IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2014-404-002064
[2015] NZHC 767

UNDER	the Resource Management Act 1991
AND	
IN THE MATTER	of an appeal against a decision of the Environment Court under s 299 of the Resource Management Act 1991
BETWEEN	MAN O'WAR STATION LIMITED Appellant
AND	AUCKLAND COUNCIL Respondent

Hearing:	24 and 25 March 2015
Appearances:	M E Casey QC and M J E Williams for Appellant B O'Callahan and J Burns for Respondent R B Enright and M C Wright for Environmental Defence Society Incorporated (s 301 party) R Gardner for Federated Farmers of New Zealand (s 301 party)
Judgment:	21 April 2015

(RESERVED) JUDGMENT OF ANDREWS J

This judgment is delivered by me on 21 April 2015 at 2.30 pm pursuant to r 11.5 of the High Court Rules.

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Registrar / Deputy Registrar

Introduction

[1] The appellant, Man O'War Station Ltd ("MWS") owns a 2,364 hectare rural property at the eastern end of Waiheke Island and on Ponui Island in the Hauraki Gulf, known as Man O'War farm ("the farm property"). Proposed Change 8 to the Auckland Regional Policy Statement ("Change 8") introduced new policy provisions for Outstanding Natural Landscapes (ONLs) and the Auckland Council prepared a new set of ONL maps for the Auckland region. The new mapping resulted in approximately 1,925 hectares of the farm property (more than 75%) being mapped as ONLs, referred to as "ONL 78" (on Waiheke Island) and "ONL 85" (on Ponui Island).

[2] MWS appealed to the Environment Court against the Council's mapping. In its decision given on 29 July 2014, the Environment Court accepted that areas in Man O'War Bay and Hooks Bay, and the whole of Ponui Island (apart from the eastern coastal margin and sea scape), should be excluded from the ONL.[1] However, the Court rejected MWS's submission that only coastal areas and particular inland areas should be included in the ONL.

[3] MWS has appealed to this Court, pursuant to s 299 of the Resource Management Act 1991 ("the RMA"), on the grounds that the Environment Court made errors of law.

Interim or final decision?

[4] The decision of the Environment Court is headed as an "Interim Decision". At [152] the Environment Court directed that the mapping of ONL 78 and ONL 85 in Change 8 was to be revised as set out in the decision, "subject to possible further consideration of mapping should wording in the [Auckland Regional Policy Statement] change after further agreement or input from parties".

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1 *Man O'War Station Ltd v Auckland Council* [2014] NZEnvC 167.

[5] An interim decision of the Environment Court decision cannot be appealed.[2] However, counsel for MWS accepted that in relation to the mapping of ONLs, the decision is final. There is, therefore, no issue as to MWS's ability to appeal.

Relevant statutory provisions

[6] The applicable law is set out in the provisions of the RMA as they were when Change 8 was publicly notified in September 2005. In Part 2 of the RMA "Purpose and principles", s 5(1) provides that the purpose of the Act is to promote the sustainable management of natural and physical resources. "Sustainable management" is defined in s 5(2) as including "avoiding, remedying, or mitigating any adverse effects on the environment". Section 6 is headed "matters of national importance" and provides that in achieving the purpose of the Act, persons exercising functions and powers under it "shall recognise and provide for the following matters of national importance", including at s 6(b): "the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development". Those sections have remained unchanged since 2005.

[7] Provisions relating to the sustainable management of the environment are set out in a three-tiered system, moving from the general to the specific: national, regional, and district.[3] Section 57(1) of the RMA (unchanged since 2005) provides that "there shall at all times be at least one New Zealand coastal policy statement prepared and recommended by the Minister of Conservation …" Section 60(1) provides that there must be a regional policy statement for each region, prepared by the regional council. Section 61(1) provides that the regional policy statement must be prepared and changed in accordance with (among other things) Part 2 of the Act, and the regional policy statement must, pursuant to s 62(3) give effect to a New Zealand coastal policy statement. Sections 60 to 62 are also unchanged since 2005.

