIRPERSON: Yes.

10 MR ENRIGHT: Quite right.

CHAIRPERSON: And the statute doesn't identify which New Zealand Coastal Policy Statement, does it?

15 MR ENRIGHT: That must be implied from the wording used which says, "any New Zealand Coastal Policy Statement". The old CPS which has been replaced by the 2010, therefore that can only refer to the currently operative, in my submission.

20 CHAIRPERSON: All right. Because the statute amendment was passed, was it before or after the new... It was 2008, wasn't it?

MR ENRIGHT: 2008, that sounds right, yes.

25 CHAIRPERSON: And the Coastal Policy Statement was ...?

MR ENRIGHT: 2010 it became operative.

CHAIRPERSON: So, wouldn't it be the other way around?

30

MR ENRIGHT: No, because my submission would be the words, "any New Zealand Coastal Policy Statement must be subject to an inherent qualification that the Coastal Policy Statement is operative or has effect". If it's fallen off the radar --

35

CHAIRPERSON: At the time the statute was passed, there was an operative New Zealand Coastal Policy Statement.

MR ENRIGHT: Yes. Yes, that's right but this is ambulatory, I think the word is, where you have to -- it has to comply as at the time the regulations are --

40

CHAIRPERSON: Are exercised.

MR ENRIGHT: Yes, that's right. So, now as at, obviously, 2017 so it can only refer to the now operative Coastal Policy Statement.

45

MR CROSBY: The statutory amendment was actually 2011.

CHAIRPERSON: Was it?

- MR ENRIGHT: Thank you, well, that answers --
- MR CROSBY: So, that post-dated.
- 5 CHAIRPERSON: Where did I get the 2008 from?
- MR CROSBY: That post-dated the 2010.
- 10 MR ENRIGHT: I'm grateful to the Commission for that point.
- MR DORMER: Did the later Coastal Policy Statement --
- CHAIRPERSON: Yes, sorry, I'm wrong.
- 15 MR DORMER: -- repeal the former one?
- MR ENRIGHT: I'm not sure if repeal is the right word.
- 20 MR DORMER: Nor am I, which is why ...
- MR ENRIGHT: It must replace, though, because there's an obligation to have at all times, I think, an operative Coastal Policy Statement. Of course, once
- 25 operative by way of ministerial approval, I think is the process, it must replace the old but we can check if there's any statutory wording on that.
- CHAIRPERSON: Those are your opening shots, as it were?
- 30 MR ENRIGHT: Opening shot, last shot across the bows was actually that at the level of principle EDS supports aquaculture in the Marlborough Sounds in appropriate places, and EDS says that a -- and this is a merits point, but a better strategic approach presents itself through the proposed Coastal Plan process, and that's the better way of achieving what these
- 35 regulations purport to achieve.
- CHAIRPERSON: Just while you're on that, when I was questioning the previous presenter, I had a doubt rose in my mind. Can you have a private plan change for a Coastal Plan? Do you know off the top of your head?
- 40 MR ENRIGHT: Offhand, not -- of course, actually, the case in point is King Salmon round one because --
- CHAIRPERSON: Of course it is. That's the BOR -- yes. So, you can.
- 45 MR ENRIGHT: The answer is yes, you can.

- CHAIRPERSON: I don't know why I had that doubt in my mind. It might have been going back to where the Minister of Conservation had to give approval, but that's not the case now, is it?
- 5 MR ENRIGHT: No, so it must not be the case.
- CHAIRPERSON: Yes, that clarifies it for me, thank you.
- 10 MR ENRIGHT: Very good. If we can now deal with our written submissions.
- CHAIRPERSON: Yes,
- 15 MR ENRIGHT: We have a couple of additional pages to hand up but we'll deal with that at the end. It won't take much longer. The trite point that marine farming is not without controversy in the Marlborough Sounds and of course comparatively recent proposals by King Salmon which have resulted in the leading authority on the RMA with the King Salmon decision, or as EDS prefers to call it, the EDS decision.
- 20 CHAIRPERSON: Of course. We'll never cease to be told that, will we?
- MR ENRIGHT: Indeed, that's right. The majority decision confirmed the importance of environmental bottom lines not to be overridden by an overall balance of judgement. Section 6 RMA and the Coastal Policy Statement are, in some instances, directive. Policies 13 and 15 must be given effect to via the plan change process for aquaculture in the Marlborough Sounds.
- 25 CHAIRPERSON: What's the reference to section 6? The Policy Statement I understand but what's --
- MR ENRIGHT: It probably crept in there. It really is just the Coastal Policy Statement, I think.
- 35 CHAIRPERSON: Yes, well, I hope so.
- MR ENRIGHT: Well, let's delete --
- CHAIRPERSON: Otherwise I've got a complete misunderstanding of the case.
- 40 MR ENRIGHT: No. We'll take those four words out, thank you. Of course, we also rely on Policy 11 which we didn't mention there.
- CHAIRPERSON: Yes, that was made to us yesterday by Forest and Bird.
- 45

- MR ENRIGHT: We then refer to section 360A RMA states that putative regulations must not be inconsistent with and is subject to the other provisions of this Act. The "subject to" wording is familiar in RMA jurisprudence. Other statutory provisions are paramount. This reflects the subordinate nature of regulations; the Executive cannot usurp Parliament's legislative directives. The "subject to" requirement must include the duty in section 67 to give effect to the Coastal Policy Statement and the RPS. The Minister must be "satisfied" of this under 360B.
- I as just reflecting on the use of the word "satisfied" in section 360B and it does bring to mind the case law, I think it's the Discount Brand decision, which talks about the duty to be satisfied and to have adequate information, essentially. So, it is quite a high threshold.
- MR DORMER: That's a notification decision.
- MR ENRIGHT: That's a notification, correct. But, I think it was dealing with a similar type of phraseology around being satisfied as to adequate information.
- MR DORMER: The Nicholor(?) case is around that word as well.
- MR ENRIGHT: Yes, indeed. So, it is a high bar not a low bar in terms of your satisfaction.
- MR DORMER: What were the four words he took out?
- CHAIRPERSON: He took out the reference to section 6 of the RMA.
- MR ENRIGHT: Section 6, sorry, it crept in there.
- CHAIRPERSON: Because actually King Salmon says exactly the opposite.
- MR ENRIGHT: No, that's right, sorry.
- CHAIRPERSON: In the circumstance. You weren't here yesterday when I had a wee debate with Ms Gepp about that. I think we arrived at the right ...
- MR ENRIGHT: Yes, well, it's certainly the case for the Coastal Policy Statement because it doesn't arise in that the exception did arise.
- CHAIRPERSON: Yes.

MR ENRIGHT: A key issue, of course, is whether and to what extent the regulations are inconsistent with other provisions of the RMA or fail to reflect the "subject to" hierarchy, which goes to jurisdiction as well as merits. The regulations are opposed for reasons of invalidity and on the merits. In terms of the merits it fails because the first five of the six sites would adversely affect the character values of Waitata Reach and Pelorus Sound and New Zealand King Shag habitat, which does not give effect to the Coastal Policy Statement.

5

10

You'll note footnote 3, and this is a matter you may wish to raise with Mr Brown, but he does acknowledge Tio Point as acceptable in terms of landscape and natural effects because Tory Channel has essentially already passed its tipping point.

15

CHAIRPERSON: Don't tell the people on the ferry that. Don't they advertise it as a scenic wonder tripping up and down Tory Channel?

MR ENRIGHT: Perhaps not quite reaching the outstanding threshold.

20

CHAIRPERSON: All right, yes.

MR ENRIGHT: So, benefits are overstated. Regulations are the wrong remedy, given the current review process for the Operative Plan with the regulations process does not involve the same level of rigour and independent testing enabled by plan change such as the 2-tier process for appeals, including rights of cross examination.

25

30

We say that's a relevant matter you can have regard to, that if you don't agree to make the regulations proposed, there is an alternative remedy available to MPI and/or King Salmon which will have the benefits of the appeals process, so a merits based examination.

CHAIRPERSON:

35

I just want to tease that a little bit with you. You say it's the wrong remedy. Do you mean legally the wrong remedy or inappropriate in terms of --

MR ENRIGHT: The latter. If we're trying to speak to the merits point, so, inappropriate. If they could carve out the few -- there are a few provisions in there that are generic and apply to the management of aquaculture activities generally and so if one could just carve out, for example, that policy I took you to, then that might be an appropriate subject matter for regulations. But basically, the balance of the regulations are inappropriate.

40

45

There is a section 32 issue around that also but we'll come to that.

CHAIRPERSON: Are you going to address that?

MR ENRIGHT: Yes, we do.

CHAIRPERSON: I want you to do that.

MR ENRIGHT: Thank you. In fact, that's my point D. 32 analysis has not to date been undertaken, which creates substantive as well as natural justice issues. Query whether intended regulations are the most effective and appropriate in terms of process, site, and wording? We don't know because there is no direct evidence to address this.

MPI's answer seems to rely on ex post facto process which we say is inconsistent with section 32(5) of the Act. It appears that the intention is that 32 analysis will be undertaken following close of the hearing and somehow be informed by Panel recommendations. We went through the transcript to make sure we have that right.

CHAIRPERSON: Yes, that is correct.

Transcript references suggest MPI sees this as a dynamic process; meaning that a 32 report may be provided to the Minister that raises or collates new information not available through this hearing process. This creates obvious natural justice concerns, especially as the Minister must have particular regard to the section 32 report.

CHAIRPERSON: Just pause there, would you, please?

MR ENRIGHT: Yes.

Where do you say that wording appears in section 360B, "must have particular regard to ..." It appears in the first schedule. It appears in the section ...

MR ENRIGHT: We'll just check that. Sorry, it's 360B(d).

MR CROSBY: Thank you.

As you know, that's an elevation of its weight because particular regard is distinct from regard, so it has a --

MR CROSBY: Thank you for that.

CHAIRPERSON: What does that mean in terms of timing, do you think?

[10.30 am]

That goes -- the answer to that -- because it says in accordance with section 32, obviously one needs to flick back to section 32 which gives you the sequencing. That's contained at section 32(5), is the answer which says:

"The person who must have particular regard to evaluation report must make the report available for public inspection (a) as soon as practical after the proposal is made in the case of a standard or regulation (so that's here) or (b) at the same time as the proposal is publicly notified."

5

The proposals defined under subsection 6 for clarity includes regulation. So, the short point is earlier not later, and well before --

CHAIRPERSON: Yes, but when?

10

MR ENRIGHT: As soon as practical after the proposal is made. So, we would say pretty much at your point of notification to the public so we could all have a chance for input. It's too late to do it after your recommendations are released, certainly too late. That must make sense from a natural justice perspective.

15

MR DORMER: You wouldn't have a chance to input into the 32, though, would you?

CHAIRPERSON: No, nobody does.

20

MR ENRIGHT: We should have an opportunity to review. Yes, we should.

CHAIRPERSON: To look at once it's done.

25

MR ENRIGHT: Yes.

MR DORMER: But that doesn't mean you have input into it. The way you get input into the 32 under the present procedure is by making submissions here and by making submissions here, you can be seen to be having an input into the section 32 analysis.

30

MR ENRIGHT: Except that we've not -- well, that will be correct if we -- I would probably take it the other way. It ought to have been released as soon as practicable in the early stage. We would then have the opportunity to review it and then address it in our submissions, which is a better natural justice process.

35

MR DORMER: That's what I thought you would be submitting.

MR ENRIGHT: That's my submission.

40

MR DORMER: Yes, it doesn't, to use the word you used, give you a right of input in ability to input into the 32, does it?

MR ENRIGHT: In the sense that we can't do a marked-up change, for example, if that's ... yes, I agree. But we should have had it available. We could then critique it and you would have heard our comments on that, which would fold into your decisions around the process.

45

- MR DORMER: I quite understand that. It's just not the way I understood you to express it.
- 5 MR ENRIGHT: Sorry. I hope I've clarified that.
- CHAIRPERSON: Under the first schedule process, submitters are given -- submitters on a proposed plan are given the opportunity to lodge submissions in relation to the section 32 assessment, aren't they, as part of that process?
- 10 MR ENRIGHT: Yes, that's right.
- CHAIRPERSON: This doesn't seem to get that far.
- 15 MR ENRIGHT: We would say one should read it in the manner that better promotes the natural justice approach, which is a Bill of Rights proposition, I suppose, but essentially it should have been made available for comment. I accept we couldn't change it but we could have had the opportunity to review and comment on it at least.
- 20 CHAIRPERSON: Yes.
- MR ENRIGHT: We have a supplementary point on that. We've got a sheet to hand up which is more of a technical drafting point. Would you like me to deal with that now?
- 25 CHAIRPERSON: Yes, please.
- MR DORMER: Yes, but can we just pursue ... assuming for the moment I accept that better practice would have been to have the 32 done first, I haven't reached a view on that, but assuming one comes to that view, is it your contention that the Minister's failure to have the 32 done sooner invalidates his decision to proceed by this route?
- 30 MR ENRIGHT: Yes. Because section 360A requires, or is it B, requires regulations to be consistent with and give effect -- sorry, and subject to the Act. So, if there's a breach of section 32, then that does invalidate.
- 35 MR DORMER: Okay.
- 40 CHAIRPERSON: That would perhaps invoke all those questions about those cases about the difference between having no section 32 analysis and having an inadequate. And there is case law on that, is there?
- MR ENRIGHT: That's true, yes.
- 45 CHAIRPERSON: So you would say if there is no 32 analysis, it's a breach of section 32 that invalidates the process.

MR ENRIGHT: That's correct, yes.

CHAIRPERSON: The whole process?

5 MR ENRIGHT: Yes.

CHAIRPERSON: Start again?

10 MR ENRIGHT: Indeed.

CHAIRPERSON: If ever.

15 MR ENRIGHT: Indeed. And that is very clearly reinforced again by section 32(5) which is very explicit as to the timing of release of the report for proposed regulations.

20 CHAIRPERSON: I'm taking the opportunity of questioning you, or we are, Mr Enright, just so you know, and Ms Gepp. We've had submissions from counsel for King Salmon and we've had an opening from MPI but there wasn't a legal opening, and we have now asked that counsel independent of MPI address us on these matters in the closing of this hearing.

MR ENRIGHT: Yes. I'm grateful for that clarification.

25 CHAIRPERSON: Because we really think we've got to address those issues.

MR ENRIGHT: Indeed.

30 CHAIRPERSON: So, that's why I'm pursuing it with you now.

35 MR ENRIGHT: Thank you, sir. I made the point before so I won't labour it, but it makes sense again from a natural justice perspective to have that report available for comment prior to us preparing our submissions in evidence. Again, that also, as you say, is not a question of adequacy. It's a total absence.

40 CHAIRPERSON: Perhaps just to round this off, might I put to you what I think, absent having the benefit of Crown counsel or whoever does this work for MPI? I'm asking for it to be independent of the Ministry itself. It might be said to us, well, you're part of the consultation process; that's us, the Panel. You're not a decision maker. Your task is to report and recommend to the Minister as part of a consultation submission public participation process.

45 MR ENRIGHT: Yes.

CHAIRPERSON: At that point, I think the argument might be that is when the section 32 is done, before the Minister exercises his decision-making function. You say that is not the law.

- MR ENRIGHT: No. It doesn't -- any attractiveness that argument might have is wrong because of section 32(5) which is explicit as the timing of the section 32 report, the evaluation report as it says.
- 5 CHAIRPERSON: Yes, I know. All right, we can move on from there.
- MR ENRIGHT: Thank you.
- 10 MR DORMER: Yes, I found it very helpful.
- MR ENRIGHT: There is a point to be made that the old wording of section 32 was probably more favourable to MPI.
- 15 CHAIRPERSON: When you say, "the old wording" you mean?
- MR ENRIGHT: The old, so the new wording which applies now is very explicit as to the timing which has to be released as soon as practicable.
- 20 CHAIRPERSON: That was by way of amendment when? 2013, is it?
- MR ENRIGHT: Yes, 2013. I think the old wording was, "before adopting".
- CHAIRPERSON: Yes.
- 25 MR ENRIGHT: That's right. So, we've changed it to "as soon as practicable after the proposal is made", a deliberate change by parliament, explicit that it applies to regulations, and a direct breach of that provision in this process.
- 30 CHAIRPERSON: Yes.
- MR ENRIGHT: Thank you.
- 35 CHAIRPERSON: If you go back to the first schedule process, which of course is also covered by this, I think at around about the same time it was amended so that when a local authority is about to adopt a proposed plan for public notification, it has to have had particular regard to the section 32 evaluation at the time it decides to embark upon that process, doesn't it?
- 40 MR ENRIGHT: Yes, that's right.
- CHAIRPERSON: And make it available at that but the first schedule now requires that decision-maker to have particular regard to it at that point in time.
- 45 MR ENRIGHT: Yes. The trend, if you like, is towards making it available earlier in time and not later, for obvious natural justice reasons, and because it also improves the quality of --

- CHAIRPERSON: But it is even more important than that, isn't it? And I'm now speaking from my experience latterly as a regional councillor, prior to that amendment, all you had to do was have the section 32 evaluation available at the time you notified the plan. Now, you have to actually state that you have had particular regard to it in deciding to notify.
- 5
- MR ENRIGHT: Yes.
- 10 CHAIRPERSON: That seems to me to be a very significant change.
- MR ENRIGHT: Yes, because it requires that you've directed your mind to the contents of that report.
- 15 CHAIRPERSON: Exactly.
- MR ENRIGHT: I understand, yes, so it's acting the cost benefits of the interaction you're proposing.
- 20 CHAIRPERSON: Yes.
- MR ENRIGHT: That would support the importance of it.
- CHAIRPERSON: Thank you very much.
- 25
- MR ENRIGHT: Thank you. Turning to page 3, paragraph (f). EDS's evidence confirms merits limbs of section 360A cannot be met. Commissioner Dormer's questioning has confirmed there is no significant offset or credit arising from surrender of existing consented sites. Mr Brown and Mr Counsell will speak to the merits of the proposal in respect of landscape and natural character and economic analysis. EDS adopts the submissions and evidence of Forest & Bird and its expert Dr Fisher on indigenous biodiversity and the New Zealand King Shag.
- 30
- 35 MR DORMER: I'm not sure the point you're making there about my questioning is confirmed. But not for your benefit because you'll be well aware of these things but for the benefit of some of those in the audience perhaps, it is by questioning -- by our questions, we do not disclose our way of thinking.
- 40
- MR ENRIGHT: Indeed.
- MR DORMER: By our questioning, we enable us to make a better understanding -- to gain a better understanding of the points you're making.
- 45
- MR ENRIGHT: Yes, without making a determination. I am sorry if that wasn't clear. We just wanted to cross -- it was just really a way of cross referencing the fact that it arose because of a line of questions in the transcripts, so I acknowledge your point.

