

Court of Appeal decision on RJ Davidson Family Trust released

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The much-anticipated Court of Appeal judgment *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 was released this afternoon. This judgment concerns the extent to which Part 2 of the RMA should be considered in determining applications for resource consent, including in light of the Supreme Court's 2014 *King Salmon* decision.

In short, the Court of Appeal has determined that:

- Notwithstanding *King Salmon*, RMA decision makers should usually consider Part 2 when making decisions on resource consents (that is the implication of the words "subject to Part 2" in section 104)
- However, where the relevant plan provisions have clearly given effect to Part 2, there may be no need to do so as it "would not add anything to the evaluative exercise". It would be inconsistent with the scheme of the RMA to override those plan provisions through recourse to Part 2. In other words, "genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome". This is particularly relevant in situations where the New Zealand Coastal Policy Statement (NZCPS) applies.

Applying this reasoning, the Court of Appeal found the High Court made an error by finding that consideration of Part 2 was not required or not available. However, the Court of Appeal declined to overturn the High Court decision, as consideration of Part 2 would not have altered the High Court's decision to decline consent for a mussel farm that was inconsistent with provisions in the NZCPS and Marlborough Sounds Resource Management Plan seeking to protect the habitat of King Shags.

We will be releasing a more detailed legal update on this important decision over the next few days. In the meantime, please feel free to contact a member of our national environment and resource management team.

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