[8] Policies 13 and 15 of the New Zealand Coastal Policy Statement 2010 (NZCPS 2010) are particularly relevant in the present case. Policy 13 "Preservation of natural character" is:

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2 See *Mawhinney v Auckland Council* HC Auckland CIV 2010-404-63, 26 October 2011 at [90]-[99] and *Motiti Avocados Ltd v Minister of Local Government* [2013] NZHC 1268.

3 See *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [9]-[16].

(1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:

(a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and

(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment; …

[9] Policy 15 relates to "Natural features and natural landscapes" and begins:

To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development;

(a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and

(b) avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects on activities on other natural features and natural landscapes in the coastal environment;

Policy 15 then sets out means by which the policy is to be achieved, including:

(c) identifying and assessing the natural features and natural landscapes of the coastal coastal environment of the region and district, at minimum by land typing, soil characterisation and landscape characterisation …

(d) ensuring that regional policy statements, and plans, map or otherwise identify areas where the protection of natural features and natural landscapes requires objectives, policies, and rules; …

[10] The term "outstanding natural landscape" is not defined in the RMA. The Environment Court referred to the approach and factors set out in the Environment Court's decisions in *Wakatipu Environmental Society Inc v The Queenstown-Lakes District Council ("WESI")*,[4] and in *Maniototo Enviromental Society v Central Otago*

[4] *Wakatipu Environmental Society Inc v The Queenstown-Lakes District Council* [2000] NZRMA 59.

District Council ("Maniototo"),[5] in which the Court will first identify a "landscape", then consider whether the landscape is sufficiently "natural" to be classified as a natural landscape, then assess whether the natural landscape is "outstanding". That latter assessment is undertaken by reference to the factors set out in *WESI*. In essence, these require the landscape to remarkable, exceptional, or notable.

The judgment of the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Co Limited*

[11] In submissions to this Court, counsel made extensive reference to the judgment of the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd ("King Salmon")* delivered on 17 April 2014 (after the hearing of MWS's appeal to the Environment Court).[6] The Environment Court received and considered submissions from counsel as to its impact on the proceeding, before issuing its decision.

[12] *King Salmon* concerned a proposed salmon farm in an area of the Marlborough Sounds (Papatua, in Port Gore) that was accepted as being "an area of outstanding natural character and an outstanding natural landscape". It was also accepted that the proposed salmon farm would have significant adverse effects on that natural character and landscape.[7] The appeal concerned whether a plan change, which would allow the salmon farm, but would not give effect to Policies 13 (1)(a) and 15(a) of the NZCPS 2010, should have been refused.

[13] The Supreme Court held by a majority that the Board of Enquiry considering the proposed plan change was required to give effect to the NZCPS policies,[8] that "avoid" (in the phrase "avoid adverse effects") means "not allow", or "prevent the occurrence of",[9] and that the Policies provided "something in the nature of a bottom line".[10] The NZCPS is "an instrument at the top of the hierarchy" of environmental instruments, and gives effect to the protective element of sustainable management.[11]

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5 *Maniototo Enviromental Society v Central Otago District Council* Decision C103/2009.
6 *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd*, above n 3.
7 *King Salmon*, at [5].
8 At [77].
9 At [96].
10 At [132].
11 At [153].

In reaching this conclusion, the majority rejected the "overall judgment" approach adopted by the Board of Enquiry, and the High Court on appeal.

[14] In his dissent, William Young J noted the possibility of overbroad consequences of the majority's decision: "severe restrictions being imposed on privately-owned land in areas of outstanding natural character", and the potential to be "entirely disproportionate" in its operation as any perceptible adverse effect would be controlling irrespective of whatever benefits, public or private, there might be if an activity were permitted."[12]

[15] Counsel for both MWS and the Council agreed that the Auckland Regional Policy Statement would need to be revised following the *King Salmon* judgment, and that the Policy Statement will inevitably be more restrictive as regards the coastal environment.