MR DORMER: Thank you.

MR ENRIGHT: As to validity, EDS's original submission addressed most of the validity concerns. Intended regulations fall outside powers conferred by s360A. It does not allow for site-specific intervention and allocation of space in the CMA. It is intended to relate to management of arguably generic aquaculture activities or methods of allocation. This is confirmed by the requirement for consistency with other RMA provisions. Query how this can apply to spot zoning of individual sites, championed by applicants obtaining competitive advantage through ministerial process.

Really, that submission rests upon your reading of the words in 360A "relate to the management of aquaculture activities in the CMA". We rely on what that means. We have adopted without repeating our original submission. Para 7 is the point that EDS is not opposed to aquaculture in principle. It certainly does not seek that it be prohibited everywhere in the Sounds. Instead, a strategic regional approach should be adopted.

The proposal is consistent with neither of these things. It does not give effect to the CPS. It is ad hoc and un-strategic and undermines Marlborough Council's plan review process. It also exceeds powers. So, we then deal with each of those points.

Again, we accept in para 10 that the proposal relies on the regulation making power in 360A. This is the first time the power been used. The power exists and so must be capable of being exercised within stated limits. 360B sets out conditions that must be satisfied before s360A regulations can be made. The Minister's discretion is fettered. Plan provisions ... and then we've listed, and you're familiar with, so I won't read out the relevant parameters.

I should perhaps ... in my point E, we say timing is not stated but I think we can now say it is stated by reference to section 32(5). Sorry, perhaps I could ask you to add that in because it's a point we've been thinking about since we arrived.

CHAIRPERSON: We've got there by a process.

MR ENRIGHT: Thank you.

[10.45 am]

- MR ENRIGHT: To add to the first point, must not be inconsistent with and subject to. The proposal consists of two distinct elements; the first is allocation and occupation of areas in the CMA, and the second is operation of farms in those areas. EDS accepts both allocation and occupation of space and farm operation are captured by 360A but must be consistent with other provisions of the RMA as per 360A(2)(b) which includes without limitation, part 7A RMA.
- CHAIRPERSON: You can do zoning and things. You just can't do it for a specific --
- MR ENRIGHT: Applicant or consent holder.
- CHAIRPERSON: Yes.
- MR ENRIGHT: That's right. Because that doesn't constitute management in the statutory phrase. I already gave you at the start -- we tried to think of some examples of what are valid examples of the exercising regulatory power. I took you through those examples. The distinction between method of allocation as distinct from allocation. Here you're being asked to allocate not create a method of allocation.
- MR DORMER: Why have we been asked to allocate here?
- MR ENRIGHT: Well, because you've got -- essentially the whole -- the underlying justification is the replacement of existing consent sites with new sites which have less water quality affects. That is what is being facilitated through the regulations.
- CHAIRPERSON: But the zoning, the new zoning with CZM4 doesn't actually say this is for King Salmon, does it?
- MR ENRIGHT: No, but I think -- I'll just have to find it for you.
- CHAIRPERSON: It just says it's the salmon farm.
- MR ENRIGHT: Yes, there is a trade-off requirement, from memory, that you have to first surrender the old to exercise the new and that's --
- CHAIRPERSON: That could only be.
- MR ENRIGHT: Yes, so therefore it can only be --
- MR CROSBY: But if King Salmon sold the existing farms then there's no restriction and it doesn't apply to King Salmon, does it?
- MR ENRIGHT: Sorry, I shouldn't have personalised it to King Salmon but it's whoever is the existing consent holder.
- CHAIRPERSON: Yes.

MR ENRIGHT: Currently King Salmon but that, I acknowledge, could change.

MR CROSBY: So if you look at Stewart Island, for example, where again you've only got, as I understand it on the evidence we heard, the one operator, Sanfords, any change to the zoning there could similarly be tagged as being a reaction to that one operator. But, in fact, as long you refer in the plan change to the area of water space you're not necessarily identifying a particular operator, are you?

MR ENRIGHT: This is unusual and it goes to another layer or another step forward because of the requirements to surrender existing so that has to be tagged to one player whoever is --

MR CROSBY: Oh no, it has to be tagged to the consents that I'd be surrendering.

MR ENRIGHT: Yes, or sorry one consent holder. So that is different to the example you have given where although in practice there's only one operator in Stewart Island, that is accepting the hypothesis, there isn't a rule around, "Thou shall first surrender consent A to take up consent B", which again it personalises it to that consent holder.

CHAIRPERSON: It doesn't matter, your argument doesn't depend on it being King Salmon?

MR ENRIGHT: No, that's --

CHAIRPERSON: It's whoever the consent holder happens to be.

MR ENRIGHT: Yes, that's correct.

CHAIRPERSON: Yes.

MR ENRIGHT: Sorry, I didn't intend to overstate that. Sorry. So, we thought it might be helpful just to remind you what part 7A says in the RMA and it's notable again that 360 itself refers to part 7A. It uses the words, for example, sub part 1. So of course sub part 1 refers to managing occupation in the CMA and section 165(f) refers to:

"May include provisions to address the effects of occupation and to manage competition for the occupation."

So those are legitimate uses of the regulation making power, again, where you impose a tendering regime, for example, that would manage competition. Also 165(g) may specify allocation methods. So may provide for rule in relation to a method of allocating space, including a rule in relation to public tender of authorisations or other methods. So we say when you are interpreting the reference to management of aquaculture activities in 360A you should have regards to the type or

genus of activity which is identified in part 7. Again, they're not particular to a specific consent holder, which is why we say it is an invalid use of the power here, not just a merit's concern.

5 Returning 21, I think it was. Sorry, no, it was 10. Sorry, we will track
and through this a bit more quickly because we have dealt with
paragraph 13 proposition at part 7A and we say in 14 that you haven't
10 really had submissions on why this section 360A particularly singles
out part 7A, so we have given you our answer to that. And we also say
in the point just made about section 165(f) to (h), that is my paragraph
15 15. So we then go on to just address, well what does a method mean.
You'll be familiar with the sort of jurisprudence on that. Essentially it's
a contextual meaning and it's set out at paragraph 17 and 18 of the
submissions.

15 So paragraph 19 the method specifically identified in the RMA
provisions is public tender. These provisions reinforce purpose of the
regulation is to address or manage generic activities not the merits of
individual applications. I don't want to repeat myself so paragraph 20
20 is the same point but we do say in the second to last sentence the 360A
power was not intended to be used as a vehicle for the Minister to step
into the shoes of a private applicant, including meeting its costs to
circumvent part 4. It is not the role of the consent authority by a coastal
plan to advantage a particular applicant or consent holder over others.

25 CHAIRPERSON: I think it's not meeting all its costs.

 MR ENRIGHT: That's probably a little bit overstated, I think.

30 CHAIRPERSON: Is it really relevant anyway?

 MR ENRIGHT: No, it's not. Sorry. We were on a roll when we wrote that obviously
but it doesn't assist the validity points, I accept that.

 CHAIRPERSON: No, it doesn't really, no.

35 MR DORMER: Are you going to be contending it shouldn't be allowed because King
Salmon's foreign owned?

 MR ENRIGHT: Not at all, no.

40 MR DORMER: Good.

 MR ENRIGHT: As I said before, and wish to emphasise, EDS welcomes aquaculture in
the right cases.

45 21. Sector level scale for generic intervention under 360A would be
consistent with the government's aquaculture strategy and be lawful,
such as introduction of sector requirement to adhere to benthic
guidelines. Equity implications of MPI substituting itself for King

Salmon have come to the fore during the hearing process. Change in zoning at Crail Bay will remove current mussel farm coastal permit holder opportunities to apply for change in aquaculture activity. In response to this issue Mr Gillard suggests the permit holder could apply for consent now and then continue to operate despite any new prohibition. This undermines any suggestion that the fallowing of relocated farms has environmental benefits.

I think that this point was made far better by the first submitter who appeared this morning and he raised obviously the issue of competing equities.

Special treatment has already been raised, like for like treatment is a function of fairness. These two points just made are really just about appropriateness, not validity. Requirement for process is ensuring fair and equitable opportunity for consent to occupy a public space for public/private use is evident from the RMA's aquaculture provisions. It is inconsistent for these provisions to use the 360A regulation power to create an unfair and anti-competitive outcome.

You might think that word "anti-competitive" is strong but again it's interesting that 165(f) RMA explicitly refers to managing competition for occupations. I didn't think it was an RMA concept, but it is by virtue of 165(f).

So giving effect to the CPS and RPS. So this section of the submissions you'll be familiar with because it was traversed yesterday in terms of what do policies 11, 13 and 15 refer to.

CHAIRPERSON: Yes, we can go --

MR ENRIGHT: Yes, I can take as read, if that is all right.

CHAIRPERSON: Yes, you can go on.

MR ENRIGHT: Thank you. And that includes paragraph 28 reference to the King Salmon EDS decision, etc. So if we move on to perhaps 33, alternative sites. So this is a point less emphasised arising out of the King Salmon decision, which because there were two questions of law the second one related to what is the duty to look at alternative sites where you're dealing with a public domain resource and part 2 RMA values are triggered. You may recall in case law there was that early decision of Justice Hammond in **TV3 v Tainui** which said well if you have a part 2 issue triggered then you might need to look elsewhere. That case was to do with a TV aerial on a hill of importance to Tainui.

CHAIRPERSON: Mt Te Arawa.

MR ENRIGHT: That's right. So the King Salmon decision advances the jurisprudence

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around duty to look at alternative sites and methods, especially where it's a public domain resource, in this case the coastal marine area, not a private site. So really we have addressed the inadequacies of assessable alternatives, which should include methods including the current proposed coastal plan review. So that's the nutshell point we're making here.

At paragraph 33(a), MPI and King Salmon claimed the proposed sites have features making them uniquely or especially suitable for salmon farming. The decision maker in this case, both the Panel for recommendations and the Minister for regulations, is obliged to test that claim, which should involve consideration of alternative sites. If I could ask you to just add in "and methods", please. That's at the top of page 11.

CHAIRPERSON: There was some consideration of alternative sites.

MR ENRIGHT: Yes.

CHAIRPERSON: Quite a lot of them actually.

MR ENRIGHT: Yes.

MR CROSBY: So on methods are you arguing that that includes the method of using a plan change?

MR ENRIGHT: That's right. Yes.

MR CROSBY: Right.

MR ENRIGHT: So, again, these are merit points and so the evidence of Mr Brown and Mr Counsell, who's our economist, test whether it has been an adequate assessment, I suppose. Certainly Mr Brown's conclusion, as you know, is five to six sites are appropriately selected.

The proposed provisions in sites will sit within the Regional Coastal Plan which must reflect a regional perspective and involve actual and potential effects to matters of national importance. And, of course, on behalf of King Salmon MPI is seeking exclusive use of public resource for private gain. So really we just wanted to remind you King Salmon doesn't just deal with how to interpret the CPS, it also deals with duty to look at alternatives and it's a tangible duty.

MR DORMER: That reference to private gain, you know this decision far better than I do, it comes towards the end, doesn't it?

MR ENRIGHT: That's right, 173.

MR DORMER: Well done.

MR ENRIGHT: I footnoted it because I knew I was --

MR DORMER: Oh, okay.

MR ENRIGHT: I do get regular King Salmon exams during cases.

MR DORMER: We had a discussion -- I forget who with, but the point arose that one could argue, I think, that 173 is obiter.

MR ENRIGHT: That's interesting.

CHAIRPERSON: We argued that ourselves. We are suggesting to you --

MR ENRIGHT: I had the pleasure of arguing this in the Supreme Court, this point.

MR DORMER: Yes, I checked that before I --

MR ENRIGHT: Although it credits my far more learned senior, Mr Kirkpatrick. I would say that is part of the ratio not obiter because the reason the question was put was because again it's -- we said there's a higher onus where it's a public domain resource than a private site. The old law which the High Court Justice Dobson had relied on related to alternatives to a private site, which was a - I can't remember now - rezoning of a residential area, I think, from memory. So we said, "Well, if there's a duty to look at alternatives for a private site, the duty must be higher where it is a public resources" here the coastal marine area. So I respectfully submit that is not obiter.

CHAIRPERSON: But they had already decided, hadn't they, there was a failure to give effect to the --

[11.00 am]

MR ENRIGHT: Oh, I see, so you're saying the discussion in totality of the second area of law was obiter? I would disagree with that respectfully because otherwise the court, as it often does, would say, "Well, there's no need for us to discuss this, therefore we don't". They didn't, the majority decided to deal with the question on its merits because it was seen as --

CHAIRPERSON: But was it essential to the decision?

MR ENRIGHT: The decision would -- I would submit it was essential to the appeal, it wasn't essential to the outcome, if you like, because it's question 1 that resulted in the Papatua plan change being struck down, if you like.

CHAIRPERSON: That's a real ratio, isn't it, of that decision?

MR ENRIGHT: It depends what you mean -- I mean a ratio can be read, as you know,
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- 5 narrowly or broadly. My submission is that it is part of the ratio. Bear in mind that Justice William Young decided -- essentially agreed with the majority view on the second question but decided it was not necessary to deal with it. So that was his approach but the majority decided there was sufficient merit. So I would submit it is a ratio.
- CHAIRPERSON: Okay.
- 10 MR ENRIGHT: And of course, you know, that academic point aside, one has to treat it as highly persuasive because it is fully argued in the Supreme Court authority.
- CHAIRPERSON: Of course, yes.
- 15 MR DORMER: I still can't understand the importance of it being in the public domain.
- MR ENRIGHT: Well, the argument essentially was - again, building on the earlier jurisprudence - if where a part 2 value is invoked one should look at alternatives - and of course part 2 RMA values relate to privately owned land and publicly owned land - the duty should be higher where you are excluding the public from something they would otherwise have access as a right to and it's not subject to an overlay of private property rights. That's why alternatives are more important. I think that's the argument.
- 20
- 25 MR DORMER: I'm with you. And because you're excluding the public's right of access to that which they would otherwise be entitled to enjoy.
- MR ENRIGHT: Yes.
- 30 MR CROSBY: I think the reason why we thought that the discussion of alternatives was obiter rather than part of the ratio lies in paragraph 164 which outlined arguments about alternative sites and then 165 said:
- 35 "We do not propose to address these arguments in detail given the issue of alternative sites reduce significance in this case, rather we will make three points."
- MR ENRIGHT: Yes.
- 40 MR CROSBY: We rather took it that the three points were obiter, but nonetheless obviously highly persuasive I would have thought, views on alternative sites in general, not relevant necessarily to the particular case.
- 45 MR ENRIGHT: Yes, thank you for that clarification. Again, I think it depends on -- I accept that it wasn't necessary for the Supreme Court to give findings on the second question for the purpose of the outcome of the case but --
- MR CROSBY: And they didn't, did they?

MR ENRIGHT: No, because the Papatua plan change was -- I'm not sure if the right word is struck out or struck down but it didn't comply with CPS basically. So I would still submit it went beyond obiter but it probably is academic because it's persuasive or highly persuasive.

MR DORMER: It would be a brave commissioner that said the Supreme Court was wrong.

CHAIRPERSON: Or an advisor.

MR ENRIGHT: Indeed.

CHAIRPERSON: There are ways of getting around those things, though.

MR ENRIGHT: Yes.

CHAIRPERSON: Yes, all right, carry on, Mr Enright.

MR ENRIGHT: Thank you.

CHAIRPERSON: You are nearly finished, aren't you?

MR ENRIGHT: We are. So the next point is about section 32 and we have already been through that.

CHAIRPERSON: Yes, we've been through that.

MR ENRIGHT: But I've given you the wording, you know, as soon as practicable so I will take it as read.

CHAIRPERSON: Yes.

MR ENRIGHT: And then 39 deals with strategic planning. So I think we wanted to just remind you of policy 7 of the Coastal Policy Statement, which perhaps hasn't had quite so much air time, which identifies strategic planning as a process for policy statements and plans to identify areas where particular activities are appropriate or inappropriate and significant risk from adverse cumulative effects. We say the ad hoc zoning approach is the antithesis of strategic planning. There is a concern about double up of plan making process because regulations result in changes to the operative plan. For those changes to be incorporated into the proposed plan they must first go through a schedule 1 process. The new bespoke plan making process introduced by the 2017 RMA amendments may provide an alternative route, but even that would require a second process requiring public consultation.

The inefficiency and fallacy of logic in seeking changes to an outdated plan subject to review in the rushed nature of the proposal were

respectfully highlighted by counsel for King Salmon's suggestion consent could be granted under the operative plan prior to its replacement and then the provisions could be allowed to fall away. Probably I think, again, we might delete the last sentence there as being a bit of an overstatement, I'm sorry.

So looking at effects. I don't think we need to read through this because you're familiar with our expert evidence, but paragraph 46, whether the Sounds are at a tipping point in terms of cumulative effects on landscape and king shag is an issue. Recommendations providing for rezoning of currently prohibited areas without thorough consideration of cumulative effects on the Sounds and in context, particularly the Waitata Reach, and independent of the plan review undertaking that specific exercise risks, pushing the Sounds over the edge, and we've made the summary point that proposal is misconceived, unprecedented and respectfully propose an unlawful use of executive powers to override accepted and strategic planning processes for the advantage of one market player. Council is in the process of developing a regional strategy for aquaculture. That process should be respected and the public interest and proper planning and good outcomes should trump private interests. We respectfully submit you should recommend no amendments to the operative plan and alternatively recommend rezoning of the five Waitata Reach sites be declined on the merits.

So just finally, I understand an issue came up yesterday - and I am indebted to Ms Wright for this - just around adaptive management and we thought you might find it of assistance to be reminded of the Sustain our Sounds decision of the Supreme Court on adaptive management. So we have prepared just a summary for you of the steps to be followed for adaptive management. I'm not going to read through that but I'll hand it up if I may.

CHAIRPERSON: Thank you.

We have a copy for the recordkeeper. I will have a copy for my friend shortly. So, as I say, that just may or may not be of assistance but we wish to remind you of the Sustain our Sounds decision.

Then, finally, we also have a hand up of really points just made orally this morning. So it's more of a summary of those if that would assist you. It's of counsel's notes.

CHAIRPERSON: Well, we've got the transcript.

Yes, that's true, all right. I will just double check I haven't missed anything in that case, sir. One second. Oh yes, there is just one point here. If you go to the proposed limited discretionary criteria. I know it should be restricted discretionary, but that is the old wording, isn't it? It might help if I could ask you to turn to that in the draft.

MR DORMER: We have one between three of us.

MR ENRIGHT: That's the problem with paper, isn't it?

