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Legislation Committee Case-notes - November 2016

Feedback Please! Any Feedback? Drop us a note!

We would appreciate comments and suggestions from members on content, format or information about cases that might be of interest to members but may have not been reported in "Your Environment".

The Case-book Editor Roger Low can be contacted through the National Office, or by e-mail, Roger Low<rlow@lowcom.co.nz>

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Summaries of cases from Thomson Reuter's "Your Environment" and "Alert24 – Land".

This month we report on seven court decisions covering diverse situations associated with subdivision, development and land use activities from around the country: Two of these decisions consider the matters of "reverse sensitivity" effects:

- A successful appeal against decline of consent of establishment and operation of a specialist dementia care establishment on rural land near a tamarillo orchard at Lepperton, near New Plymouth;
- An unsuccessful appeal by a land-owner against conviction for unconsented earthworks at Pauatahanui, near Porirua;
- A further High Court decision relating to sale of a property at Duder's Beach, Manukau;
- An unsuccessful appeal against a decision of Heritage New Zealand for emergency authority to demolish an earthquake-damaged listed historic building at Christchurch;
- Granting of enforcement orders against owners of a rural-residential property at Otatara near Invercargill for activities involving motor vehicle repairs and testing;
- A successful application for judicial review of a decision to grant consent for a residential development on a property within a light industrial area at Te Atatu, Auckland;
- An unsuccessful application by a group of residents to become a party to the appeal about continuation of quarrying activity on Saddle Hill near Dunedin.

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Log-in and download the case summaries and other news items at:
http://www.surveyors.org.nz/Category?Action=View&Category_id=40

CASE NOTES:

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Avatar Glen Ltd v New Plymouth District - [2016] NZEnvC 78

Keywords: resource consent; reverse sensitivity; traffic; noise; condition; effect adverse; effect positive

This was an interim decision on an appeal by Avatar Glen Ltd ("Avatar") against the decision of a commissioner appointed by New Plymouth District Council to decline necessary resource consents for the establishment and operation of a specialist dementia care home at Lepperton, east of New Plymouth. The proposal was for a 60-bed care home comprising three groups of buildings. The proposal was intended to be staged with three pods constructed first and two to be constructed at a later time. There were to be 40 car parking spaces. The site was 4.24 ha and zoned Rural Environment Area in the district plan. It was accepted that on a bundled basis the proposal required resource consents as a discretionary activity and was to be examined under ss 104, 104B and pt 2 of the RMA.

Avatar argued that the commissioner's decision should not be upheld. It argued against reverse sensitivity being a serious issue and was prepared to accept conditions such as requiring residents to remain indoors during notified periods when orchard spraying was undertaken. Residents surrounding the proposal had concerns as to the impact of a large development,

reverse sensitivity and traffic generation. Mr and Mrs Weston ("W") owned a tamarillo orchard to the north of the subject site and had been there for 33 years. Their primary concern was with the potential adverse effects of reverse sensitivity on the operation of their business. W's orchard was the only commercial tamarillo orchard in the region. In addition to spraying the other issue of reverse sensitivity related to noise as the Ws ran a frost fan over the winter period and used a bird-scaring device.

The Court noted the positive effect in the provision of a purpose-built specialist dementia care home for the community. Further, enhanced riparian planting of the property's wetland would improve the quality of its natural water. The Court agreed with expert witnesses that (subject to appropriate conditions) the effects regarding landscape and visual amenity, contamination of land from previous use of the site, construction and earthworks, infrastructure services, lighting, traffic and noise from the site itself were no more than minor.

Regarding traffic adverse effects, the Court was satisfied that a combination of measures would appropriately address traffic and safety issues but it would still depend on a responsible approach by all users of the accessway and driveway. Regarding adverse effects of noise the Court considered construction noise, noise resulting from the on-going use of the facility on the local environment, noise standards that should apply to the proposal, and reverse sensitivity associated with rural activities. The Court was satisfied that with the imposition of internal noise limits there was no valid basis for declining the consent based on noise.

Following new, expert opinion on reverse sensitivity resulting from the potential effects of agrichemical spray drift the Court was satisfied that the potential risks to human health from any spray for residents, visitors and staff of the dementia care facility could be regarded as within the acceptable limits for pesticide exposures. Subject to a practical and lasting arrangement to give notice to the care home management of intended spraying on the W property the Court saw no reason to decline consent.