Application to adduce new evidence on appeal

[16] MWS applied to adduce further evidence on appeal, being a statement of Mr Andrew Christopher McPhee, principal planner in the Central and Islands area planning team at the Auckland Council. Mr McPhee's statement considers the planning implications of the Supreme Court's judgment in *King Salmon*, in particular, whether changes are required to be made to planning instruments as a result of the judgment.

[17] At the hearing in this Court, counsel for the Council, Mr O'Callahan, advised the Court that the Council acknowledges that there needs to be revisions to the Auckland Regional Policy Statement, and that the policy in respect of the coastal environment will inevitably be more restrictive. Mr O'Callahan submitted that there would be no purpose in allowing the evidence to be adduced.

[18] In the light of that acknowledgment, I agree that there is reason to adduce Mr McPhee's evidence.

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[12] At [201].

Environment Court decision

[19] The Environment Court noted that it was agreed by the parties that all of the areas that were in dispute as being ONLs were "landscapes", and had sufficient "natural" qualities for the purposes of s 6(b) of the RMA.[13]

[20] The Environment Court considered a submission for MWS that (in particular as a result of the *King Salmon* judgment, and the inevitability of more restrictive policies) a more conservative (higher) threshold should be adopted for determining what comprises an ONL, and that the assessment should be made at a national scale. However, the Court accepted a submission for the Council that the planning consequences would flow from the fact that the land is an ONL, and are not relevant the determining whether it is an ONL or not.[14]

[21] Further, the Court was not comfortable with MWS's submission that the assessment of "outstandingness" should be made on a national rather than a regional scale, for two reasons. First, the task would be enormously complex, if not impossible, and secondly, if pristine areas of New Zealand such as parts of Fiordland, the Southern Alps, and certain high country lakes were to be regarded as the benchmark, nothing else might qualify to be mapped as outstanding.[15]

[22] The Environment Court then considered in detail evidence given for MWS and the Council concerning ONL mapping. It is evident from the maps presented in the Environment Court that the principal witnesses for both parties agreed that the entire coastline and sea scape, and the prominent landscape in the higher parts of the property were properly assessed as ONLs, and that areas in Man O'War Bay and Hooks Bay were properly excluded.

[23] The debate focussed on intermediate areas between the coastal and interior landscapes. MWS's witness, Ms Gilbert, distinguished between the "coastal environment landscape area" and the "interior landscape character area". The

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13 Environment Court decision, above n 1 at [4].
14 At [37]-[39].
15 At [57]-[67].

Council's witness, Mr Brown, disagreed with this separation. The Environment Court said that during a site visit:[16]

> … it became obvious to us that [MWS's] property on Waiheke Island offered a mosaic of landscape features including the bush clad eastern slopes of the Puke range, an interspersed network of bush gullies, pastureland, vineyards and geological features, flanked by a series of coastal headlands, escarpments and ridges leading out to the waters of the Hauraki Gulf. These features interact in a manner that, viewed from either land or sea, makes it difficult to identify distinctly separate landscapes for assessment of significance in a regional context. … In particular, we consider that these "landscapes" have varying degrees of connectedness to the coast but ultimately read in the round for the viewer. With one exception … we do not find it appropriate the separate coastal and inland landscape …

[24] Accordingly, the Environment Court allowed only limited amendments to the ONL mapping.

Approach on appeal

[25] It was common ground that the principles to be applied in approaching an appeal to the High Court under s 299 of the RMA are as summarised by French J in *Ayrburn Farm Estates Ltd v Queenstown Lakes District Council*:[17]

> [33] An appeal to this Court under s 299 is an appeal limited to questions of law.
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> [34] Appellate intervention is therefore only justified if the Environment Court can be shown to have:
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> i) applied a wrong legal test; or
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> ii) come to a conclusion without evidence or one to which on the evidence it could not reasonably have come; or
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> iii) taken into account matters which it should not have taken into account; or
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> iv) failed to take into account matters which it should have taken into account.
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> [35] The question of the weight to be given relevant considerations is for the Environment Court alone and is not for reconsideration by the High Court as a point of law.