5 MR DORMER: I have a suitcase full of papers here that I brought along for today.

CHAIRPERSON: You might find it in there.

10 MR ENRIGHT: What's notable by its absence is, of course, there's no criteria relating to --

CHAIRPERSON: Sorry, what page number is it?

15 MR ENRIGHT: I am trying to find it actually.

CHAIRPERSON: Are you talking about the rules or the --

MR ENRIGHT: The rules, yes.

20 CHAIRPERSON: They're on page 71.

MR ENRIGHT: Thank you, sir.

25 MR CROSBY: No, sorry, page 73

CHAIRPERSON: Sorry, you're quite right. Page 73 and following.

MR ENRIGHT: Yes, so it is page 74, 35(3)(iii)(ii) matters to which discretion is limited. Of course, noticeable by their absence are references to biodiversity, natural character and ONL values. None of those things are to be considered when you're granting or refusing a --

30 CHAIRPERSON: Yes, that point was made to us yesterday.

35 MR ENRIGHT: Yes, and we would say that because they are silent on those matters those criteria cannot give effect to the CPS. So as they currently stand they do not give effect to the CPS and you should not recommend approval. At minimum the decision maker must be able to consider these matters when assessing resource consent application and be capable of decline or adverse effects if these values cannot be avoided, or alternatively avoided agreement be mitigated depending on the quality of the value. If it's outstanding or whether it's a lesser level.

40

45 That is necessary to give effect to the avoidance that -- well, what the Supreme Court refer to as the graduated scheme of protection and preservation under policies 13 and 15.

CHAIRPERSON: I think the counter to that might be that those matters have already been

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considered in deciding the zoning.

MR ENRIGHT: I understand the point but --

5 CHAIRPERSON: Therefore they don't need to be considered again.

MR ENRIGHT: Yes, well there are two answers to that. The first being the
inadequacies of this process because unlike, say, the two tier appeals
10 regime where you can thoroughly test assertions made by expert
witnesses, we don't --

CHAIRPERSON: But that is a different matter, isn't it?

MR ENRIGHT: Well, it is.

15 CHAIRPERSON: That's getting back to process?

MR ENRIGHT: It's getting to process and --

20 CHAIRPERSON: In other words, I think the counterargument could be, well, why would
you go through all that argument again when you've been through it in
the planning process and you've made decisions about the
appropriateness of the sites in terms of the New Zealand Coastal Policy
Statement.

25 MR ENRIGHT: Well, we would say this is not an analog of the planning process and
it's not a proper testing -- sorry, that's another process point. It's also
not very logical because there are still some double ups. So, for
30 example, effects on tangata whenua, layout, positioning of operational
structures, some of those are double ups, effects on water quality. So
there is going to be a double consideration, if I can put it that way, of
some matters before you now, but excluding importantly the most
significant issues.

35 CHAIRPERSON: Yes, because it's a non-notified process anyway.

MR ENRIGHT: Yes, well of course that's something we criticise as well.

40 CHAIRPERSON: You don't like that either.

MR ENRIGHT: No, but it's a deficiency that means it doesn't give effect to the CPS is
the bottom line point on that.

45 CHAIRPERSON: But is that right if the plan change itself has given effect to the CPS, if
that were to be the position?

MR ENRIGHT: If that were to be the position, well, I suppose that's begging the merits
question, but we say it doesn't, I suppose.

CHAIRPERSON: But that is a merit question.

MR ENRIGHT: Yes, it is.

5 CHAIRPERSON: You are raising this as a jurisdictional question.

MR ENRIGHT: I am raising it, yes.

10 CHAIRPERSON: Yes.

MR ENRIGHT: I can only say we would say at the level of merits and jurisdiction that it doesn't give effect to policies 13 and 15.

15 CHAIRPERSON: You have to say that.

MR ENRIGHT: I do, yes. Thank you. That's something you will hear more from our two experts, so those are my submissions. I am happy to take any further questions or we can move to experts or morning tea.

20 CHAIRPERSON: I think we might move to morning tea even though it's late in the morning.

MR ENRIGHT: Very good, sir. Thank you.

25 CHAIRPERSON: So we'll adjourn for 15 minutes. Thank you.

ADJOURNED [11.13 am]

30 **RESUMED** [11.33 am]

CHAIRPERSON: We haven't quite finished with you, Mr Enright.

MR ENRIGHT: That's okay.

35 MR DORMER: It sounds ominous, doesn't it?

CHAIRPERSON: No, it's not really. Mr Crosby has some questions for you.

40 MR CROSBY: Mr Enright, have you got the provisions of the Act in front of you?

MR ENRIGHT: Sorry, I'll just grab that if I may. Excuse me. Thank you.

MR CROSBY: Just if you turn to section 32(5) if you would.

45 MR ENRIGHT: Yes.

MR CROSBY: Just while you are turning it up if I read it out for the record.

"The person who must have particular regard to the evaluation report, the section 32 report, must make the report available for public inspection."

5 There then follow two alternatives:

"(a) As soon as practicable after the proposal is made in the case of a standard or regulation; or

10 (b) At the same time as the proposal is publicly notified."

Now, we just understood you to be advancing a proposition really that what needed to be done here was that once the proposal was notified there needed to be a section 32 for a critique to occur from the public. If that was the position there would only need to be the one option, wouldn't there? What is the purpose of the first option of those two and what setting and what circumstances do you say that it is intended to meet?

MR ENRIGHT: It's almost a bit like the "earlier of" type wording but it doesn't say "earlier of" so it's either or. (b) is obviously at date of notification which was the scenario you just described but as soon as practical after proposal is made doesn't itself define what proposal is made so you have to read into it essentially that must be the point at which it's put before the public.

MR CROSBY: But if that was the case you wouldn't need the words "as soon as practicable" would you? Wouldn't it be at the same time as the proposal was made?

MR ENRIGHT: Well, I don't think much turns on the difference between (a) and (b). Both address an early part of the process and what is curious, for example, is (a) uses, in the case of a standard or regulation, so arguably (a) only applies to standards and regulations. In contrast (b) could apply to proposals generally and curiously proposal is defined to include regulations. So on its face when you're dealing with regulations the date of notification can be under either (a) and (b) I think but (a) seems to be limited to standards or regulations. So what's the material difference between the two? I don't think there is much difference actually. Possibly a bit more flexibility is allowed for regulation and that's the reference to practicability but it's a critical step in the process. We've traversed the reasons why I've made that submission.

MR CROSBY: Can I ask you then to turn to schedule 1 and I really just want to deal with the contents page? So have you got the statute there?

MR ENRIGHT: Yes, I do.

MR CROSBY: You will see that in the schedule 1 process clauses 3 to 3(c) relate to consultation. There's then the issue of clause 4 relating to requirements but we don't need to address that. Then after consultation public notice and provision of the document to public bodies and if you turn to that clause 5 that's where the requirement is for there to be particular regard to section 32 for notification. So that's clause 5(1)(a). Do you see that?

MR ENRIGHT: Yes, I do.

MR CROSBY: Now, the thrust of what we understand to be the likely argument, it's the reason for putting it to you, that we were expecting to come from MPI, or from independent counsel, arises out of the way in which the consultation process has been framed. Again, I'm sorry, you may not have with you the consultation document. Have you got that there?

MR ENRIGHT: No, I don't but I listened to the proposition.

MR CROSBY: Right. Well, the proposition is at page 66 of that document --

MR DORMER: Take mine for the minute.

MR ENRIGHT: Hopefully it's got the answers in the margin for me.

CHAIRPERSON: Yes, don't take any notice of ...

MR ENRIGHT: Thank you.

MR CROSBY: You will see that there is a part 6 under No. 8, having your say, consultation process. It outlines that a public consultation process will take place between 26 January and 27 March, as outlined in figure 6 below - well, that was a bit hopeful, it's dragged on a bit from there - because when you follow that through there's a website reference, then there's provision, the Ministry of Primary Industry will hold public drop-in sessions during this time, the sessions are for information only not for the purpose of providing comments. There is then provision for comments, reference to the Ministry holding a hui on the proposal with iwi authorities then.

"Following the closing date for written comments there will be an opportunity for persons to attend public hearings and speak to their comments with a Marlborough Salmon Farm Relocation Advisory Panel. Iwi authorities will also have an opportunity to meet with the Panel. The Panel will then review the expert research reports, analyse all written comments and prepare a written report and recommendations to the Minister of Primary Industries. As part of the process expert workshops will be conducted to discuss and resolve any outstanding issues with available information."

Then there's a schematic and the schematic shows in a very dramatic way, with a finite line, the public hearings process that has been spoken about with a line which indicates consultation ends.

5 MR ENRIGHT: Yes.

MR CROSBY: Now the --

10 CHAIRPERSON: I'm sorry. Could you go over then to the next page under the heading "What happens next"?

MR CROSBY: Okay. The Chair has drawn attention to the fact that - over the next page at 8.4 - "what happens next":

15 "The Marlborough Salmon Farm Advisory Panel's report, together with final advice from agencies on the proposal and statutory requirements will form the basis of the Minister's decision on whether to recommend the use of regulations to enable relocation and before making a decision the Minister will take account of the report and recommendations.
20 Provisions of the operative plan, whether regulations are necessary, etc, whether the matters addressed regional or national significance, whether the amended plan will continue to give effect to the NZPCS Regional Policy Statement, any national environment standard [and then importantly] the evaluation report and the costs and benefits of the proposal."
25

30 So what's being flagged here is a process whereby, as the Chair raised with you earlier in an earlier exchange with you, whereby this process and our process and our advisory report is a consultation process which informs the Minister and following which he takes that into account as well as the section 32 report. Given that, what's your response to what might be an anticipated proposition that that means as soon as practicable means once those steps have been undertaken?

35 MR ENRIGHT: Well, I suppose first query the utility on 32(5) of making the report available for public inspection if that's at the very end when there's nothing you can do about it. Why would it be made available for public inspection? I understand other than for some purpose essentially. So that would be the first point.
40

Also both (a) and (b), regardless of which one applies, require an early notification of that either as soon as practical or at the time of public notification. So both tend to suggest that's at the start of the process, not the end.
45

5 That interpretation better aligns with the right to natural justice in the
New Zealand Bill of Rights Act and should be preferred as an
interpretation because ability to understand what advice officials are
giving to the Minister we must have the right to comment on that advice
and, of course, the commissioner should have that opportunity too.
10 This is a small point but the document you've just taken me to, the
consultation document, sort of strictly, as page 68 says, "The Minister
will take account of" and it says, "the evaluation report" but, of course,
it's actually not take account; "particular regard must be given". So
strictly speaking that's an inaccurate description of what the Minister
will do with a section 32 report. That's a small point but let's remember
the importance of the section 32 report. It has a sort of higher level of
consideration because you have to give particular regard to it. Another
reason why the public ought to have access to that report as part of this
15 process.

CHAIRPERSON: "Take account" is actually more directory than "have particular regard
to", isn't it?

20 MR ENRIGHT: My submission, respectfully, is the reverse.

CHAIRPERSON: Doesn't the case law say that when you're looking sections 6, 7 and 8?

25 MR ENRIGHT: Yes, or 7, there's case law on "particular regard" and I can provide it if
required.

CHAIRPERSON: We've understood "take into account --"

30 MR ENRIGHT: Shall take into account creates --

CHAIRPERSON: "-- principles of the Treaty of Waitangi" was stronger than "have
particular regard to".

[11.45 am]

35 MR ENRIGHT: My submission that it is the reverse. Well, certainly the first point is
it's a different onus and second point, my submission, it's a stronger
onus than "shall take account" but there is some case law on this. I'm
sure that Crown Law can deal with that point.

40 CHAIRPERSON: There's a criminal case I think actually.

MR ENRIGHT: Yes, and it's got to be relevant statutory context of course so --

45 CHAIRPERSON: Anyhow.

- MR ENRIGHT: Anyway, that was more of a small point I suppose. What else can I say? I was asked a question, why is there a difference between section 32(5)(a) and (b) and the phrase "as soon as practicable". One answer might be, one has to have regard to the sort of exigencies of process with regulations, which: we haven't done this before. There might be some reasonable reason why you can't immediately release the section 32 report on the date of notification. I would submit 5(a) occurs before 5(b) so at the latest it's the date of public notification because the proposal obviously is put to the Minister for consideration at an earlier stage than it's publicly notified. So I think 5(b) is the latest at which the section 32 report can be released.
- I think that's probably all I can assist you with.
- CHAIRPERSON: All right, thanks very much.
- MR ENRIGHT: Thank you. We have Kevin Counsell to my left who will now speak to his evidence. We did just have a quick question which was in relation to both EDS witnesses, whether the commissioners have had opportunity to read not only the primary evidence but also the summary of evidence for each witness because that will allow them to speed things up.
- CHAIRPERSON: You're going to call two witnesses?
- MR ENRIGHT: Yes. Sorry, so first to my left is Mr Kevin Counsell, economist, and the question, sir, was whether you've had an opportunity to review his summary of evidence?
- CHAIRPERSON: Not the summary, no.
- MR ENRIGHT: Not the summary, so would it assist for both Mr Counsell and Mr Brown to speak to their summaries?
- CHAIRPERSON: To speak to their summaries, yes.
- MR ENRIGHT: Very good, thank you. I'll leave them to --
- MR DORMER: Excuse me, sir, could I just ask further question of Mr Enright?
- CHAIRPERSON: Yes.
- MR DORMER: Early in your submission, before you went on to the written one today, you spoke about MPI having chosen the wrong horse by amending the operative plan.
- MR ENRIGHT: Yes.

- MR DORMER: I wasn't quick enough. I will go back to the transcript. I wasn't quick enough to get everything down there. In what respects have they chosen the wrong horse?
- 5 MR ENRIGHT: Yes. I'll just bring up section 360. The main point there was 360B(c)(iii) says:
- 10 "The Regional Coastal Plan to be amended by the proposed regulations [key words] will continue to give effect to the Coastal Policy Statement inter alia."
- MR DORMER: So it doesn't.
- MR ENRIGHT: As a starting point it doesn't then it won't do so after you --
- 15 MR DORMER: It can hardly continue to. It will continue to do so to the same extent it did before.
- MR ENRIGHT: Well, it's an interesting argument and "will continue to give effect to"; we say, well, it doesn't. It's very much outdated. It doesn't give effect to. For example it doesn't identify all relevant ONLs and by introducing these regulations first it won't continue to give effect and the second point is a merit's point, you're making it worse by the sites you select if you like but the first point is a statutory interpretation point.
- 20 25 MR DORMER: Thank you.
- CHAIRPERSON: Thank you for you that. On the summaries I've got in front of me a pre-caucusing statement by Mr Brown. I've got the wrong one.
- 30 MR ENRIGHT: We were unsure, sir, whether you'd seen the summary statement by Mr Counsell which was filed with our legal submissions on Friday I think. I'll see if I have a spare.
- 35 CHAIRPERSON: I might have it electronically I think.
- MR ENRIGHT: I have one spare.
- 40 CHAIRPERSON: Wait a minute. I think we might be all right here. Statement of evidence dated 2 May, is that the one?
- MR COUNSELL: That's my full brief, yes.
- 45 CHAIRPERSON: That's your full brief?
- MR COUNSELL: Yes.

- MR ENRIGHT: Attachment A to the statement of evidence, right at the very back, gives you the points of agreement and disagreement.
- CHAIRPERSON: That's the document that I've left in the other room.
- 5 MR ENRIGHT: I have a spare of that, sir, and I think this was your copy of the ...
- CHAIRPERSON: You've done the same with Mr Brown, haven't you?
- 10 MR ENRIGHT: Yes.
- CHAIRPERSON: Okay. So we're now reading from the statement, which is a summary, dated 2 May?
- 15 MR COUNSELL: No, that's my full brief. I filed a summary on 27 March, which was a couple of pages, but my full brief, 2 May, but I think that is the best one to read from if that's okay.
- CHAIRPERSON: I'm sorry I'm not with you at all now.
- 20 MR COUNSELL: The 2 May statement; that is my full brief of evidence.
- CHAIRPERSON: Well, where do we find the summary?
- 25 MR COUNSELL: I've done a caucusing summary in --
- CHAIRPERSON: That's what we want.
- MR COUNSELL: That's what you're after. Yes, that's attachment A to that evidence.
- 30 CHAIRPERSON: All right. Attachment A is headed "points of agreement and disagreement".
- MR COUNSELL: Yes. It's a caucusing statement.
- 35 CHAIRPERSON: Yes.
- MR CROSBY: What you're saying is, attached to the original comment you filed a four-page document?
- 40 MR COUNSELL: Yes. So I firstly filed a four-page summary on 27 March and then a full brief on 2 May and attached to that 2 May one --
- MR CROSBY: I think what's confusing the Panel is that ordinarily one gets the full brief and then a summary. So what you've done is a summary and then the full brief. Is that right?
- 45 MR COUNSELL: Yes, that's right. Yes, I apologise.

MR CROSBY: That's all right. As long as we understand ...

CHAIRPERSON: But I haven't got the summary, I've got the full brief.

5 MR CROSBY: The summary is on 0592, so you would have that electronically.

CHAIRPERSON: You haven't got copies of the summary, have you?

MR COUNSELL: No, I've only got one.

10 MR ENRIGHT: If it assists we could reverse the order and get some copies run off if you like.

MALE SPEAKER: No, we're going to get there.

15 CHAIRPERSON: We're just about there I think.

MR DORMER: I've got it.

20 CHAIRPERSON: All right. This is a document called "summary of statement by Kevin Counsell, etc"?

MR COUNSELL: Yes.

25 CHAIRPERSON: Dated 27 March?

MR COUNSELL: Yes, that's right.

CHAIRPERSON: Thank you.

30 MR COUNSELL: So my various qualifications are set out in the first paragraph, I won't elaborate unless you'd like me to.

CHAIRPERSON: No.

35 MR COUNSELL: So skipping through to 4 my focus in my evidence is on PwC's report which is an input/output analysis. As you know, it's calculated the effects of the salmon farm relocation on GDP and on employment in the Nelson and Marlborough region. I've given the figures there they've used.

40

45 The key thing that I talk about in my summary and my evidence is the inferences drawn by MPI and to an extent also by PwC that these additions to GDP and employment are the economic benefits of the proposal. Just as an aside too, I don't think this is just about semantics. The word "economic benefit" is referred to by MPI regarding the government policy so I think it's important as economists at least to help the Panel understand how we think about these benefits. So my --

CHAIRPERSON: Could you read from paragraph 5 please?

MR COUNSELL: Certainly. As I will --

5 CHAIRPERSON: Just read it.

MR COUNSELL: Certainly.