The Court stated that if a workable arrangement could be worked through, conditions addressing the source of potable water and no complaints covenants in respect of noise and spraying could be usefully addressed. The Court asked the parties to see if such arrangements were possible, and to inform the Court by 27 May 2016.

Decision date 31 May 2016; Your Environment 01 June 2016

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Phillips v Wellington Regional Council - [2016] NZHC 1266

Keywords: High Court; prosecution

W Phillips ("P") appealed against his conviction, following a defended hearing, of three charges. The charges, laid by Wellington Regional Council ("the council"), related to works undertaken by P in and around the Pauatahanui Stream on land owned by P at Belmont Rd, near Porirua ("the site"). The works were undertaken as part of the removal of a building from another property to the site. The access road to the site was shared with nearby properties. P undertook the works because he wished to widen the inner bank of the access road, but did not apply for the requisite resource consent. Representing himself, P now appealed on the grounds that as he was the occupier at the relevant time he did not need resource consent, and he was required to carry out emergency work or face liability if someone was harmed.

The High Court reviewed the relevant provisions of ss 13 and 14 of the RMA and stated that the District Court Judge had been correct to conclude that what occurred was in breach of those sections. Further, the Judge was correct in finding that P's intention was irrelevant as the offences were of strict liability under s 341(1) of the RMA. The Court found that the conclusion, that the defence under s 341(2)(a) of the RMA was not available to P, was open to the Judge on the evidence. In addition, the Court found that evidence submitted by P on appeal from a consulting engineer was neither fresh nor cogent, because such evidence did not state that erosion of the stream bank was imminent or likely to occur in the near future. Finally, the Court found that P was not a "person" in terms of s 330(1)(a) of the RMA, because the work in the present case was not "any public work" but was a private work and so that section did not apply. Accordingly, as P was unable to establish any defence, the appeal against conviction was dismissed.

Decision date 11 July 2016; Your Environment 12 July 2016

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Botany Land Development Ltd v Pallister _ [2016] NZHC 1371

Keywords: High Court; adjournment; resource consent; subdivision

By this decision the High Court considered whether to adjourn the proceeding. The matter concerned an application by Botany Land Development Ltd ("Botany") seeking specific performance of its agreement of 5 November 2012 with trustees of the Margaret E Pallister Family Trust ("the trustees") to sell certain land at Maraetai ("the agreement"), or damages in substitution. The agreement was conditional on Botany obtaining a subdivision consent from Auckland Council ("the council") by 10 May 2013. Acting on a belief that a 2002 Concept Subdivision Consent ("the concept consent") remained active, Botany declared the agreement unconditional. The company 184 Maraetai Road Ltd was nominated to take title to the land. Prior to the agreement so becoming unconditional, the council informed the trustees that it enjoyed a right of first refusal in respect of one of the titles in issue and that such right was set out in an encumbrance registered against the title. After the agreement became unconditional, the council lodged a caveat against the title, so preventing the agreement from proceeding. The caveat was sustained by the High Court and that decision was upheld by the Court of Appeal. Subsequently the council entered into a contract with the trustees and Botany whereby one of the titles was to be bought by the council for $2.74 million. On 10 December, the trustees purported to cancel the agreement, which resulted in the present application by Botany.

The Court summarised the contract issues arising in the present proceeding and noted that meanwhile parallel proceedings were running in the Environment Court ("the EC"). In its decision of 10 December 2015, the EC concluded that the land use consent for the concept consent had been given effect to. In making that decision, the Court noted that the EC made it clear that the concept consent was not and never was a resource consent to undertake any works, and the effect of the concept consent was to give a later application a special status if it addressed certain preconditions. The Court stated that following the EC's decision of 10 December 2015 the trustees commenced a new proceeding in the EC, seeking declarations and strike out, and this was scheduled to be heard on 19 September 2016.

In view of the most recent proceeding in the EC, the Court stated, that although the delay was regrettable, the hearing, scheduled for 3 October 2016, should be adjourned and made directions accordingly. Costs on the adjournment application were reserved.