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16 At [128]

17 *Ayrburn Farm Estates Ltd v Queenstown Lakes District Council* [2012] NZHC 735, [2013] NZRMA 126 at [33]-[36].

> [36] Further, not only must there have been an error of law, the error must have been a 'material' error, in the sense that it materially affected the result of the Environment Court's decision.
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> (Footnotes omitted)

[26] Further, as Mander J observed in *Young v Queenstown Lakes District Council*:[18]

> The Court will not engage in a re-examination of the merits of the case under the guise of a question of law, nor will it delve into questions of planning and resource management policy. The weight to be attached to policy questions and evidence before it is for the tribunal to determine, and is not able to be reconsidered as a point of law.

[27] Finally, it is appropriate to note the observation of Wylie J in *Guardians of Paku Bay Association Inc v Waikato Regional Council*:[19]

> The High Court has been ready to acknowledge the expertise of the Environment Court. It has accepted that the Environment Court's decisions will often depend on planning, logic and experience, and not necessarily evidence. As a result this Court will be slow to determine what are really planning questions, involving the application of planning principles to the factual circumstances of the case. No question of law arises from the expression by the Environment Court of its view on a matter of opinion within its specialist expertise, and the weight to be attached to a particular planning policy will generally be for the Environment Court.

Appeal issues

[28] On behalf of MWS, Mr Casey QC first submitted that the Environment Court had erred in its consideration of the effect of the Supreme Court's judgment in *King Salmon*. In particular, it was submitted, the Environment Court erred in:

a) failing to address the *WESI* factors when determining whether the landscapes in question were ONLs;

b) failing to undertake the assessment of whether areas of the farm property were ONLs by reference to landscapes in New Zealand as a whole, rather than by reference to landscapes in the Auckland region;

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[18] *Young v Queenstown Lakes District Council* [2014] NZHC 414, at [19].

[19] *Guardians of Paku Bay Association Inc v Waikato Regional Council* (2011) 16 ELRNZ 544 (HC) at [33].

c) failing to recognise that as a result of the level of protection required for ONL's in the coastal environment being clarified in *King Salmon*, the threshold for classification as an ONL was significantly elevated above that applied under Change 8; and

d) failing to recognise that given the implications of the judgment in *King Salmon*, it was required to determine which parts of the farm property fell within the coastal environment, and which did not.

WESI factors

(a) Submissions

[29] Mr Casey and Mr Williams submitted for MWS that while the Environment Court listed the factors set out in *WESI* and other decisions, it did not actually evaluate whether the landscape was "outstanding", by reference to the factors. Rather, the Court simply adopted the approach taken by the Council's expert witness. They further submitted that the Court failed to give adequate consideration to the "naturalness" of the disputed landscape: the MWS land is a working farm, and so heavily developed that it cannot properly be described as "natural".

[30] Mr Williams also submitted that the Environment Court was wrong to reject MWS's submission that it is necessary to separate coastal and non-coastal areas for the purposes of identifying ONL's. He submitted that there is a "fourth dimension" involved in assessing non-coastal land, which is not present in relation to the coastal environment. He described this as a "real world enquiry", which allows for the dynamic nature of farming, and the fact that a simple farming step (such as spraying weeds to reclaim pasture) may lead to a substantial change in a landscape. He submitted that the Environment Court had erred in law in failing to take this factor into account.