10 "However, as I will explain in my evidence the IO [that's input/output] analysis conducted by PwC is not a correct measure of the economic benefits of the proposed salmon farm relocation. Rather the PwC analysis measures only the economic impacts of the relocation on the Nelson and Marlborough regions. Economic impacts are essentially the monetary flows in the economy that arise from any form of
15 economic activity. IO analysis does not specifically identify which of these monetary flows are benefits and which are costs."

Paragraph 6 then:

20 "When considering trade-offs about how resources are best allocated economists assess economic benefits using a concept known as welfare. In broad terms welfare refers to the net benefits, the economic factors received from an action or transaction such as salmon farming. The preferable approach to measuring welfare and therefore net
25 economic benefits would be to use the methodology of cost benefit analysis, CBA. CBA seeks to measure all of the benefits and costs associated with economic activity. It's scope is broad enough to cover direct benefits and cost to consumers and producers as well as environmental, cultural and recreational benefits and costs."

30 I then go on in paragraph 7 with a quote from the New Zealand Treasury. So the quote is this:

35 "Economic impact analysis, EIA [and I should just point out that's the same as input/output analysis which PwC has done]. So EIA differs from CBA in that it measures the economic impact of a project, that is to say the activity generated rather than the net benefit created. Because it measures the activity generated it treats costs as a benefit. Using an extreme example, if a project involved digging a hole in the
40 ground and filling it in again then the expenditure on labour employed would, under EIA, be treated as a contribution to the economy and therefore as a benefit. The cost would be ignored."

45 That's from the New Zealand Treasury's guide to cost benefit analysis 2015 paper.

Paragraph 8:

"Indeed the Treasury's analogy of digging a hole in the ground and filling it in illustrates the issue because IO analysis does not separately identify costs and benefits. It will always show economic activity, such as digging a hole and filling it in, as generating a positive impact on GDP. The point of analysing welfare is to identify which of those impacts are benefits and which are costs and to allow those benefits and costs to be assessed using a common metric. This ensures that priority can be given to the types of economic activity that maximise net benefits."

On to 9:

"In my evidence I consider the benefits and costs of the proposed salmon farm relocation from a conceptual standpoint. The relocated salmon farm sites result in an increase in production relative to the existing farms with the benthic guidelines implemented. To the extent that this results in higher profits from salmon farming this could be considered as a benefit."

[12.00 pm]

Then in 10:

"However, there would also be costs. For the relocated salmon farms there would be a range of environmental costs including potential adverse effects on endangered king shags and potential adverse effects on water quality associated with increased production. Moreover, some of the salmon farms would be relocated into an area that is defined as an outstanding natural landscape. Environmental resources often have important non-use values and the characterisation of an outstanding natural landscape is consistent with this. Where these values are undermined this is a cost that should be incorporated into any measure of net economic benefits."

Then 11:

"In summary, PwC's analysis shows only that the increased production at the relocated salmon farms will generate additional economic impacts, a tautological result. This does not necessarily imply economic benefits. A proper assessment of the economic benefits would recognise that the relocated farms will produce some benefits but will also incur a range of costs."

CHAIRPERSON: Yes, thanks very much. Have you got any questions?

MR DORMER: No, thank you.

CHAIRPERSON: Ron?

MR CROSBY: No.

CHAIRPERSON: So thank you for that, Mr Counsell, and we'll be seeing you later, tomorrow I think.

5

MR COUNSELL: Yes, that's correct. Okay, great.

CHAIRPERSON: Okay, thank you.

10 MR COUNSELL: Thank you.

MR BROWN: Good morning, Mr Chairman.

15 CHAIRPERSON: Mr Brown. In your case, Mr Brown, are we looking also at a document that you produced in March or --

MR BROWN: No, sir.

20 CHAIRPERSON: We're looking at what's called a pre-caucusing statement?

MR BROWN: Yes, dated 5 May.

CHAIRPERSON: Yes, thank you.

25 MR BROWN: Sir, I perhaps should just state that my qualifications are as outlined in the evidence-in-chief. My name is Stephen Brown, that I gave evidence in the previous King Salmon hearings and I would probably like to start by just addressing the areas where I think there's commonality or agreement between the different landscape architects involved in this process.

30

CHAIRPERSON: Well, we're going to do that, aren't we, tomorrow?

35 MR BROWN: Yes. That's where I was wondering. I'm really going to take your guidance a little bit because I could read this out but equally there might be more benefit from just leaving you to read it and then to respond to questions this afternoon and if that is the case then --

CHAIRPERSON: No. I think if you could read this now that would help us.

40

MR BROWN: I will do that.

CHAIRPERSON: Thank you.

45 MR BROWN: So if I can start first of all dealing with the matters of agreement at paragraph 4.

5 "My reading of the evidence indicates the following matters are agreed
between all experts. Firstly, that while natural character values are
often viewed as being very site specific there can be no doubt that
perceptions of naturalness and natural character value and the physical
reality associated with such values often stretch well beyond the site
level. As such I agree with Dr Steven in relation to Boffa Miskell's five
scales of natural character assessment and John Hudson's analysis
where I believe he takes this adequately into account. It appears that
10 Julia Williams also agrees with this approach to natural character
assessment."

So that's the five scales that are set out in the natural character
assessment undertaken by Boffa Miskell.

15 CHAIRPERSON: Just pause there. I'm sorry. I might have misled you. What we would
like from you is a summary of your evidence rather than this
pre-caucusing statement. Have you got that?

20 MR BROWN: No, sir.

CHAIRPERSON: Just like we've had from Mr Counsell.

MR BROWN: No, sir. I was asked to prepare this pre-caucusing statement. I wasn't
25 asked to prepare a separate summary.

CHAIRPERSON: Because you've got a fairly lengthy statement of evidence, haven't you?

MR BROWN: Would you like me just to try and summary it orally?

30 CHAIRPERSON: Yes. I think that would be helpful because we'll leave this until the
other experts are here.

MR BROWN: I'd like to just quickly subdivide it into some of the sort of areas of
35 concern and issue and the first is naturally that of existing values and
of the ONLs that are applied to different parts of the Sounds and in
particular parts of the Waitata Reach. In that regard I have to say that
I do have a degree of sympathy for some of the opinions expressed by
Dr Stevens. I wouldn't have expressed them in probably quite the same
way as he has but I do believe particularly, as we are dealing with a
40 landscape or landscapes that comprise a series of sunken valleys and
hills and ridges stretching in a north-easterly direction towards Cook
Strait that sink into the strait, we're dealing with a landscape that is very
different from the majority of landscapes that myself and other
landscape architects generally address. I think that that makes the sea
45 a very important component of these landscapes and I think Dr Steven
is quite right to say that the sea is both an important component but it
is also an element that helps to glue together a lot of the terrestrial areas
that maybe we have more comfort assigning values to.

Now, traditionally with landscape architecture there have been two approaches to identifying landscapes. The first has been quite simply using a catchment-based approach so that if you're looking at somewhere like the Waitata Reach you might, as it were, position yourself in the Reach and imagine the catchment that encloses you, that's around you, that extends up to the ridge lines, that probably extends out to the Chetwode Islands and perhaps goes down close to Maude Island and you might describe that as a catchment and that might be the area that you define as a landscape and that is an approach which certainly has a lot of appeal in this instance. I say that because not only are we dealing with an area that's quite nicely enclosed, we know that people travel through this by boats and so on so they often perceive this landscape in terms of the sort of experience I've just talked about.

The other way of addressing landscapes and defining landscapes is to look at the characteristics that are found on both land and sea, and where there's a certain commonality of those characteristics and values to define those areas that have that commonality and then to say in terms of ONLs or any other level of landscape value that you're talking about, this area has such and such a value and character, this area has a different character and value.

In this instance, Boffa Miskell have adopted an approach which is essentially the latter so their 2015 study reflects the latter approach which is more based on the character of different parts of the Marlborough Sounds. I can see why they've adopted that approach but equally I can see why Dr Steven and myself to a certain extent are concerned that this perhaps doesn't take sufficient account of the sea areas between those land areas that I've talked about.

So this is quite a complex issue and it makes the assigning of values and the identification of ONLs a very difficult task, and I have a lot of sympathy for Boffa Miskell in terms of the work that they have undertaken.

CHAIRPERSON: That's in connection with the preparation of the new plan.

MR BROWN: That's exactly right but it helps to explain this issue of why there's been a difference of opinion about just what ONLs are or what landscapes are in fact, so I was just trying to help explain that.

When it comes to assessing the effects of development proposals, the situation is different because what you tend to do instead then is focus upon all of the catchments and receiving environments that are exposed to a particular development, or series of developments in this case, and look at assigning levels of effect and magnitudes of effect in relation to all those receiving environments based on the detailed analysis of the characteristics of both the landscape and the proposal. I think that's what, for the most part, everybody involved in this exercise has tried to do.

The differences that have arisen have largely emerged because, first of all, some landscape architects have placed more weight on the site-specific level. In other words, on the area around the individual marine farm sites, whereas others such as myself and Dr Steven have placed more emphasis upon both that site level, but also the accumulative effects derived from seeing, first of all, one development or one marine farm in conjunction with others and other development and, secondly, the accumulative effects that are derived from travelling through that landscape and experiencing that exposure to the proposed marine farms but also other development in a more sequential fashion.

Now there's nothing unusual about this process. It's used all the time. It's particularly used for very large scale developments, for instance wind farms, so it's common to discuss the experience, for instance, of exposure as people are travelling down a state highway or travelling down a road, or through a river valley in relation to something like a wind farm. So this idea of cumulative effects in relation to sort of sequential exposure is nothing new. It's very common.

The point that I have made in terms of my evidence is that I think that Mr Hudson's evidence in particular focuses very strongly on the site-specific effects, and I think it perhaps doesn't address the accumulative effects quite as thoroughly as myself and Dr Steven have addressed them.

CHAIRPERSON: So having got to that point, are you able to summarise your views as --

MR BROWN: Yes.

CHAIRPERSON: -- distinct from anybody else's?

MR BROWN: Yes, I can.

CHAIRPERSON: On the various --

MR BROWN: Yes, I can.

CHAIRPERSON: -- sites?

MR BROWN: Yes. And I mean the point I reached, first of all if we are going to deal with Tory Channel ... I think there was a degree of amusement this morning with the discussion about the Tio Point or reference to Tio Point and so on. The issue for me is that --

[12.15 pm]

CHAIRPERSON: So you're dealing now with the proposal in Tory Channel?

MR BROWN: We're dealing with Tory Channel, Tio Point. Spectacular entry to Tory Channel. It's probably the highlight for anyone travelling on the Interislander. Unfortunately, the experience after entering the mouth of the channel is a little less edifying. Increasingly you're exposed to areas that are both settled and farmed, production forestry, areas of harvesting, smart transmission lines, etc, etc.

So the experience offered whether it's to visitors or locals, both, is reflected in the fact that there are no high value landscapes identified within Tory Channel, and in my view the landscape within the channel can probably be best described as compromised. It's certainly modified and I think it's much more able to accommodate and integrate one of the six proposed relocations.

CHAIRPERSON: So you wouldn't see the proposal here as adversely affecting any outstanding landscape?

MR BROWN: No.

CHAIRPERSON: All right.

MR BROWN: No. The situation in relation to the five other proposed relocations is, however, from my point of view quite different. Regardless of whether you agree with Dr Steven and myself or whether you agree with Boffa Miskell's 2015 report, there is a sequence of ONLs and areas of high natural character found within and around the Waitata Reach; and the experience of travelling through the Waitata Reach which is, in fact, the gateway to Pelorus Sound, benefits very greatly from the presence of those ONLs and areas of high natural character.

MR DORMER: Sorry, what benefits very greatly?

MR BROWN: Oh, the gateway experience. So for anyone travelling into the Sound or, for instance, visiting Port Ligar from Cook Strait there is a great deal of value associated with those ONLs. I have reached the conclusion that certainly the two outer relocation sites ... I am sorry. I haven't got my main report with me. I just brought the summary up to the table. I wonder if I could just --

CHAIRPERSON: Would looking at a map help you, of the sites?

- MR BROWN: Yes, it would; it would be very beneficial.
- CHAIRPERSON: Oh, get your brief then, yes.
- 5 MR BROWN: Yes, thank you.
- MR DORMER: They're the Blow Hole ones, are they?
- 10 MR BROWN: Yes, the Blow Hole ones and I think the Central Waitata proposals from my point of view would have a significant effect.
- CHAIRPERSON: What we have heard as the mid-Reach?
- 15 MR BROWN: Yes, mid-Reach.
- CHAIRPERSON: And you say they are ...
- 20 MR BROWN: Would have a significant effect on the values of the Waitata Reach and in my opinion would affect the nearby ONL sufficiently that parts of them would probably not remain ONL in the future. They would also reduce the natural character value of parts of the Reach as well.
- CHAIRPERSON: Which Dr Steven I think explained to us yesterday as two different things, is that right? Do you agree with that?
- 25 MR BROWN: Two different things?
- CHAIRPERSON: Well --
- 30 MR BROWN: Like natural character versus landscape?
- CHAIRPERSON: No, outstanding natural character.
- 35 MR BROWN: Yes, we're not really dealing with ONC areas except out near -- oh, I think out near Kaitira so I'd just need to check that.
- CHAIRPERSON: Right.
- 40 MR BROWN: Now, I've rated the existing values that would be affected by the two very outer Blow Hole Point marine farms as having high natural character at present. I haven't got it as outstanding and that was at the Reach scale so that was looking at the Northern Reach as a whole, but the landscape values for that area I had as being largely outstanding which reflects the presence of the ONLs. In my opinion, the water area connecting West Point with Kaitira really should be included within the ONL. It's not, so I just accept that but my assessment certainly is
- 45 in regard to the existing ONLs as identified.

CHAIRPERSON: That's in the proposed plan?

MR BROWN: That's correct, sorry.

5 CHAIRPERSON: Yes, which is the subject of contest.

MR BROWN: That's right, it is. I simply refer to that because it's very similar to the 2009, then it was modified in 2011 versions of the landscape assessments. It hasn't changed much in relation to the Waitata Reach so that's very similar to --
10

CHAIRPERSON: I think Mr Crosby has a question.

MR BROWN: Certainly.
15

MR CROSBY: In terms of the operative plan, and I know there's a different prescription given to areas of outstanding landscape value I think.

MR BROWN: Yes.
20

MR CROSBY: Those areas at the Blow Hole Point north are not included within that area. Can you give us an explanation in your view as to why they're excluded?

MR BROWN: Well I actually produced a map at the 2012 hearing and I said I felt it should have been definitely. I think the landform there is very dramatic and expressive. It encapsulates that concept of gateway which I've already talked about. The feeling of entry into the throat of Pelorus Sound coming from the much more open reaches of Cook Strait and its margins, I felt that really was important. I don't know why Boffa Miskell did not originally identify that area but I felt it should have been, and it's notable that since then they have identified it as such. My own view is that reflects a more considered interpretation of that landscape, possibly including what was said at the 2012 hearing. From my professional standpoint, I have to say I still think it's ONL and I think that's an important consideration from my perspective.
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MR CROSBY: Thank you.

MR BROWN: If we move further into the Waitata Reach and we have the mid-Waitata site to consider, it's not directly adjoining any ONL but the problem from my perspective is that it's enclosed by areas that do have ONL values. I agree with Dr Steven that one of the really defining features of the Waitata Reach is the way in which a lot of the headlands come out to define the entry channel and then the passage through the outer reach. A lot of those are covered in bush and so they provide a landscape setting that has a high level of naturalness and a high level of value in terms of all the criteria that are discussed in the modified Pigeon Bay factors and so on.
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So, in my assessment, when I've looked at this I don't think you can say, "Well, okay, there's this physical separation because the marine farm happens to sit out here and we don't have the ONL extending out through that site". That does not stop the marine farm still having an impact upon the values of those ONLs and, in my view, it would and as such I believe it would reduce the experience and value of the Waitata Reach from a landscape standpoint. Again, that references both the direct effects of the site by itself, but also the accumulative effects that are derived as seeing that as part of a sequence of marine farms for anyone travelling through the Reach as well or overlooking the Reach.

Then, finally, we come to the two southern sites; the one in Horseshoe Bay and Richmond Bay that are proposed. This is probably the area where I've had the most difficulty. The real issues arise because there's already existing marine farms in both bays, small pocket of settlement and at least some scattered housing in Horseshoe Bay, but the area is also exposed to Maud Island which is identified as both an ONC and an ONL.

The headlands that stretch out and wrap around both Horseshoe Bay and Richmond Bay have more of the qualities that I would associate with some of the ONLs that I've talked about which are found more towards the outer parts of the Reach. They're quite important in defining that water space across to Maud Island and, therefore, I think it inevitable that the two farms very close to the edge of Richmond Bay and Horseshoe Bay would inevitably have an impact upon perception of that part of the Reach.

Therefore, while I don't consider the effects would be as dramatic as they would be in relation or as significant as they would be in relation to the outer parts of Waitata Reach, I still have concerns and I believe that the effects on the ONL values would still be sufficient to potentially threaten that ONL and, as a result, I've reached the conclusion that I don't believe those two farms are appropriate.

I think that one other thing influenced my thinking here too and that was that at the moment you have quite a balanced situation where you've got the highly natural Maud Island out within the Reach. You've got the outer margins of both Richmond Bay and Horseshoe Bay which are becoming increasingly natural. You've got the existing mussel farms within both bays but they're actually recessed into them so they don't have a great deal of effect on the Reach itself, and I feel that the situation would change by pushing the two proposed marine farms out to the edges of those bays. So that's why I reached that conclusion.

[12.30 pm]

CHAIRPERSON: All right. Thank you very much. Would you just remain there?

MR BROWN: Yes, of course.

5 CHAIRPERSON: Do you have any questions?

MR DORMER: No, thank you.

10 MR CROSBY: No, thank you. You've given a good talk to us. Any questions that I've got I'd like to leave for this afternoon.

MR BROWN: I think there might be a few this afternoon.

15 CHAIRPERSON: Well, maybe, yes. Okay, thank you very much, Mr Brown.

MR BROWN: You're welcome.

20 CHAIRPERSON: Thank you. So that's the finish of your case, Mr Enright. I'll give you back this document which is a copy of Mr Counsell's evidence. I don't need that. Thank you very much. All right. Now we're going to move to hear from Martin Pinder. All right, Mr Pinder.

MR PINDER: Good afternoon, Mr Chairman, Mr Dormer, Mr Crosby.

25 CHAIRPERSON: We've got your original comments on this matter.

MR PINDER: Very good.

30 CHAIRPERSON: How do you want to proceed today?

MR PINDER: Very good. I won't be speaking to all of the submission. I'll just be speaking to three questions.