Decision date 1 August 2016; Your Environment 2 August 2016

(See previous decisions reported in Newslink in December 2015 and February and March 2016 – RHL)

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Taggart Earthmoving Ltd v Heritage New Zealand Pouhere Taonga _ [2016] NZEnvC 123

Keywords: heritage values; building; resource consent; interpretation

Taggart Earthmoving Ltd ("Taggart") appealed against the decision of Heritage New Zealand Pouhere Taonga ("HNZ") to decline Taggart's application for an emergency authority to demolish McLean's Mansion in Christchurch ("the building"). The building, which was extensively damaged during the Canterbury earthquakes, was built in 1900 and was listed on the New Zealand Heritage List as a Category 1 Historic Place, meaning that prior authority from HNZ was required before destroying or modifying it. In March 2012 a report from quantity surveyors to the owners of the building estimated the costs of repairs at $12.3 million, although repair costs estimates given in the hearing were significantly less. The building was insured for $5.67 million and the owners received an insurance payout. In July 2013 the Canterbury Earthquake Recovery Authority ("the Authority") determined the building was dangerous and gave notice under s 38 of the Canterbury Earthquake Recovery Act 2011 ("the CERA") to the owners that it should be demolished. The owners authorised Taggart as agents to apply for an emergency authority to demolish the building. Taggart now argued that HNZ's decision: did not adequately consider the purposes of the CERA; took into account incorrect and unreliable information; did not consider serious safety concerns; and did not give appropriate weight to the costs of making the building safe.

The Court considered the relevant statutory instruments, including the CERA, the Heritage New Zealand Pouhere Taonga Act 2014 ("the HNZA"), the Canterbury Earthquake (Historic Places Act) Order 2011 ("the 2011 Order") and the Historic Places Act 1993 ("the HPA 1993"), repealed by the HNZA. The Court noted that, by specified provisions of the Greater
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Christchurch Regeneration Act 2016, and of the HNZA, the 2011 Order continued to apply. The Court stated that the legal issues for determination were: whether the construction of the phrase "subject to" in cl 15(4)(b) of the 2011 Order meant that the provisions for the CERA were "subject to" the HPA; whether there was any inconsistency between the purposes and principles of the CERA and the HPA 1993; and the relevance of the decision of the Chief Executive of the Authority to issue a s 38 notice to demolish the building. Regarding the first issue, HNZ submitted that the 2011 Order established a hierarchy between the CERA and the HPA, while Taggart argued that there was no hierarchy and that the Court was required to have regard to both. Applying the legal principles of interpretation and relevant case authority relating to the phrases "subject to" and "have regard to", the Court found that cl 15(4) of the 2011 Order required the Court to have regard to the principles and purposes of both Acts and, provided that the Court gave genuine attention and thought to the matters in question, it was free to allocate weight as it saw fit. Turning to consider the second issue, although the Court stated that it found the relationship between cls 10 and 15 of the 2011 Order were poorly drawn, it found that, in order for an emergency authority (to demolish) to be granted, it must be directly or indirectly necessary or desirable to promote any of the purposes of the CERA. The Court found that rather than there being any conflict in the provisions of the Acts, the issue would be better expressed as a question of weight, which was a matter for the Court. In the present case, the Court was satisfied that to decline the application would achieve the purposes of both Acts. Regarding the third issue as to the relevance of the Authority's decision to issue a s 38 demolition notice, the Court agreed with HNZ that s 38 of the CERA did not compel the building owners to undertake demolition but merely required them to notify the Authority within the time limit whether they intended to do so. Further, the effect of cl 15 of the 2011 Order was to broaden the range of relevant factors to which regard was to be had for the purposes of the CERA. The decision by the Authority to issue the s 38 notice, and the decision of the archaeological officer declining an emergency authority under cl 10 of the 2011 Order, clearly involved different considerations. In the present appeal, the Court stated that the significance of these two attributes (that the building was dangerous and that it was an archaeological site) was a matter of judgment, based on the evidence.