[31] It was submitted that, as a result of the above errors, the Environment Court had identified as ONLs landscapes which, while picturesque or handsome, were best

described as "fairly normal rural landscapes". Counsel referred to the comment in *High Country Rosehip*, that not all handsome landscapes are "outstanding".[20]

[32] Mr O'Callahan submitted for the Council that the Environment Court was not in error. He submitted that the Court was not required to consider whether the farm property was "landscape" and "natural", as that was agreed by the expert witnesses for MWS and the Council. Further, there was agreement that substantial parts of the farm property were ONLs. The debate was as to drawing the line between the ONLs and areas that were not ONLs. The Environment Court was dealing with areas around the fringes, so did not have to rank the "outstandingness" of particular areas.

[33] Mr O'Callahan submitted that in deciding whether a natural landscape is "outstanding", the Environment Court had to have regard to the appropriate factors and synonyms used to understand "outstandingness", as set out in cases such as *WESI*, *Maniototo*, and *High Country Rosehip*. Those factors and synonyms were derived in cases that did not involve the coastal environment. He submitted that, in any event, the assessment of "outstandingness" is essentially the same whether carried out in the coastal or non-coastal environment.

[34] Mr O'Callahan submitted that the Environment Court had appropriately set out and understood the relevant factors, and had set out and considered the competing evidence and submissions. Ultimately, he submitted, the Court's determination was a matter of the specialist court exercising its judgment on the expert evidence. It was not necessary for the Court to set out and analyse the individual factors. The Court's determination was a factual determination, which cannot be appealed.

[35] Mr Enright submitted for the Environmental Defence Society that the real issue on appeal was whether the Environment Court undertook the exercise of deciding whether the land at issue was "outstanding". In that assessment, divisions of the Environment Court have in other cases referred to synonyms, or qualifying adjectives, such as those set out in *WESI* and *High Country Rosehip.* In the present case, he submitted, in identifying disputed ONL areas, the Court had in mind the

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[20] *High Country Rosehip v MacKenzie District Council* [2011] NZEnvC 387 at [104].

relevant adjectives, or synonyms, used to assess whether the land was outstanding. Ultimately, whether land is outstanding is a factual determination.

(b) Discussion

[36] I am not persuaded that the Environment Court failed to undertake an appropriate assessment of the disputed ONL areas. I accept that the Court was not required to consider whether the disputed areas were "landscapes" and "natural landscapes", as those issues were agreed. The sole issue for the Court was whether they were "outstanding".

[37] The Court referred to the discussion of the concept of "outstandingness" as set out in *WESI*, and the qualifying adjectives and synonyms noted in the evidence of MWS's expert witness. There was no error in the Court's analysis of the evidence before it. Its conclusions as to which areas were ONLs were then factual determinations, and cannot be appealed.

[38] So, too, was the Environment Court's rejection of the MWS submission that there must be a separation of coastal and non-coastal land for the purposes of identifying ONLs. The "real world enquiry" is recognised in the factors set out in *WESI* and *Maniototo*, where human intervention was accepted as being part of the development of the natural landscape. In *Maniototo*, in particular, the element of human engagement and interaction with the landscape is recognised. Far from detracting from the "naturalness" of the landscape, the human engagement and interaction contributes to the intrinsic value of the landscape.

[39] I am not persuaded that the Environment Court has been shown in the present case to have failed to take that factor into account. The Court had the evidence of the expert witnesses for MWS and the Council before it, and referred to both in its decision. It is not an error of law to have accepted one over the other.

Regional or national reference?

[40] As noted earlier, the second aspect of MWS's appeal concerned the scale against which the assessment of "outstandingness" is carried out: whether it should be on a national, regional, or district-wide scale.

(a) Submissions

[41] Mr Williams submitted that the Environment Court was wrong to assess the "outstandingness" of the MWS farm property at a regional level; he submitted that the assessment should be at a national level. Mr Williams accepted that in *WESI* the Environment Court had referred to a regional basis for assessment, but submitted the in later decisions, for example *Maniototo*, the assessment was on a national basis. He submitted that this is appropriate, as an "outstanding" landscape must, by definition, "stand out against the rest". He submitted that it follows from the fact that protection of ONLs is a matter of national importance, that the assessment of them must be on a national, not regional or district basis.