35 CHAIRPERSON: All right --

MR PINDER: I would like to --

CHAIRPERSON: -- you're going to address three matters. Yes?

40 MR PINDER: Three matters that I have submitted. I did add a couple -- a couple of others, but we'll get to those shortly.

CHAIRPERSON: And you're going to do that by 1.00 pm.

45 MR PINDER: I am, yes. By PowerPoint.

CHAIRPERSON: Could you just tell us a bit more about who you are --

MR PINDER: Certainly.

CHAIRPERSON: -- and what's your interest in this matter. All I've got is that you're Martin Pinder --

5 MR PINDER: Yes.

CHAIRPERSON: -- and you live in Blenheim.

10 MR PINDER: All right. I'll get to that shortly.

CHAIRPERSON: Yes.

15 MR PINDER: Okay. So here we are, the proposal to relocate New Zealand King Salmon Farms to the aquaculture prohibited area, CMZ1, Tory Channel.

CHAIRPERSON: So you're specifically interested in Tory Channel?

20 MR PINDER: Yes, I am.

CHAIRPERSON: And only Tory Channel?

MR PINDER: Correct.

25 CHAIRPERSON: Right.

MR PINDER: Right?

30 CHAIRPERSON: Yes.

MR PINDER: My family have owned property in Tory Channel for a period of over --

FEMALE SPEAKER: Can't hear you.

35 MR PINDER: Sorry. Very good. Thank you. That was someone I know. My family have owned property in Tory Channel over a period of 30 years. We have -- we spend any free time we have in Tory, enjoying fishing, diving, the natural environment, and water sports.

40 Tory Channel is a special -- is special for many reasons. And not least, the water is calmer than Queen Charlotte, as Arapawa Island provides a lee from the prevailing north-west wind.

45 We built our eco-house in 2011, on a point overlooking Ngamahau Bay. We take many foreign visitors to our house. They love the outlook from our property, and unfailingly ask, "What is that?", when spotting the salmon farm. And we are always sure to tell them.

This presentation's key submission points are the cumulative effects. That wasn't in my submission specifically, because I felt that while we were asked for additional comments, that perhaps those effects would have been obvious to anyone. But in hearing some of the submissions, I just want to add these photographs to my submission, if I may, and this PowerPoint. So if I can -- so then question 22, the water quality effects; question 29 from the consultation document, effect on mammals; additional comments on demersal fish; and then sedimentation effects.

CHAIRPERSON: Right.

MR PINDER: If I just might borrow this from the McGuinness Institute, and it has not been updated recently. But, you know, just for the benefit of the people here. This map essentially shows aquaculture in the Marlborough Sounds -- or it did. And it's gone. Oh yes. And the blue are those areas where aquaculture is permitted, and is well established in Pelorus and other parts of the Sounds. And the purple are those areas that are considered CMZ1, aquaculture prohibited.

This is an explanation of the various parts of the map, but I won't go into that at this point in time, other than to say that Hector's dolphin, and bottlenose dolphin, and other mammals transit through Tory Channel.

As I understand, you've visited the area by helicopter, by air. But that you perhaps have not at this time, but potentially will at some point in time, go and visit farms and set foot on them. I don't know.

Actually, this is my photograph that I took, that people seem to borrow a lot of. But anyway.

CHAIRPERSON: Tell us about the photograph.

MR PINDER: Oh, this is a -- my photograph that I took some while back. It's for the Board of Inquiry, and this is Tory Channel.

CHAIRPERSON: Yes.

MR PINDER: It illustrates -- where's a pointer? So we have -- this is Te Pangu. This is Clay Point.

CHAIRPERSON: Oh, yes.

MR PINDER: Ngamahau -- oops. Ngamahau is here.

CHAIRPERSON: Is that going -- which way --

MR PINDER: Going north.

CHAIRPERSON: Going north.

5 MR PINDER: So this is going north, so the --

CHAIRPERSON: Going north.

MR PINDER: -- so the ferry will go out of the entrance here.

10 CHAIRPERSON: Yes. Okay.

MR PINDER: So this is -- this is Ngamahau Bay. Sorry, it's just -- not me shaking, it's just the bloody thing. And my property is approximately here on the headland, overlooking Ngamahau Bay.

15 CHAIRPERSON: So coming in on the ferry, you would see your place.

MR PINDER: Indeed you would. Although I'd like to think that you might struggle to see it, because it is an eco property.

20 CHAIRPERSON: Of course.

MR PINDER: It has recessive colours.

25 CHAIRPERSON: Yes.

MR PINDER: And it sits nicely on the property without imposing itself.

CHAIRPERSON: Right.

30 MR PINDER: Here is the area that the new Tio Point farm is proposed to be relocated to. So what we're seeing here are potentially four farms in very close proximity to each other, bringing a significant amount of water traffic, service boat traffic, to this area. And it is quite significant.

35 If I can just go to the next ...

CHAIRPERSON: Can you just tell me when that photograph was taken, please?

40 MR PINDER: Yes, so it's approximately five years ago.

CHAIRPERSON: Okay.

45 MR PINDER: I might add that this Te Pangu farm has since been extended to, so it has had more -- not nets, but -- well, it's just been extended, essentially. I do have another photograph of that.

I might come back to this shortly, but in the meantime, you know, this is the area that we're talking about. So the ferries and several ferry movements a day will come past these farms --

5 CHAIRPERSON: Yes.

MR PINDER: -- and certainly -- yes.

10 So moving on, this is Tory Channel from the sea. So from the air you get an idea of what's happening in a broad sense, but from the sea it's a whole different environment. So -- we haven't moved on there.

CHAIRPERSON: Yes, you've made that point.

15 MR PINDER: Thank you. Cumulative effects. Four large farms in close proximity together, concentrating pollution and industrial activities. And I just want to show you just some of these farms. This is Te Pangu from the air, and --

20 CHAIRPERSON: When's that taken?

MR PINDER: That one was taken about a month ago. This is the farm opposite, which is known as the Clay Point Model Farm. This is taken five years ago, or thereabouts. Again, for the Board of Inquiry. This is Clay Point again, and you can see what I believe is the start of the new extension. So there was consent awarded for this, and this was extended just last month.

25 30 Yes. So this is, you know, barge attending to, I imagine, the final placement of the -- this additional structure, although I can't be sure on that. And then another barge. So these barges are in constant motion in this part of the Sounds.

35 You can see the nets, and the large structure.

Ngamahau, this is an image of the Ngamahau farm. Again, this was taken last month. What I'm just trying to show here, are the effects of having these large structures taking up a huge amount of water space in a very small area, effectively. And then, do we want to add Tio Point as another structure within that quite confined area. This is for you to decide.

40 CHAIRPERSON: So what's that a photograph of?

45 MR PINDER: This is a photograph, again, of nets, but of Clay Point nets. Or the Clay Point structure, rather. But I'm just saying, well this is how they look, are we going to add another one of these to Tio Point?

What happened there? We have a technical issue. I think it was right. Okay. Come back.

Right, anyway. So this is the Ngamahau farm from my property.

CHAIRPERSON: When's that taken?

MR PINDER: This was taken, well, after the placement of the farm, so that would have been this -- sorry, last year. 2016. And from personal experience, I can tell you that even though that farm is 800 metres away, or thereabouts, the effects are seal population increases. We have seals on our beach, on the Ngamahau beach. There's a number of seals taken up residence on the farm, and around the farm. The feeders are a constant noise, so you get a rattling of the feeders all through the day. The generator you can hear mainly at night when the air is still. Net cleaning, and the service boats. So there is constant activity at these sites. I'm not getting into the pollution effect at this point in time.

Also we have the night-time lights coming on, so through the night you'll see a glow around that farm, of the underwater feeding lights for the fish. The fish are fed 24 hours, I understand, so the lights are on to encourage the fish to the feed. I might add that I suspect that it also encourages endemic fish also to the area.

[12.45 pm]

And of course, the incongruous farm structure itself sitting out. Landscape architects, generally those for the establishment of farms, tend to show the farm against the background, but as you can see from this particular location, it is set way out away from the bay, into Tory Channel, and it is as I say just an incongruous form.

So question 22 of my submission, which you do have, "What further information would you suggest the Minister for Primary Industries collates on water quality effects in relation to the Tio Point site?" Well baseline studies of demersal fish and intertidal shellfish, flora and fauna, and their habitat. I believe it must be mandatory in any CMZ1 zone, or any other zone that is proposed to be used for finfish farming. And annual follow-up studies, undertaken within a true depositional shadow, to describe ensuing effects from any farm relocation.

And 29, "Are there marine mammals in the Marlborough Sounds that you think may be particularly impacted by this proposal?" I have photographed orca along the shorelines and entering Tio Bay, or rather Oyster Bay, via Tio Bay. We have oysters -- sorry, we have orca regularly coming to the area, and whale. So I believe that these animals, these mammals will be in fact -- will be impacted further by the marine farm anchor lines, nets, structures, lights, pollution, and water traffic, all have a detrimental effect on these mammals.

- CHAIRPERSON: In your answer you refer to the humpback whales --
- MR PINDER: Yes.
- 5 CHAIRPERSON: -- transiting Tory Channel.
- MR PINDER: Yes.
- 10 CHAIRPERSON: But you don't say -- and to the dolphins, but I can't see any reference to orca.
- MR PINDER: Okay. I might have forgotten orca. There was definitely orca that come through.
- 15 CHAIRPERSON: You haven't referred to it in your comment.
- MR PINDER: Okay. All right. Okay. I don't know how to amend that then, other than to submit this PowerPoint to yourself, which does say that.
- 20 CHAIRPERSON: You want to say that you -- orca as well?
- MR PINDER: Yes, please.
- 25 CHAIRPERSON: Okay.
- MR PINDER: And Hector's dolphin. So this is the photograph -- I didn't say that either, but Hector's dolphin apparently do come through, although I haven't seen so many myself, or any myself.
- 30 CHAIRPERSON: You say here you haven't see any for the past 12 months.
- MR PINDER: I haven't seen dolphins for the past 12 months, but for a long time you would -- for many years we have seen dolphin. It's a regular occurrence, you almost -- whenever you go down -- you would expect to see dolphin. This year has been unusual that I haven't seen any. But I'm not there the whole time, I don't live there the whole time, although I'm trying to. So here's a humpback, a photograph of a humpback whale, and this is actually foraging around the entrance to Tio Point. It's not a very good photograph, because there was about a 30-knot southerly blowing at the time.
- 35 40 CHAIRPERSON: When -- can you tell me when that was taken?
- 45 MR PINDER: Yes, that was in 2015. I can't give you -- it's in the winter. I can't tell you when precisely.
- CHAIRPERSON: Okay.

MR PINDER: So it's just to illustrate -- and by the way I have seen other whales down Tory Channel when I didn't have a camera with me, but this is one that I did hear when I was at -- I was at my property, and followed it and took some photographs.

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I had it confirmed by the National Whale Centre that this is fact a humpback, a juvenile humpback whale.

CHAIRPERSON: Right.

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MR PINDER: Demersal fish, in the questionnaire, I saw no -- and this is a point that I wanted to make. There were pelagic fish spoken about, but nothing about the demersal fish, and I have a concern about these fish particularly, because they are our -- well, the fish that we catch for our table. They occupy the seafloors and the lakebeds, which usually consist of mud and sand, gravel or rock. So these are the demersal -- or fish that live in the demersal zone. Nowhere in the MPI extensive questionnaire has there been any mention of demersal fish. These fish are bottom-dwellers, such as cod, gurnard, terakihi, perch, and many others. Blue cod are the iconic fish of the Marlborough Sounds, and they are already under Fisheries management, as a result of commercial and recreational over-fishing. Locally Tio Point is known for its excellent cod and gurnard fishing. A blue cod was caught with salmon feed in its stomach 800 metres distance from Ngamahau, clearly indicating feed pellets travel long distances.

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Salmon feed pellets are designed for fast-growth farmed fish. Studies into the effects on endemic fish is critical to the wellbeing of coastal fisheries -- inshore fisheries. And any further introduction of relocated farms will be detrimental to the blue cod, and other fauna in Tory Channel. I suggest scientific study on the effects on blue cod, perch, and other demersal fish; their number, size, habitat, and effects on them. And for this to be an ongoing and monitored, and this be presented prior to any decision made on relocating farms.

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Fish will continue to feed on salmon pellets over time, will this alter their physiology? I in fact caught this fish opposite Ngamahau farm, about, well it can only have been a year and a half ago. And I was amazed to open up this cod, that we are told have a very sort of close range to where they hunt and live, so they don't move far away from their feeding ground. But I found this one 800 metres across the channel from the Ngamahau farm. So I was wondering, well, how did -- how did that happen? Either the fish decided to swim all the way across the channel, away from its normal habitat, or the pellets had found him.

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No, no.

But I am concerned about cod, I can't tell you how long they live, but it's a darn sight longer than a 22-month salmon that's being fed these pellets day in and day out. Cod will be there, unless I catch it, a lot longer than that time.

I'd just like to show you something here, which tells you -- which illustrates a little bit my point about what's happening with these farms, with these structures. That, you know, the changing habitats, these new habitats that are enticing endemic fish. And if I can run this, just two weeks ago I hooked up a go-pro camera to my -- to my fishing line, and I sent it down this corner, the north-west corner of this farm, just to see what was down there. And I was quite surprised -- and probably more surprised it's not going to work, but let's see. So this is effectively the line has landed now on the seabed. I had no idea what I was going to see down here, and it's not particularly easy to appreciate, but anyway not a great deal of visibility. But you'll see coming into shot shortly, fish that I rarely catch, which are juvenile kingfish. And there's a sand shark, just coming in. And here we have juvenile kingfish. And it makes me wonder, you know, would they be there without that structure? I believe that kingfish do use these types of structures, wharfs, jetties, to protect themselves from prey. But I do wonder about these fish, and the feed that they are getting, or taking, from the salmon farm. Again, this is only a very small drop, very small area, very short time. I don't think we know enough.

CHAIRPERSON: That's the Ngamahau farm, is it?

MR PINDER: Indeed, yes. Ngamahau.

CHAIRPERSON: Yes.

MR PINDER: Sedimentation, I can't -- yes, no -- sedimentation is an addition to my submission. And I did provide you with a document that refers to sedimentation and the effects. But sedimentation and smothering is a real concern, and the sedimentation I'm speaking of, it's not from land, but it's from the outputs from the farm, from the fish faeces and from the feed. What does sedimentation do? Or rather, this is where it comes from. Usually from muds and silts washed down into the nearshore area. It can significantly alter the biodiversity and productivity of fisheries and eco systems through both direct and indirect effects. Look, I do understand that we are talking about these are land-based effects, but I want to know -- I'd like to have explained to me at some point in time, the -- what goes to the seafloor, does that have the same similar effect? Certainly it's not a good effect that builds up on the seafloor, we all know that. But what is the risk? If from land-based, it suggests that there is significant risk to the productivity or sustainability of a number of inshore shellfish, crustacean, and finfish fisheries.

And extent of the issue? Well, you get clogging of the gills of shellfish, cockles, pipis, scallops, and other filter feeders, reducing settlement success and survival of spores, larvae, and juvenile invertebrates, eg kelp, pāua and kina, making it harder for some fish to see their food. Indirect effects may be far greater. These include the modification or loss of important fish nursery habitats, like green-shell and horse mussel beds. Seagrass meadows, bryozoan and tube worm mounds, sponge gardens, so on and so forth. These are vital nursery grounds for snapper, terakihi, trevally, John Dory, blue cod, grey mullet, and others.

Pāua and shellfish in the intertidal zone. Pāua is a food source and recreational endeavour for many, and an iconic inhabitant of the intertidal zone. These molluscs are very sensitive to water quality and supply of healthy and plentiful kelp. Pāua have vanished from bays where farms are established. Case in point is Ngamahau, Tory Channel. Prior to the farm, pāua of all sizes were in abundance, now there are none. Tio Point, entrance to Oyster Bay, has abundant healthy pāua, kina, and a large kelp forest. This area has been determined to be an excellent habitat for spawning and juvenile development, as well as harvest-sized pāua. It comes to again the sedimentation concern that I have with the depositional shadow from the farms, and from potentially a very close-by farm being Tio Point. So therefore I suggest -- that the computer -- I suggest scientific studies of the intertidal zone pāua and kina population quantities, health and reproduction, and for this to an -- to be ongoing and monitored; and this presented prior to any decision made on relocating farms.

Now, I just want to just, quickly, if I'm able, just to go back to the -- to the map. Oh, sorry, to the aerial photograph. You mentioned the other day, Alan, when it was brought -- I think it was about Waitata Reach, and the -- and the -- King Salmon putting consent for a mussel farm, and then another mussel farmer, or mussel farmers, being upset by the ploy. And you felt that that was an okay thing to do, that -- "Well that's business". I'm disappointed to hear that that business is happening here, at Clay Point. So there is now a consent application in for a three-hectare mussel farm, that's being heard in July to establish a mussel farm here.

[1.00 pm]

MR DORMER:

All I'm saying is, that's been standard commercial tactics for a couple of decades or more in this part of the world.

MR PINDER: Yes. Yes. So what I'm saying is that it's, you know, the gold rush mentality continues. That "if I can't have it, then someone else", you know. It's just unfortunate that going back to the previous McGuinness map, you know, just showing all the aquaculture that we have in the Sounds, that even now, as much as we know about these things, it's becoming acceptable to, you know ...

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So if you wanted to see the -- so I do have a couple of documents to hand as part of this submission, which are just background in regards to the information I've taken off of -- well, (a) the consent application, just one page really of that for that mussel farm; the cumulative --

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CHAIRPERSON: Who's applied?

15 MR PINDER: Sorry?

CHAIRPERSON: Who has applied?

MR PINDER: Jonathan Tester. Jonathan Tester. I have the consent application number here, if you'd like it.

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CHAIRPERSON: Tester or Tesler

MR PINDER: T-E-S-T-E-R.

25

CHAIRPERSON: Okay.

MR CROSBY: Just give us the U number, would you?

30 MR PINDER: U161243.

CHAIRPERSON: Right, thank you, that'll do.

MR PINDER: Thank you. And I do have some handouts for you, which just talk about the cod, the kina, the risks from sedimentation, and from eutrophication. I don't know, you probably already have enough to read already --

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CHAIRPERSON: Well, we've got quite a lot of material going along.

40

MR PINDER: Yes, I know you do. Okay. Good. Yes.

CHAIRPERSON: Yes. And you've made your point.

45 MR PINDER: Thank you. That essentially finishes my submission. I do just want to say one thing, that I feel that King Salmon is a small bit-player in the aquaculture industry and that I feel that we do need to know more about their business. And that using Tory Channel to dump their waste is really a poor example of cost transfer.

