
King Salmon Reigns

The High Court decision of *Davidson Family Trust v Marlborough District Council* [2017] NZHC 52, clarifies how the King Salmon (*Environmental Defense Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38) decision should be applied in relation to resource consent applications.

In summary, the Supreme Court in King Salmon found that unless there is invalidity, incomplete coverage or uncertainty of meaning in the statutory planning documents, there is no need to look at Part 2 of the RMA when making decisions on plan changes. The Court reasoned that Councils are required to give effect to Part 2 in preparing planning documents, therefore a further assessment of Part 2 would be unnecessary duplication.

When the King Salmon case came out it was considered a ‘game changer’ as it related to plan changes, however it did not clarify whether the ruling applied to decisions on resource consents. Since King Salmon, the Environment Court has taken a tentative approach on how King Salmon should be interpreted in respect of resource consent applications (see: *RJ Davidson Family Trust v Marlborough DC* [2016] NZEnvC 81 and *KPF Investments v Marlborough DC* [2014] NZEnvC 152). The Davidson High Court judgement clarifies how decision makers should apply Part 2 of the RMA when assessing a resource consent application. Davidson confirms that the ruling in King Salmon applies to resource consent applications, as it would be “*inconsistent with the scheme of the RMA and King Salmon to allow Regional or District Plans to be rendered ineffective by general recourse to Part 2 in deciding resource consent applications*” (*Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 at [63]).

In practical terms, this means that in completing a resource consent application the main focus should be on the planning documents, such as National and Regional Policy Statements and Regional and District Plans, rather than focusing on the matters outlined in Part 2 of the RMA. Part 2 of the RMA should be referred to only in circumstances where plans are outdated or there are inconsistent objectives and policies. Many resource management practitioners have adopted this approach since King Salmon. The Davidson case confirms that this is the correct approach.

The High Court delivered their judgement on the 31st January 2017, so it is possible that this decision will be appealed to the Court of Appeal.