[42] Mr O'Callahan submitted that the MWS submission on this point misinterpreted the provisions of the RMA. He submitted that the MWS submission would equate to saying that the RMA is to be read as "protecting nationally significant landscapes" and "nationally significant indigenous flora and fauna. However, that is not how the RMA is framed. The RMA provides that *protection* is of national importance; it is of national importance to protect ONLs and other matters that are of significance.

[43] Mr O'Callahan further submitted that if it had been intended that only "nationally outstanding landscapes" were to be protected, then the RMA would have provided accordingly, and would have provided the machinery for such protection at the national level. Further, various divisions of the Environment Court have developed the law concerning the identification of ONLs at the district or regional level; albeit on occasion (as in *Maniototo*) asking how the landscape in issue compared with other New Zealand landscapes.

[44] Mr Enright, for the Environmental Defence Society, submitted that there is no reason to interfere with the well-established factors for assessing "outstandingness" which were developed at the regional or district level and were agreed upon by all parties before the Environment Court.

(b) Discussion

[45] There is no basis on which I could accept that the assessment of "outstandingness" in this case should have been undertaken on a national, rather than regional or district basis. I accept the submissions for the Council and the Environmental Defence Society that the wording of the RMA does not support MWS's submission. Section 6 is clear in its terms, that it is protection of ONLs (and the other matters listed) that it is national importance. It does not say that it is only natural landscapes that are of national significance that are to be protected.

[46] There is force, too, in Mr O'Callahan's submission that if it had been intended that only nationally significant natural landscapes were to be protected, the RMA would have included an express provision to that effect. It is significant that the jurisprudence surrounding the identification of ONLs has developed through divisions of the Environment Court considering the issue on a regional or district basis.

[47] Further, I am not persuaded that it is necessary to incorporate a "national" comparator (or even a regional or district one) into the consideration of "outstandingness". The Courts in which the jurisprudence has been developed have not been asking "is this a nationally significant outstanding natural landscape?" They have been asking simply "is this an outstanding natural landscape". That is the issue that they are required to consider, under the RMA.

Effect of King Salmon

(a) Submissions

[48] On this point Mr Williams submitted that mapping of ONL's on the farm property for the purposes of Change 8 had been undertaking in the policy context

that prevailed before the Supreme Court judgment in *King Salmon*. That context included the adoption of the "overall judgment" approach to planning decisions. Mr Williams referred to *North Shore City Council v Auckland Regional Council*, in which the Environment Court said: [21]

> We have considered … the method to be used in applying s 5 to a case where on some issues a proposal is found to promote one or more of the aspects of sustainable management, and on others is found not to attain, or to attain fully, one or more of the aspects described in paras (a), (b) and (c). To conclude that the latter necessarily overrides the former, with no judgment of scale or proportion, would be to subject s 5(2) to the strict rules and principles of statutory construction, which are not applicable to the broad description of the statutory purpose. To do so would not allow room for the exercise of the kind of judgment by decision makers (including this Court – formerly the Planning Tribunal) …

[49] Mr Williams submitted that a different paradigm now applied, with the clear direction that higher order documents in the hierarchy of environmental management have primacy over lower order documents. He submitted that *King Salmon* would have a substantial and serious impact on its farming operation. It has a reasonable fear that the judgment will translate into a prohibition on all activities on the farm property, in order to comply with the directions in higher order documents. Working within a policy framework where farming activities could continue (on an overall judgment approach) is vastly different from a situation where those activities could be prohibited, under a requirement to "avoid adverse effects".