CHAIRPERSON: Right.

MR PINDER: Thank you.

5 CHAIRPERSON: Thank you very much --

MR PINDER: No questions?

10 CHAIRPERSON: -- Mr Pinder.

MR PINDER: No?

CHAIRPERSON: Have you?

15 MR DORMER: No, are you able to say how much the sedimentation problem has increased in the years you've been there?

MR PINDER: Yes, good question. It's certainly there down the channel. Where I

20 dive along this bay here, along here, you do find sedimentation on the kelp. And I don't know what it is, but it's -- you swim along, and it just floats to the surface, floats out of the way. Certainly in Ngamahau Bay, it's a beautiful dive site, and I haven't dived there now, certainly for a while, but my daughter has dived there, and she told me about the --

25 that the pāua have all gone. So I don't dive there now, but it's a beautiful site. But it did have very clear water, and it did not have much sedimentation. There's certainly sedimentation in the channel now, I don't know where it comes from.

30 MR CROSBY: Not so much a question, Mr Pinder, but I just wondered whether you'd had the opportunity of looking through the suggested standards or conditions for the baseline report?

MR PINDER: Yes.

35 MR CROSBY: Did -- had you had the chance of looking at those?

MR PINDER: Well look, to be quite honest with you, because I feel very strongly that

40 no farm should be placed at Tio Point that really -- and I guess that any amount of adaptive management, any of those things, for me mean nothing. Because ultimately when you see new consents go in for adding to farms, it's like, well we're just going to get more consents, we have to show up here at more hearings to debate why farms should not be extended, why there should be -- why there should be no more

45 feeding going into Tory Channel, no more addition of nitrogen to Tory Channel, so on and so forth. So to look at, well, King Salmon will adapt, and slowly build up and -- I just, I have no time for it. Sorry. To answer your question.

- MR CROSBY: If I could just pass the observation on to you, that if you do look at the baseline plan that's required, it's interesting to listen to your evidence, because the very things that you identify are identified there as being required to be established as a baseline plan.
- 5 MR PINDER: Yes. But a lot of things --
- MR CROSBY: But I appreciate where you come from.
- 10 MR PINDER: Yes. Okay, good. But a lot of things aren't happening. We do not know much about what's happening to the effects of demersal fish, pāua, shellfish, in these areas. We just don't. Where are the studies? There are none.
- 15 CHAIRPERSON: Thank you very much, Mr Pinder, and thank you for coming, too.
- MR PINDER: Yes. You're welcome. Thank you.
- 20 CHAIRPERSON: Now, Ms McGuinness, we come to you. I just want to discuss with you a matter of time. What is the time now? 1.00 pm. Shall we -- I'm just wanting to discuss with you a matter of timing, because we've got a caucusing arrangement at 3.00 pm, are you -- and we need to break at some point. Would now be the convenient time to do that?
- 25 MS MCGUINNESS: Yes, whatever the Panel -- whatever suits the Panel. Would you ...?
- CHAIRPERSON: Say for the next half to three-quarters of an hour, or something like that?
- 30 MS MCGUINNESS: That's fine, I think.
- CHAIRPERSON: And how long do you expect that you will take?
- MS MCGUINNESS: I was hoping an hour.
- 35 CHAIRPERSON: You were hoping an hour. So, yes. That'll take us through to -- yes.
- MS MCGUINNESS: Enjoy your lunch.
- 40 CHAIRPERSON: Thank you, we will. So we'll see you quarter to two.
- MS MCGUINNESS: Quarter to two. That's fine. Thank you.
- CHAIRPERSON: Thank you very much.
- 45 MS MCGUINNESS: Thank you.
- CHAIRPERSON: We'll adjourn then till quarter to two, thank you.

ADJOURNED

[1.06 pm]

5

RESUMED

[1.45 pm]

CHAIRPERSON: Now ...

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MS MCGUINNESS: I have all the paperwork here, if you'd like a copy.

CHAIRPERSON: Well, I thought we already had the paperwork.

15

MS MCGUINNESS: Yes, you do. I wasn't quite sure. Louise, she said to bring something -- everything down just in case, so ...

CHAIRPERSON: So let me tell you what I've got - and my other colleagues can do the same - we've got a statement of your evidence, dated 2 May.

20

MS MCGUINNESS: That's right.

CHAIRPERSON: I've got - but I'm not sure that I need it - a copy of a letter you've written to the Minister, Nathan Guy, on 2 May. But that's been superseded by something else.

25

MS MCGUINNESS: I've actually got it nicely bound for you --

CHAIRPERSON: What?

30

MS MCGUINNESS: -- with a map that also -- if you would prefer this.

CHAIRPERSON: Why do we need the letter?

35

MS MCGUINNESS: Because it has relevance in terms of -- some of them, not everything, but definitely there are points that are relevant. I just like to keep things very tidy for you and bound.

CHAIRPERSON: So we can ditch that one?

40

MS MCGUINNESS: Yes. Because I sort of see them as a series, which is why I actually decided it might be easier for everyone.

(off mic conversation)

45

CHAIRPERSON: And then we have also a document called New Zealand King Salmon - A Financial Perspective.

MS MCGUINNESS: Yes, that's 2016 and that's --

CHAIRPERSON: So what's the relevance of that now?

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MS MCGUINNESS: PwC reviewed it.

CHAIRPERSON: Pardon?

5

MS MCGUINNESS: King Salmon asked PwC to review it, so that's your hard copy.

CHAIRPERSON: They reviewed it for this case?

10 MS MCGUINNESS: Yes. And it's involved in the statement of evidence.

(off mic conversation)

CHAIRPERSON: But what relevance would that have for us?

15

MS MCGUINNESS: There is information in there that I've referred to --

CHAIRPERSON: In your evidence?

20 MS MCGUINNESS: Yes.

CHAIRPERSON: All right.

25 MS MCGUINNESS: So I consider all of those documents as part of the statement of evidence.

CHAIRPERSON: Now, there's another one too.

MS MCGUINNESS: Yes.

30

CHAIRPERSON: Oh, that's an article you wrote about the Board of Inquiry decision.

MS MCGUINNESS: That's right.

35 CHAIRPERSON: Yes.

MS MCGUINNESS: And then most relevant is the photo, actually, which just shows the --

CHAIRPERSON: Righto. All right. Thank you.

40

45 MR ENRIGHT: Sorry to interrupt, Mr Chairman. We're just wondering: my friend and I have been conferring about the timing that may be required for the landscape experts. Mr Brown has a flight at I think it is 6.15 pm so we need to finish by 5.30 pm, and we were wondering, with all respect to Ms McGuinness, whether -- well, it depends really on the extent of questions, of course, but whether we're going to have sufficient time to take that by 5.30 pm.

CHAIRPERSON: We still anticipate commencing that at 3.00 pm.

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- MR ENRIGHT: Yes. Thank you.
- 5 CHAIRPERSON: Is that going to be all right with you? In fact, we'll make sure that we do commence it at 3.00 pm.
- MR ENRIGHT: Very good. Thank you for that.
- 10 CHAIRPERSON: That was the time scheduled, which I assume was scheduled in consultation with you?
- MR ENRIGHT: Yes.
- 15 CHAIRPERSON: We will commence the meeting at 3.00 pm.
- MR ENRIGHT: Very good. Thank you, sir. Sorry to interrupt.
- CHAIRPERSON: Yes. So you have got an hour and a quarter.
- 20 MS MCGUINNESS: Thank you very much.
- MR CROSBY: Well, an hour if we have time for a small cup of tea.
- CHAIRPERSON: Maybe a bit less if we want to have a cup of tea.
- 25 MR CROSBY: Or we can bring our tea in here.
- CHAIRPERSON: Yes, we could do that.
- 30 MS MCGUINNESS: Well, thank you very much. Perhaps if we start with the statement of evidence.
- CHAIRPERSON: I think you should do that; that's a good place to start.
- 35 MS MCGUINNESS: Cool. Basically, I'll take it as read that the introduction is fine. It just really sets out my experience and skills.
- CHAIRPERSON: Yes.
- 40 MS MCGUINNESS: The letter to the Minister, you now have delivered, nicely-bound, in the blue folder that I've just -- blue booklet that I've just given you.
- CHAIRPERSON: Yes.
- 45 MS MCGUINNESS: There are three other items of discussion, which I will go through after referring directly to the letter. They include the PwC report, Andrew Clark's statement of evidence and also the --

CHAIRPERSON: I'm sorry. I'm having difficulty hearing you, so if you could, sort of, speak up a bit?

MS MCGUINNESS: Is that better. Sorry.

CHAIRPERSON: Yes. That's good.

MS MCGUINNESS: Okay, good. So the statement of evidence talks, on page 3, about the letter to the Minister. Page 5 deals with the PwC Economic Impact Assessment. Page 4 deals with Andrew Clark's statement of evidence, and page 11 deals with the PricewaterhouseCoopers review of the Working Paper 2016/02, the financial perspective, which you've got a copy of.

CHAIRPERSON: Yes.

MS MCGUINNESS: Thank you. The way that I thought it might be best to proceed is to walk through the figures that are actually in the letter to the Minister, which has the graphs. And we've got those on PowerPoint for you, to help as well.

CHAIRPERSON: So you're not going to read this statement?

MS MCGUINNESS: I wanted to refer back to it, but I take it as read from you. But I can read it if you would like.

CHAIRPERSON: Well, I don't know that you can take it as read, can she?

MS MCGUINNESS: Okay, that's fine.

MR CROSBY: For my part, she can.

CHAIRPERSON: She can?

MR CROSBY: Yes.

CHAIRPERSON: If you're happy with that.

MR DORMER: Yes.

CHAIRPERSON: All right, well, we will take it as read, then.

MS MCGUINNESS: Okay, thank you.

CHAIRPERSON: So you want to go now to the letter to the Minister?

MS MCGUINNESS: Yes, please. And I'm just going to talk through the figures that are included. So this is the graph, the map -- sorry. Yes, please. So in the front cover, I've actually updated the map that was talked about.

CHAIRPERSON: Slowly.

5 MS MCGUINNESS: I've updated the map that the earlier speaker, Martin Pinder, talked about --

CHAIRPERSON: Oh, yes.

10 MS MCGUINNESS: -- and I've just put the six new proposed farms on the right-hand side, so it gives us a point, because I'd like to go back to this. So it just gives you that context. Okay.

CHAIRPERSON: All right.

15 MS MCGUINNESS: The second graph looks at when is a salmon farm not a salmon farm, and I think that's highly relevant in terms of the salmon farm is a relocation of salmon farms, not necessarily a relocation of licences, because the licences are consented for under the Marlborough District Council. So I wanted to explore a question over whether Crail Bay
20 actually was a salmon farm when it hasn't been operated as a salmon farm by King Salmon since 2011, when it was purchased. The salmon fish, to our understanding, has actually been --

25 CHAIRPERSON: Yes, we know that. Yes.

MS MCGUINNESS: Yes, okay. So I wanted to raise that question. And you can see that from the PwC report, which shows that Forsyth and the two Crail farms are largely zero. And, in fact, the 544 in Crail MFL32 refers to the salmon that was purchased and then sold.

30 CHAIRPERSON: So where do we find that?

MS MCGUINNESS: That's on the PricewaterhouseCoopers report.

35 CHAIRPERSON: But I thought you were referring to the Minister's letter.

MS MCGUINNESS: Yes, I am, and I can point where it is in the letter.

40 CHAIRPERSON: So where's your reference to this in the Minister's letter -- or the letter to the Minister, I'm sorry?

MS MCGUINNESS: Yes. It's actually on page 1, and it's a question that I've raised with MPI. And so the Crail farms were purchased by NZ -- so the bottom of page 1, NZKS from Pacifica Salmon Limited in 2011. And then the salmon was basically used and, as -- the term used by Andrew Clark at
45 the Board of Inquiry, was "mothballed".

CHAIRPERSON: So what's your point?

- 5 MS MCGUINNESS: The point is that, if you're going to relocate something, so imagine we're sitting round a dinner table, we've all got a plate and we want to swap the plates. Are we talking about different-sized plates, or what's actually on the plate? And this is relevant in terms of are we talking about relocation in terms of area? Are we talking about relocation in terms of product? Are we talking about relocation in terms of feed discharge?
- 10 CHAIRPERSON: You can ask a lot of questions, Ms McGuinness, but we're looking for answers, not questions.
- 15 MS MCGUINNESS: Right, okay. Well, the first thing is that the occupation of the farms, of the six farms, is actually less than what is being proposed. So at the moment the actual maths of it is that there are 51.4 hectares that was in the six farms. This proposal actually applies for 61.4. So it's significant.
- CHAIRPERSON: So you say there's an increase in area?
- 20 MS MCGUINNESS: Based on our understanding of the resource consents in July 2016.
- CHAIRPERSON: So where do you get the 51.4 hectares from?
- 25 MS MCGUINNESS: I can refer to our working paper on 2016/02, on page 55. I'll just show it to you. We actually went through, and what I've done is circled the ones that --
- CHAIRPERSON: That's another document now?
- 30 MS MCGUINNESS: Yes. That's before you: 2016/02.
- CHAIRPERSON: That's your financial perspective one?
- 35 MS MCGUINNESS: That's right.
- CHAIRPERSON: Page?
- 40 MS MCGUINNESS: Page 55. And when you look at the occupancy per hectare consented, that comes to --
- CHAIRPERSON: Wait a minute until I've got it.
- MS MCGUINNESS: Okay, that's fine.
- 45 CHAIRPERSON: Page 55.
- MR CROSBY: You haven't got a total there.
- MS MCGUINNESS: No, but I can tell you, it adds up to 54.9, the six farms.

CHAIRPERSON: Working paper; what's the date of that, again, 2016/02?

5 MS MCGUINNESS: Yes. So that was looked at at July 2016. There may have been an increase, but we're not aware of it.

MR DORMER: Fifty-four, did you say?

10 MS MCGUINNESS: 54.9 is the total consented area occupancy hectares of the farms that are considered for relocation under this proposal. And that should be compared with the potential relocation of salmon farms in the Marlborough Sounds MPI document page 39, which has a total consented area of hectares of 61.4.

15 CHAIRPERSON: Page what of the MPI?

MS MCGUINNESS: Thirty-nine, sir.

20 CHAIRPERSON: And the figure is?

MS MCGUINNESS: 61.4. So my view is that, when you consider swapping something, there are many characteristics that you would look at, and one is you would look at hectares. Another one, which I want to discuss in a moment, in feed discharge.

25 CHAIRPERSON: You see, the evidence we've got from King Salmon is that they've got 17 hectares now and they'll have 17 hectares at the end.

30 MS MCGUINNESS: Well, I'm not sure where that evidence is. I'm comparing --

MR DORMER: They're talking about surface structures.

MS MCGUINNESS: Okay.

35 CHAIRPERSON: Yes. So are we talking about the same thing here?

MS MCGUINNESS: I'm referring to occupancy. So the term was, they've got, "Total consented area in hectares", and this was using consented area, and then I've put, "Occupancy ha".

40 CHAIRPERSON: Have you taken these off the consents?

MS MCGUINNESS: Yes. I would like to add that the consents can be a little bit confusing at times.

45 CHAIRPERSON: Sorry?

MS MCGUINNESS: I would like to add that the consents can be a little bit confusing at times, but that's our understanding. We can show you the exact pages, if that --

5 CHAIRPERSON: Yes. But I think the difference between you is that they're only talking about six that they're going to replace with another six, they're not looking at all the rest of them.

10 MS MCGUINNESS: No, this is just the six, so their difference is the difference between the six looking at what is currently consented and what is currently applied for under this proposal. It is one of the characteristics that I would look at in --

15 CHAIRPERSON: Well, how is it that there's such a huge difference between you?

MS MCGUINNESS: My view is that there's a very broad lack of understanding about what a relocation of a farm means. Does it mean a relocation in a hectare sense? Does it mean a relocation in terms of a feed discharge?

20 CHAIRPERSON: Well, we're talking about areas here, yes, not what goes on, and so on. Yes.

[2.00 pm]

25 MS MCGUINNESS: Okay. Well, that is a question that, from our research, would benefit further clarification.

CHAIRPERSON: Well, it would be good if you could have given us an answer.

30 MS MCGUINNESS: Well, my answer is based on what I know, which is this, but if you can imagine, when you're trying to do this process from the outside in, you try the very best you can based on the evidence, but then you need to put it through a process, like yourselves, and that gives an ability for King Salmon to respond and for MPI to respond. And so there's a
35 broader question that I really -- I wanted to alert you to that, but there's a broader question in terms of feed discharge.

40 MR CROSBY: If we look at the erratum document that was produced as part of the consultation document, the figures that are produced there - and they were amended to give final figures - for the six, the maximum surface structure area was 9 hectares, the consented area was 49.47, so there's a difference, on your figures there, of a little over 5 hectares. And then the new farms were proposed to occupy a surface area of 8.079, and a
45 total consented are of 64.610, so slightly bigger than your --

MS MCGUINNESS: And that looks different again from the MPI document that we've got as part of --

MR CROSBY: Well, these are the two tables, table 2 and table 6 of the summary of existing effects; that's the document that we're bound by.

5 MS MCGUINNESS: This is the one that is actually produced by MPI as the proposal.

CHAIRPERSON: So is this. This is an erratum document that was issued subsequently. It's on the website, because this is a printout from the website.

10 MS MCGUINNESS: Okay. I suppose, if anything, that explains the difficulties in the process in terms of that not being -- sorry. I raise it as an issue in terms of what a swap means, and looking at the documentation, as I have done, to bring that to the table.

15 I'd now like to look at -- if that's all right with the Panel, to move to looking at feed production.

CHAIRPERSON: Yes, that's probably more relevant for you in that regard because that might -- I think we've got figures on that as well.

20 MS MCGUINNESS: Okay. So if we actually put up just the next -- so this is actually just looking at Crail Bay, which, I would argue, isn't a salmon farm, but we'll just go onto the next, please.

25 CHAIRPERSON: Yes. We've had that.

MS MCGUINNESS: And the other thing is this is what was said by King Salmon at the Board of Inquiry, that:

30 "One may be used for research in the future, but not for production in the long term."

35 So it was taken into account at the Board of Inquiry that Crail Bay was not going to ever be production. And one of my perspectives is that all this information that is before you was taken on board by the Board of Inquiry, and they approved four farms based on taking into account that these farms would not be relocated. And so we sit here today to revisit the Board of Inquiry after they've been given these three new farms and now they are going back again and trying to relocate those farms.