[50] Mr Williams further submitted that *King Salmon* has substantially changed the nature of environmental policies and objectives. The corollary must be, it was submitted, that there must be a change in mapping, as the nature of the protection to be provided (in the present case, for ONLs) must inform the process of mapping. ONL's are not mapped for their own sake, but for the purposes of protecting them from inappropriate subdivision, use, and development, and from adverse effects (if they fall within the coastal environment). In essence, Mr Williams argues that the definitions of ONLs was contextual and depended on the extent of protection that that status would grant.

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[21] *North Shore City Council v Auckland Regional Council* [1997] NZRMA 59

[51] He submitted that as a result of *King Salmon*, it necessarily follows that the manner in which ONL criteria are applied must change; the increased level of protection required for ONLs necessitates a higher threshold for identification of an ONL.

[52] Federated Farmers of New Zealand supported the submissions for MWS. Mr Gardner also expressed concern as to the consequences of the *King Salmon* judgment for the level of landscape protection required under the RMA. He submitted that the issue of the threshold for identification of an ONL is of crucial importance for any farm that is in the coastal environment and is "outstanding" in terms of s 6 of the RMA.

[53] Referring particularly to rural production activities, Mr Gardner submitted that, following *King Salmon*, it was implausible that the many and varied activities associated with rural production (such as construction of farm tracks, planting exotic shelter belts, or constructing some farm buildings) which would previously have been considered appropriate in an ONL in the coastal environment would now have to be avoided (prohibited) because of their adverse effect.

[54] Applying *King Salmon* would necessarily mean that the very activities Change 8 relies on as warranting classification as an ONL should no longer take place. Thus, it is "logically difficult" to identify working rural landscapes as ONLs, and the underpinning of the landscape identification and mapping under Change 8 is undermined.

[55] Regarding the impact of *King Salmon*, Mr O'Callahan submitted that MWS was wrong, at a conceptual level, to submit that if the level of protection for ONLs set out at the policy level increases, the threshold for identifying ONLs must be stricter. He submitted that policies do not drive identification as ONLs. Rather, the RMA clearly provides a delineation between identifying ONLs, and the policies for protecting them.

[56] Mr O'Callahan further noted that in *King Salmon*, it was accepted that the area where the proposed salmon farm was to be sited was an ONL. There was no

suggestion that, as a result of the Supreme Court's judgment, the local authority should reconsider the ONL identification. Rather, the policies for protecting the area identified as an ONL had to be reconsidered.

[57] Mr Enright submitted that the *King Salmon* judgment does not affect mapping of ONLs. It impacts upon the wording of objectives, policies and methods to protect ONLs. He submitted that *King Salmon* could not, by a side wind, change anything relating to identification of ONLs. More particularly, it could not have been in the Supreme Court's mind that the identification of ONLs should be more confined, and their numbers reduced as a consequence.

(b) Discussion

[58] I do not accept the submission for MWS that as a consequence of the *King Salmon* judgment, the identification of ONLs must necessarily be changed, and made more restrictive. There is no justification for such a submission in the *King Salmon* judgment, and it is not justified by reference to the RMA.

[59] It is clear from the fact that "the protection of outstanding natural features and landscapes" is made, by s 6(b), a "matter of national importance" that those outstanding natural landscapes and outstanding natural features must first be identified. The lower level documents in the hierarchy (regional and district policy statements) must then be formulated to protect them. Thus, the identification of ONLs drives the policies. It is not the case that policies drive the identification of ONLs, as MWS submits.

[60] As identified by the Council, the RMA clearly delineates the task of identifying ONLs and the task of protecting them. These tasks are conducted at different stages and by different bodies. As a result it cannot be said that the RMA expects the identification of ONLs to depend on the protections those areas will receive. Rather, Councils are expected to identify ONLs with respect to objective criteria of outstandingness and these landscapes will receive the protection directed by the Minister in the applicable policy statement.

Decision

[61] For the reasons set out above, MWS's appeal against the Environment Court decision must fail. The appeal is dismissed.

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Andrews