40 So there's no, really, new information here that was not before the Board of Inquiry, to my knowledge, that is significant, that means that these new farms should be relocated. It was all known about; that was why the Board of Inquiry accepted and approved four farms out of the nine that they applied for.

45 So the next statement --

CHAIRPERSON: What's your point?

MS MCGUINNESS: My point is that the reason that they approved the three farms was because of the problem with these existing farms.

MR DORMER: They got the exchange for Crail Bay already, you're saying?

MS MCGUINNESS: Exactly.

MR DORMER: And they shouldn't be asking for it here.

MS MCGUINNESS: Exactly. The deal was done based on that information. You could argue that they've tried to have another bite of the cherry, but, really, it was already accounted for in that decision.

MR CROSBY: Are you saying there were any other farms, other than the two Crail Bay ones?

MS MCGUINNESS: They acknowledged that the other farms -- all the low flow sites are in the Board of Inquiry as acknowledged as not being viable or being difficult to pursue. We've got a quote from Ruakaka. Do you want to -- so that was 2012. Oh, this is Forsyth, so that's another example that is throughout the processes in the transcript of the Board of Inquiry.

CHAIRPERSON: Yes, go on.

MS MCGUINNESS: Thank you. So we'll now go to feed discharge. So one of our concerns is that -- and it goes back to our term of what a relocation or a water swap is. So if we are swapping one farm for another, you would have expected that the feed discharge would have been the same; you would have been looking at an area issue, you would have also been looking at a feed discharge issue.

So the public was, sort of, told that it was a water swap, and I personally at that stage thought that we were talking about swapping consents. What, in reality, is happening under this veil is that the consents are far bigger and longer than what the swap was intentionally for.

And I was puzzled over how to try and explain that to the Panel, and I came up with this way of showing the difference. So, basically, what is before the Panel is actually the difference in the feed discharge between the blue line and the orange line. So they're not asking for a swap here, they're asking for a whole lot more feed discharge and they're asking for the expired consents to be extended very significantly.

CHAIRPERSON: Yes. I think we're generally aware of that.

MS MCGUINNESS: Great.

CHAIRPERSON: But because that's over time; it's subject to adaptive management control.

5 MS MCGUINNESS: Absolutely, but feed discharge has been always a part of the consent process and has been at a high level. So if you go to a consent - any consent - it always has the feed discharge as a characteristic, all the content of it. So feed discharge for me, when I look at a consent, is very indicative, in the same way that you would be looking at area.

10 CHAIRPERSON: Pardon?

MS MCGUINNESS: In the same way that you would look at area.

15 CHAIRPERSON: Yes, I think I understand what you're saying.

MS MCGUINNESS: My understanding is also under the Resource Management Act - and I've only got this information this morning from MPI - is that the consents would need to be between 20 and 35 years that King Salmon apply. And I would say it's very prudent of King Salmon; if I was them, I would be applying for 35 years. So these figures are based on 35 years from when the consents are given by Marlborough District Council.

20

CHAIRPERSON: Yes, but that, again, is subject to all those conditions about adaptive management and proceeding from one step to another. It may never get to that point.

25

MS MCGUINNESS: Exactly, but this is the way that the consents have been drawn, and this is the way that the consent --

30

CHAIRPERSON: This is the way the Plan will be drawn.

MS MCGUINNESS: Okay. The Plan has been -- your regulations have been predetermined to make it very difficult for Marlborough District Council - this is based on the draft - to decline a consent application from King Salmon. So your decision --

35

CHAIRPERSON: Well, that's a different issue.

40 MS MCGUINNESS: No, you're right, but your decision here matters, which is why -- or your advice to the Minister matters, because you have the information upon which to make that advice, which is why it was relevant to raise it now.

45 So I will go onto the next graph, if that's all right.

CHAIRPERSON: Well, I think we agree that what you're showing here is the absolute maximum that could ever happen, assuming it ever happens.

- 5 MS MCGUINNESS: Yes. I agree, but I would say it would be prudent -- King Salmon will go for 35 years; I would be very surprised if they didn't. I wouldn't if I was them. And the second point I would make is that you are quite right about the terms of adaptive management, but that requires a great deal of management and honesty and transparency. Yes.
- CHAIRPERSON: Oh, I see. So that's an enforcement issue, you think?
- 10 MS MCGUINNESS: Exactly. And the enforcement issue filters onto Marlborough District Council, and they don't have the resources being funded by the Crown, or by King Salmon, to do that, to my knowledge. And that point --
- CHAIRPERSON: Well, we might have to ask them about that.
- 15 MS MCGUINNESS: Yes, that might be --
- MR DORMER: They just charge a very high resource rental, surely?
- 20 MS MCGUINNESS: Well, at the moment, there's no coastal charge, and that was written about: Marlborough District Council issued a report in 2014 on that, and we still don't have any coastal charges in the Marlborough District.
- CHAIRPERSON: But they're proposing to have them, aren't they?
- 25 MS MCGUINNESS: Proposed in 2014 and we're sitting at 2017. Also, those charges are very minimal.
- CHAIRPERSON: All right. They've got to be put into a plan, though.
- 30 MS MCGUINNESS: Absolutely. But at the moment those figures are very low, those costs, are not -- they're based on area, they're not looking at impact. So they're not designed to meet the requirements that the regulations are asking.
- 35 CHAIRPERSON: Well, if there were, you could have a coastal permit charge that covered the cost of the monitoring. Yes.
- MS MCGUINNESS: Cost of the impact, yes. My understanding is -- but you have the legal background to know that, but that's my -- I wanted just to raise it.
- 40 CHAIRPERSON: Yes, all right.

MS MCGUINNESS: Thank you. The next two graphs are looking at option 1 versus option 2, and I think this is significant - and it came up in the Board of Inquiry - the importance to look at these sound by sound. The map, which we don't need to go back to, but basically the Tory Channel acts a bit of a plughole in a bath. So you have the Queen Charlotte Sounds, you have the Tory Channel as the tap that puts the water in, and you have the water then going out of the plughole of the bath. So the Tory Channel basically pushes water in and pushes water out of the Queen Charlotte Sound.

So my view is that it is naive to think of Tory Channel in terms of water quality without looking at the Queen Charlotte Sound. So these graphs show what we have at the moment. The dark blue lines at the bottom have Queen Charlotte Sound, including the Tory, and the light blue have the Pelorus.

And the next graph will show exactly the same thing using option 2, and that's assuming 35 years again, at the total discharge, given your Chair's comments.

CHAIRPERSON: I'm not sure what you're referring to when you're referring to, "Options".

MS MCGUINNESS: Okay. The first option is the status quo. The second option is the proposal put forward by MPI.

CHAIRPERSON: So this is your work?

MS MCGUINNESS: This is my work, based on the assumptions. It's basically a replica of the first figure that you saw, broken down by each sound. And my view is that both the Tory Channel -- in the beginning of the Pelorus -- you had previous speakers talking about landscapes, but in terms of water quality, you need to look at the sounds in totality. They stand on their own.

CHAIRPERSON: Are you a water quality scientist?

MS MCGUINNESS: I'm not a water quality scientist but I know --

CHAIRPERSON: Well, how can you make that statement?

MS MCGUINNESS: I've looked at the water flow that was done by NIWA and by Cawthron Institute, and I can refer you to those documents, if you would like.

CHAIRPERSON: Yes, but you're not in a position to comment on those, are you?

MS MCGUINNESS: I'm hopefully in a position to direct them to you.

CHAIRPERSON: Yes. But you're drawing conclusions that you haven't got the expertise to draw.

5 MS MCGUINNESS: Well, I have looked at the reports, and they have drawn -- that's the conclusions that they've drawn. They talk about the different tidal flows. I don't think anyone would have a concern about that there isn't a tidal flow both into Pelorus and into Queen Charlotte.

10 CHAIRPERSON: No, I think that's -- but where and how far it goes might be an issue, mightn't it?

MS MCGUINNESS: And it is in those reports; I can direct you to them.

15 CHAIRPERSON: Pardon?

MS MCGUINNESS: It is in those reports. I can direct you to them. They were directed to me by MPI when I asked about tidal flow.

20 CHAIRPERSON: Right. So you're relying on that work done by the Cawthron Institute?

MS MCGUINNESS: Yes. It might be useful; I actually have had a lot of questions to MPI and I actually have it all documented, if you want to see the answers.

25 CHAIRPERSON: No, thank you.

MS MCGUINNESS: No. That's all right. Okay.

CHAIRPERSON: We've got enough to read.

30 MS MCGUINNESS: Okay. No, fine. So I wanted just to get across that -- so when you're looking at six farms, my view is that you cannot look at that in isolation, and that's really what those two graphs are trying to show you.

35 The next table I wanted to refer you to is table 1 on page 11. And there's been - which I have raised - some real concern around the independence of the expert documents that you have received.

[2.15 pm]

40 Basically, in tracking down the work that was prepared or commissioned by MPI, 95 per cent of those reports were from people that had previously worked, employed or had consulted directly to King Salmon.

45 CHAIRPERSON: So, what's the problem? Are you suggesting that they're not professional enough to be independent?

MS MCGUINNESS: One of the things that Cabinet was very made aware of in December 2016 in their paper was that there would be concerns raised about the need for independence around these documents that would be used to shape this narrative. And independence was mentioned and, yet, we find ourselves --

CHAIRPERSON: Yes. And what was the outcome?

MS MCGUINNESS: Well, no, that was in December; this is the outcome that was actually done -- this work was done in 2016. And then in December 2016, the Cabinet paper actually refers to they believe that concerns would be raised over independence, and, I think, quite rightly.

CHAIRPERSON: Who believed what?

MS MCGUINNESS: The paper was prepared by MPI to Cabinet. It was a Cabinet paper, and it documents the fact that there were concerns there was a risk that there would be a lack of independence. I can find you the exact quote, if you would like.

CHAIRPERSON: But you're making an assertion now. You're asserting that these people aren't independent. Where's your evidence for that?

MS MCGUINNESS: Is that they have been previously employed by King Salmon.

CHAIRPERSON: So every time an expert is employed by a client they can't be employed by them again?

MS MCGUINNESS: I think the extent of the 95 per cent is indicative of an issue that Cabinet was aware of being an issue. So I am emphasising --

CHAIRPERSON: I'm not really worried about what Cabinet thinks; it's what we think that matters here.

MS MCGUINNESS: And my objective is raising this to you because I think that 95 per cent is very high.

CHAIRPERSON: 95 per cent of what?

MS MCGUINNESS: Of the people that have been commissioned by MPI have actually previously had a working or a consulting engagement with King Salmon.

CHAIRPERSON: Well, I think you could probably say that about a whole lot of things right throughout this country.

MS MCGUINNESS: Okay. Well, the second thing is then, if you accept that that's acceptable, they should still acknowledge that in their reports. I do that as a matter of course, and my view is that that was unprofessional.

CHAIRPERSON: And so what are we supposed to do about that?

MS MCGUINNESS: Well, my view is that, so if you have a potential perceived lack of independence, you acknowledge it. And then the second thing that you do is you make sure that all your data is transparent. And I know in the case of PwC that they didn't make all the information public, so we can't do the verification.

So it's sort of a double whammy: if someone gives you a black box and they tell you you can't open that black box, and they tell you that they -- they don't tell you that they've previously worked with people that have created the black box, then you -- in my view, the level of discomfort with the black box is such that you would not open it. Does that make sense to you?

When I do reviews or assessments of things, I'm looking for quality documents that are transparent where I know what the author's background and history is, what skills they bring to the table, what experiences they've had. And I think that standard was not delivered in this case to you.

MR DORMER: Just to take Marshall Day and Associates as a start, I may be defaming one or two other acoustics firms, but I have no doubt whatsoever that if I had an acoustics issue, I would go to Marshall Day. I've use Chris Day on and off for 35 years. To me, he is the ultimate professional; he would turn down more instructions than he would accept because he couldn't agree with my client's position.

If Chris has done work for King Salmon before I can tell you right now, no way would that influence any project he was embarking on for King Salmon, or anybody else in the future. To just say that they've worked for them before therefore there's a danger of bias, I think is very dangerous.

MS MCGUINNESS: My view is that they should have noted it in their report, number 1. I think that is professional. And the second thing is you know that information, I don't, so that's the difference, and so I --

MR DORMER: The difference is that, without knowing information, you're making accusations.

MS MCGUINNESS: I'm not making accusations. I am saying a professional person would actually acknowledge it. It's a little bit like I have a property in Arapaoa Island; I put that in all my documentation with the board, or the Board of Inquiry or the Panel. It's about being open and transparent, and --

CHAIRPERSON: Yes, but you're alleging here that these people are not being open and transparent because they've actually had professional relationships with King Salmon in the past. I don't understand that.

5 MS MCGUINNESS: Okay. This is a public asset that you are looking at providing -- sharing that public asset, and giving rights over, for 35 years, so you need to know that each one of these pieces of information that you're relying on is 100 per cent kosher. Now, with --

10 CHAIRPERSON: Well, what's to say it's not?

MS MCGUINNESS: Well, my argument is: what's to say it is? It's the opposite to what you're saying.

15 CHAIRPERSON: Oh, I see.

MS MCGUINNESS: It's the ability to have confidence in experts in terms of independence, and Cabinet was told of this as being an issue, and all I'm doing is raising, based on that information, 95 per cent. It's the package, sir. It's
20 not what -- if I was MPI I would not have delivered the Panel 95 per cent of King Salmon's past associates as experts before the Panel. I would not have done it.

CHAIRPERSON: So you're making fairly strong accusations about very reputable
25 institutions, like the Cawthron Institute?

MS MCGUINNESS: Yes. My concern is the lack of disclaimer.

CHAIRPERSON: Like NIWA? You know, these are independent scientific
30 organisations. You're saying that, because they've done fee-paying work in the past, that they're going to be biased?

MS MCGUINNESS: If you can imagine -- I'll go back to Alan Dormer's comment. When
35 you have a working relationship with someone you, to a degree, can lose your ability for critical enquiry. You don't test --

CHAIRPERSON: Not if you're a good expert, you don't.

MS MCGUINNESS: Well, some of these people will be but some of them won't, and I don't
40 know the difference, and that's my point.

CHAIRPERSON: All right. I think we've had enough of that. Thank you.

MS MCGUINNESS: Okay. Thank you. The next slide, thanks. From my perspective,
45 there's been -- this is the net profit or loss for --

CHAIRPERSON: Sorry. Now, where are we going to?

MS MCGUINNESS: This is figure 4; that's in the working paper --

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CHAIRPERSON: You've got 20 minutes.

MS MCGUINNESS: Okay.

CHAIRPERSON: Page 15, yes.

MS MCGUINNESS: Yes, thank you. So this is actually looking at the profitability of King Salmon. Now, as you'll notice, there were a couple of losses: 2012 and 2014, and this is from the financial statements. And you'll notice that, basically, they went public in between -- sorry in late 2016. They've been able to reorganise their debt, which has delivered a very major reduction in their interest payments. And they've delivered - and are forecast to deliver - some very significant profits.

Now, the reason why this is important is that the water space is absolutely critical. The relationship between water space and their productivity, and therefore their profit, is very aligned. So at the moment, we know that those profit figures are based on the new farms, but the new farms are not fully operative. And there are different figures of how many years before it's fully operated. But what this is indicative of is to say that King Salmon's profitability with the current water space, without these new relocations, is actually growing significantly, and will continue to grow. So the relocated sites are like cream; it's like the ability to get excessive profits.

Another way of saying this is that the question before the Panel is how wealthy you want to make King Salmon and their shareholders. It is not a question about profitability, it is about the level of profitability that these --

CHAIRPERSON: Why is that a question before the Panel?

MS MCGUINNESS: Well, because part of your terms of reference is the aquaculture public policy that forms part of your terms of reference. And part of the public policy is MPI and its role of growing the industry. So profitability is a significant player in their narrative.

CHAIRPERSON: Well, that's a national interest matter, it's not a profitability for King Salmon.

MS MCGUINNESS: Well, if you allow --

CHAIRPERSON: The government isn't in the business of making King Salmon profitable, it's --

- 5 MS MCGUINNESS: Well, if you allow this relocation, which keeping in mind these figures do not include, you will make this company significant profits. And your question before you is: what was the purpose of the relocation in the first place? Was it profitability? Was it to create jobs? Was it to meet this goal of 1 billion by 2025? This is, in my view, government public policy that fits under your terms of reference. And I just wanted to bring it to your attention through the graphs by illustrating what the financial results are.
- 10 CHAIRPERSON: All right.
- MR DORMER: These proceedings are being conducted under the Resource Management Act.
- 15 MS MCGUINNESS: Yes, and that includes economics, and this is economics, in my view.
- CHAIRPERSON: Economic wellbeing?
- 20 MS MCGUINNESS: Well, if you're including the PwC Economic Impact Report, you would need to, I'd imagine, not -- you would have to look at the financials as well, wouldn't you? Because the financials lead into the PwC report and they use financial data as input.
- CHAIRPERSON: I know.
- 25 MS MCGUINNESS: I don't think that you can look at one without the other. So, if you take the PwC report, you would need to also take this, in my view.
- CHAIRPERSON: Okay.
- 30 MS MCGUINNESS: So the next two figures I'll just -- this is looking at the health events, just showing that the health events -- this is net of insurance, as basically the mortalities are down. The only issue I would say is that there is -- MPI let me know this morning that they have got a 2015
- 35 report on mortalities that might be useful for you to request.
- CHAIRPERSON: Yes, we've heard all about that.
- 40 MS MCGUINNESS: Okay, thank you. The next slide just shows how the shareholders loans -- basically, that explains to you what actually happened in 2016. The forecast for 2017 and 2018 is no debt, which is why the interest costs are down, which is why the profit is so high.
- 45 Next slide. This is actually showing King Salmon's excerpt from NZX. You will see, basically, when it started in November 2016, it was relatively low. Based on the documents that were prepared for NZX, the relocation farms were basically -- the expenses, I think, from memory, were capitalised and it was -- they were asked not to -- the water space issue was not taken into account in the forecast.

Basically, in December 2016 and January 2017, the relocations were taken into -- I believe, started having interest, and the share price has gone up. That's illustrative, but I'm just trying to get across to understand the distinction, what the relocation actually means. It means very, very big money.

In my view, that is beyond what was the intention of MPI. The Cabinet papers talk about commercial unviability of these six farms; the cabinet paper doesn't talk about the excessive profitability that will happen as a result of this relocation.

Next slide. This is actually looking at productivity. The reason why I wanted to show you this is that the PwC report is based on productivity. The relationship between productivity and the ETS, which is the equivalent -- fulltime equivalence, is actually not as apparent as what the PwC report implies, basically, in the way that they've modelled it. So you can see that the productivity is increasing without any relocated farms.

The next slide shows the inventories and biological assets; once again, showing that productivity is increasing significantly.

[2.30 pm]

This next slide, which is actually on the top of page 20, shows the fulltime employment figure. The fulltime equivalent has been an ongoing issue in terms of the narrative round the Board of Inquiry, and is also before you in terms of PwC's report. I'm a great fan of fulltime equivalence; I think that they give an indicative -- very useful measure, whereas headcount is not. In other words, you could have five part-timers that make up one headcount -- one fulltime equivalent, just to give you some sort of understanding.

So when you actually see the King Salmon, basically, figures for fulltime equivalents flattened out, like you have above there -- now, this information was provided by King Salmon to the Global Salmon Initiative. And one of the things, as an analyst, is you're interested in the relationship between employment and productivity, and the next slide just brings those two together.

And what I'm trying to illustrate to you there is that -- an assumption that more productivity, more tonnes of biomass created and the number of employment, is not easily apparent. My view is that technology and the sensing that's happening globally, that that relationship is actually disaggregating; you know, decoupling. And so I just wanted to raise that for you, and I'll be discussing it again tomorrow as well.

CHAIRPERSON: All right.

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MS MCGUINNESS: The other thing I wanted to raise with the PwC report, is there's a whole discussion around the pens and the nets.

5 CHAIRPERSON: Around what?

MS MCGUINNESS: The pens and the nets. Basically, the new farms actually requiring all this capital.

10 CHAIRPERSON: Oh, yes.

MS MCGUINNESS: Number 1, the salmon farms are moved around the sounds ... I was going to say frequently, but you know, it's not an impossibility.

15 CHAIRPERSON: No, they've told us about that.

MS MCGUINNESS: Yes. PwC produced the data separately so that you could, from the front end, try and disseminate -- or at least they acknowledged that they were different aspects, and their capital expenditure data that they were putting into the model was large. But if we go to the next graph, that one there, you can see, in table 41, is the really key document that they use in the PwC report.

20 CHAIRPERSON: Where do we find that?

MS MCGUINNESS: It is actually in my statement of evidence. I didn't put it in the letter to the Minister; apologies.

25 CHAIRPERSON: Oh, it's on page 6, is it? Yes. This is PwC's work?

30 MS MCGUINNESS: That's PwC's report.

CHAIRPERSON: Yes.

35 MS MCGUINNESS: So the key aspect there is that the relationship between FTEs and value adds; I think my view is that the FTEs is just a formula, so in relation to productivity. They've built a very strong -- their model is built on that relationship. And the second thing is that they don't dissect the capital from that. In my knowledge and reading the document, I can't see how they've dissected that. So the capital is a significant figure, so when you look at models, you're looking for sensitivity. What's the one you need to get right? And what's the rubbish that you don't need to look at very closely. So I have a lot of concerns with the PwC report but that's an important aspect for me that I'm always looking for.

40

45 What's the -- what would I need to change to make the outputs different? So different that I would make a different decision?

So I raised that for you in terms of my concerns about that relationship between them. And it also says to me, if you -- basically with the estimated decrease, what that tells you is about the six farms they want to relocate. What it doesn't tell you, but is inferred, is what it tells you about the five that is operational. That they're excessively profitable, given the profitable figures that you've seen before. So we know for example, by looking at that, that two of the Crails well, they haven't been used; you know that information. You all also know that Forsyth and the productivity figures has hardly ever been used as well.

MR DORMER: What is excessively profitable?

MS MCGUINESS: I think -- well, I haven't done the figures but I think that they could make -- if this relocation happened, it could be 20 million per year, instead of the 10 million.

MR DORMER: So the existing farms are excessively profitable.

MS MCGUINESS: They are not commercially viable in terms of the -- basically meeting --

MR DORMER: I'm just questioning your use of the word -- your use of the term "excessively profitable".

MS MCGUINESS: Profitable, okay.

MR DORMER: You obviously have a value judgement as to what level of profitability is acceptable.

MS MCGUINESS: Yes.

MR DORMER: And you're employing that?

MS MCGUINESS: Absolutely.

MR DORMER: Yes, okay.

MS MCGUINESS: And so what I would say is that when I looked at the financial situation at the Board of Inquiry, I didn't have all the information, which is why I went into doing this work in 2016. Unbeknown at the time, that they were going public or thinking about it. So I did that work as sort of almost a tidying up process because at the Board of Inquiry, that information hadn't been made available.

At that time, I could see that the company was challenged so I would use that term as challenged and I don't think there would be massive disagreement. There's actually comments at the Board of Inquiry by people from King Salmon, indicating that things were tight. They had a, for example --

CHAIRPERSON: Look, I don't think we need to go into that thank you.

MS MCGUINESS: Okay. No, that's fine. Thank you. So, in answer to your question about the difference between challenged and profitable and excessive profitability, I would say you had the challenged there, you had what I think is profitable now where they're 10 and I think they've got -- I don't know 15 million forecast for 2018 was up there. I think that you could add perhaps another ten on this maybe -- I know I'm only guessing but you're asking me to guess. But --

MR DORMER: No, I'm not.

CHAIRPERSON: No, we're not. We don't want your guess.

MR DORMER: We're not asking you to guess.

MS MCGUINESS: Oh, you were asking me --

MR DORMER: My point was, you were using a very emotive term; excessive profitability.

MS MCGUINESS: Okay. Well if I was to define --

MR DORMER: I've obviously given you the opportunity to retract your use of the term. You've chosen not to. That's fine, we can move on.

MS MCGUINESS: I'm sorry, I misunderstood. I actually thought you were asking for an opinion.

CHAIRPERSON: What?

MS MCGUINESS: I thought you were asking for my opinion.

MR DORMER: No, I wasn't. I --

CHAIRPERSON: You were using a term that Mr Dormer --

MS MCGUINESS: Yes, I know. But I'm sorry, I thought that you were asking what excessive meant. That was what I understood you asked me and I was trying to define that for you in terms of the context of a company that was making losses, to a company that is now making good profits, to make what I would call significant profits.

CHAIRPERSON: And your point is it's making those profits with two of its farms dormant?

MS MCGUINESS: Well, it's actually with this -- with no relocation. That's my point.

CHAIRPERSON: With no relocation?

MS MCGUINESS: No relocation of all of those six farms.

CHAIRPERSON: That's your point, isn't it?

5 MS MCGUINESS: That's exactly my point. Thank you.

CHAIRPERSON: Yes. Right.

10 MS MCGUINESS: And I apologise for that misunderstanding. I --

MR DORMER: That may well be my misstatement --

MS MCGUINESS: No, I think it was mine.

15 MR DORMER: -- with the proposition.

MS MCGUINESS: It's mine.

20 CHAIRPERSON: Now, what else is there you want to talk about? Because we're getting towards the end of your time.

MS MCGUINESS: This is a point I'll raise tomorrow if you like, about the EBIT and --

25 CHAIRPERSON: Thank you.

MS MCGUINESS: Thank you.

CHAIRPERSON: All right. Thank you, Ms McGuiness.

30 MS MCGUINESS: Thank you.

CHAIRPERSON: Bearing in mind that we're going to see you again in the context of economic matters tomorrow. Have you any further questions?

35 MR DORMER: Something you may care to ponder between now and tomorrow, if you regard the level of profits that they're about to make, as excessive, could I ask you a prelude, what proportion of their production is exported?

40 MS MCGUINESS: I can --I think it's about -- do you want me to guess or --

MR DORMER: Yes, go on.

MS MCGUINESS: I think it's about 25 - 30 per cent.

45 MR DORMER: So they could bring their profits down to much more modest levels, couldn't they, by giving their product away? By not accepting the current prevailing world prices for their product? I am struggling to think as to why they should do that.

MS MCGUINESS: Well, I --

MR DORMER: If Auckland restaurateurs are prepared to pay whatever they're prepared to pay for the product, why not charge the Aucklanders? Where's the problem here?

MS MCGUINESS: Well, I think that if you would like me to, I will do some more work on forecasting it.

MR DORMER: No, I'm not really interested. I think the whole thing's irrelevant.

MS MCGUINESS: Right, that's fine. It actually was relevant in terms of the Cabinet papers. The context for the purpose behind this proposal was because of the commercial viability of the six farms. And so I think we have a difference of opinion and that's fine.

MR DORMER: We do. As I move through life, I find fewer and fewer people agree with me.

MR CROSBY: Just at page 5 of your letter to the Minister, you make the statement that:

"The difference between the lines in figure 1 highlights that although the public narrative is that this latest proposal is simply about swapping one farm location with another, the reality is that the feed discharge limits under the latest proposal are a significant change to the status quo. This is not obvious in the consultation documents prepared by MPI."

Just before tomorrow, I just invite you to reread again paragraph 7.2 and particularly 7.2.1 of the consultation documents, because they're all a discussion of an ability to increase revenue by \$49 million. The regional GDP aim to increase by 511 FTEs. I just struggle to see how anybody reading that could not conclude that it was going to be an increase in feed discharge limits because you've got to produce more fish to produce that amount of money to employ that amount of people, don't you?

MS MCGUINESS: Well, I think that there's been a misunderstanding perhaps. I definitely misunderstood that. I thought that the consents and that documentation it refers to, that the consents would be sent from NZ King Salmon to Marlborough District Council.

CHAIRPERSON: Sorry, I didn't -- this could be important; repeat that, would you? You thought that ...

- MS MCGUINESS: I had thought that -- in fact I can find a quote for you, where it says that the MPI documents actually refer to that -- this will not prevent the consents going through to Marlborough District Council; something similar to that. And my view is that for a lot of people, including myself, I took that initially as being a fully public consultation consent that you would then have a look at the length of the application, that it would be publicly notified. So I think that maybe it is my fault, but that's what I took it as initially.
- 5
- CHAIRPERSON: But what's that got to do with the question that Mr Crosby's asking you?
- MS MCGUINESS: My understanding is, you're asking whether it's relevant that there was -- whether that knowledge was available in public or not.
- 10
- CHAIRPERSON: What knowledge?
- MS MCGUINESS: The knowledge about whether the feed discharge would be as big as it is.
- 15
- MR CROSBY: Would be able to increase?
- MS MCGUINESS: Yes.
- CHAIRPERSON: It's all in the proposal.
- 20
- MS MCGUINESS: Well, I don't think it's very clear in the proposal. I didn't pick it up. I thought that we were dealing with a swap, an exact swap. I didn't understand that the length of the expiry, the amount of the discharge and that the area was going to be so significantly increased. So I misunderstood that and it was only when I delved in a lot deeper that I understood that.
- 25
- MR CROSBY: Thank you.
- 30
- CHAIRPERSON: I hope I'm not being unfair or anything here, Ms McGuinness; can I ask you who is paying for this?
- MS MCGUINESS: McGuinness Institute. No, I don't -- that's very open.
- 35
- [2.45 pm]
- 40
- CHAIRPERSON: Sorry?
- MS MCGUINESS: You're very welcome to ask that question.
- 45
- CHAIRPERSON: Yes.

- MS MCGUINESS: So the McGuinness Institute is funded from my husband's and my McGuinness Foundation and the money comes from -- I never had money when I was young and we worked hard and my husband's developed Willis Bond & Co, which is a property --
- 5 CHAIRPERSON: Is what?
- MS MCGUINESS: Willis Bond & Co, which is a property development company. I also did a lot of consulting in Treasury and for government departments. I ran McGuinness & Associates and basically, as I got older, that evolved into the public good of what is now called McGuinness Institute. So that --
- 10 CHAIRPERSON: So you're funding this yourself?
- 15 MS MCGUINESS: I'm funding this and --
- CHAIRPERSON: Nobody's paying you for this advice?
- 20 MS MCGUINESS: It's completely independent as much as I can. Like, I've given you my disclaimer about the property. But I'm interested in this and I actually have copies -- we do a lot of work in a lot of areas and one -- the earlier working paper that we published this year was to do with poverty. So we did a big tour around the country and I'm going to --
- 25 CHAIRPERSON: So do you get paid for that?
- MS MCGUINESS: Very occasionally I get donations. Like, I was invited to Tasman to help them with their strategy work and for their long-term plan. So they've --
- 30 CHAIRPERSON: I mean, these documents would not be cheap to produce.
- MS MCGUINESS: They are -- it will sound -- you need to be a public policy person. This is a very interesting case study.
- 35 CHAIRPERSON: Yes, I'm sure it's a very interesting case, but I don't see how you could be in business doing this if somebody's not paying you?
- 40 MS MCGUINESS: Oh, so 2004 sorry, is when I started the McGuinness Institute. So what perhaps might --
- CHAIRPERSON: Yes. But where's your income come from?
- 45 MS MCGUINESS: I don't have an income --
- CHAIRPERSON: Where do you get the money to do this sort of thing?

- MS MCGUINESS: No. Okay, sorry, just so you understand, from the foundation, the McGuinness Institute gets about 500,000 or 600,000 a year.
- CHAIRPERSON: The foundation produce --
- 5 MS MCGUINESS: Produces. Pays the money to the McGuinness Institute and it's about \$500,000 or \$600,000 a year.
- CHAIRPERSON: And what business does the foundation conduct?
- 10 MS MCGUINESS: Pardon?
- CHAIRPERSON: The foundation --
- 15 MS MCGUINESS: The foundation gets the money largely from Willis Bond, which is the property development. So there's Willis Bond --
- CHAIRPERSON: All right.
- 20 MS MCGUINESS: -- that produces money. That money obviously comes to us and we -- then goes to the foundation. Then the foundation gives it to the institute. The foundation also does other work and puts money into like a school in Porirua. This is other types of work that we do. There's --
- 25 CHAIRPERSON: So is the foundation a charitable trust or something like that?
- MS MCGUINESS: Yes, it is and so is the McGuinness Institute.
- 30 CHAIRPERSON: So you don't pay any tax?
- MS MCGUINESS: We do pay tax. No, we don't pay tax sorry but we --
- CHAIRPERSON: You don't pay tax --
- 35 MS MCGUINESS: -- pay tax --
- CHAIRPERSON: -- if you're a charitable trust.
- 40 MS MCGUINESS: Yes. So this is for example -- and we've got three copies of this if you would like it. Because there seems to be a narrative that we just are an Oceans Institute.
- CHAIRPERSON: That you what?
- 45 MS MCGUINESS: That we just deal with ocean management.
- CHAIRPERSON: Oh, yes.

- 5 MS MCGUINESS: But we're actually very broad. We are running a civics project. I'm speaking tomorrow afternoon at Victoria University on genetic modification with law students. So we've done extensive work from 2004. And so I'm on a What's in Our Future programme on TV. I'm broad. This is actually a tiny bit of our work. You might like copies of this.
- CHAIRPERSON: And what's the document you've got there?
- 10 MS MCGUINESS: Pardon? Oh, this is just the working paper I've just put into the -- that you've got in front of you, this is our Tackling Poverty working paper that we did based on the tour that we did last year.
- 15 MR DORMER: Our society is the richer because able and informed people contribute to the policy debates.
- 20 MS MCGUINESS: Yes. And there is a lot of people out there. The Tackling Poverty tour was amazing for the quality of people trying to make change and -- yes. So like, on Friday, I go to the Community Board's conference and speak on tackling poverty so ...
- 25 MR DORMER: There's an old saying about free legal advice; it's worth every cent you pay for it. Thankfully, such sayings are not applicable to many who are working in the area that you are.
- CHAIRPERSON: So, the real source of your financial support is this Willis Bond --
- MS MCGUINESS: Bond, which is my husband's property --
- 30 CHAIRPERSON: -- property development company?
- MS MCGUINESS: Which I'm also a shareholder in but it --
- 35 CHAIRPERSON: And what sort of property development is it?
- MS MCGUINESS: Commercial property, so Clyde Quay Wharf. He does a lot of work in Auckland as well.
- 40 CHAIRPERSON: Sorry?
- MS MCGUINESS: Clyde Quay Wharf, like in Wellington, he developed that. Chews Lane. I should have him answering these questions. Auckland; he does a lot of property development in Auckland.
- 45 CHAIRPERSON: Mainly commercial property development?
- MS MCGUINESS: Mainly commercial but also some social housing. I mean, not -- I was going to say --

CHAIRPERSON: Yes. Is that a limited company?

MS MCGUINESS: Yes, it is.

5 CHAIRPERSON: Yes. So it's --

MS MCGUINESS: You can find out --

CHAIRPERSON: Your records are in the Companies Office.

10 MS MCGUINESS: Absolutely, yes.

CHAIRPERSON: Yes. Okay, thank you.

15 MS MCGUINESS: And we pay a lot of taxes.

CHAIRPERSON: I'm sure you do.

MS MCGUINESS: Too much.

20 CHAIRPERSON: Hope you pay your fair share like everybody else.

MS MCGUINESS: Yes, I know. Exactly, it's very important.

25 MR DORMER: And don't forget that the donations made to a charitable foundation are tax deductible.

MS MCGUINESS: Yes. But I would rather spend it, yes. No, this is a complete passion of mine because I'm a great believer in quality information.

30 CHAIRPERSON: Yes, you've made that very clear to us.

MS MCGUINESS: Thank you.

35 CHAIRPERSON: Thank you very much.

MS MCGUINESS: Thank you very much.

CHAIRPERSON: We'll see you tomorrow.

40 MS MCGUINESS: Thank you.

CHAIRPERSON: I think we'll leave these with you.

45 MS MCGUINESS: No, that's fine. I just thought it might be useful for you to understand the breadth of our work.

CHAIRPERSON: Thank you. All right, that actually now completes the presentations from people who have lodged comments on this proposal and what is left for us this week are some meetings with expert witnesses. Three in particular; landscape today, economic tomorrow morning and experts on the king shag next week. The only other people that we are going to then be hearing from, are a group of iwi and that will take place on; what's the name of the marae?

MR CROSBY: Te Hora.

CHAIRPERSON: Te Hora Marae At –

MR CROSBY: Canvastown.

CHAIRPERSON: Canvastown next Wednesday, 17th?

FACILITATOR: Still to be confirmed.

CHAIRPERSON: Pardon?

FACILITATOR: Still to be confirmed, but yes.

CHAIRPERSON: Yes. So apart from that, these hearings will be concluded so those who want to stay to hear our discussions today; this afternoon with the landscape architect experts are welcome to do so. But other than that, and to attend tomorrow if you want to hear our discussions with the economic experts, including Ms McGuinness. Or on Monday next, when we will be discussing matters with the experts on the king shag, you're welcome to do so. They are all parts of the public hearing process, as will be the hui on the Marae.

So we going to take a short adjournment now and then we will resume and have our discussion with the landscape architect experts. Thank you.

ADJOURNED

[2.54 pm]