The Court then considered the grounds of appeal, addressing first whether the historical and cultural heritage values of the site, and any other factors, justified the protection of the site. Expert heritage evidence was considered which agreed that the building was capable of being repaired and strengthened to 100 per cent NBS. The Court found that the building was a significantly tangible example of a particular period of social history and life in Christchurch and continued to make a significant and important contribution to the community's sense of place and identity. Pursuant to s 20(6)(a) of the HPA the Court found that in its present condition the building's very high historical and cultural values justified its protection. The Court then considered, under s 20(6)(d) of CERA, the interests of any person directly affected by HNZ's decision, namely the building's owners. The Court stated that the owners did not lack alternatives which could substantially reduce the cost of restoration. In particular, there was no evidence that the owners had reconsidered the matter in the light of the lower costs estimates presented to the Court, and there was no evidence presented that the owners had undertaken any serious re-evaluation of the feasibility of attracting grant funding for the restoration. The Court further concluded that to refuse the appeal, and so protect the site, would not prevent or restrict the existing or reasonable future use of the site for any lawful purpose, under s 20(6)(c) of CERA. To take account of the cultural and heritage values of the building and refuse the application would involve the least possible alteration or loss, and would safeguard the options of the present and future generations, as required by the relevant provisions of the HPA. The application was declined and the decision of HNZ confirmed. Costs were reserved but not encouraged.

Decision date 2 August 2016; Your Environment 3 August 2016

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Invercargill City Council v Carlaw _ [2016] NZEnvC 134

Keywords: enforcement order; district plan; rule; rural residential; amenity; noise; home occupation

Invercargill City Council ("the council") applied for enforcement orders under s 314 of the RMA against M Carlaw ("C") in respect of the property at 96 Oreti Rd, Otatara, Invercargill ("the site"). The council alleged that certain of C's activities contravened a rule in the district plan and were offensive and objectionable to such an extent that they were likely to have an adverse effect on
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the environment. The activities included the servicing, repair and testing of multiple motor vehicles and the racing of motor vehicles around a paddock at the site. The site was in a rural residential zone in an area characterised by the plan by its peace and tranquillity, low levels of glare and light-spill and low traffic density. In response, C submitted he was carrying out a home occupation in accordance with the plan.

The Court considered the evidence of neighbours, including S who lived in a property adjacent to C's paddock, in addition to that of council inspectors. The Court accepted S's statements as to the scale, timing and frequency of the activities occurring on the site and also that S and her husband had been adversely affected by such activities. The noise and glare from vehicle headlights had caused severe sleep disturbance, and they felt intimidated and verbally abused by C. Addressing the provisions of s 314(1)(a)(i) of the RMA, the Court found that the activity in question did not come within the definition of "home occupation" because it was not contained within the residence or the accessory buildings on the site. Accordingly, it not permitted under the plan, absent a resource consent. The Court found that the activities were likely to contravene the rule for non-complying activities in the plan. Turning to consider the test under s 314(1)(a)(ii) of the RMA, the Court was satisfied that the adverse effects of noise and headlights were offensive and objectionable.

The Court was satisfied that it was just in the circumstances to make the orders sought under both subsections of s 314(1)(a) of the Act, taking into account that an abatement notice and two infringement notices had been issued but not complied with. Accordingly, with the amendments indicated, the Court made the orders specified in the decision. Costs were reserved.

Decision date 9 August 2016; Your Environment 10 August 2016

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Tasti Products Ltd v Auckland Council - [2016] NZHC 1673

Keywords: High Court; judicial review; public notification; district plan proposed; objectives and policies; plan weighting

Tasti Products Ltd ("Tasti") and North Western Property Ltd ("NWPL") applied for judicial review of certain planning decisions made by Auckland Council ("the council"). The decisions were: not to give limited notification under s 95B of the RMA to Tasti of a consent application for a commercial/residential development made by Midpoint Investments Ltd ("Midpoint") ("the notification decision"); to grant consent to Midpoint ("the consent decision"); and not to notify an application for variation of the consent conditions, and to grant the variation ("the variation decisions"). Tasti and NWPL were related companies. Tasti was a food manufacturer carrying on business from premises at Te Atatu at a site owned by NWPL, which owned the majority of properties in a block bounded by Totara and Te Atatu Roads. One of the properties on the block not owned by NWPL was owned by Midpoint, a property developer. All the properties were zoned Working Environment zone under the Operative District Plan – Waitakere Section 2003 ("the OP"). Midpoint's resource consent application was a non-complying activity under ss 104 and 104D of the RMA. The present challenges arose because of the changes proposed in the Proposed Auckland Unitary Plan ("the PAUP"). The recommendations of the Independent Hearings Panel regarding the PAUP were lodged with the council on the day following the date of the present decision. Tasti and NWPL alleged that the council, in its notification and consent decisions, did not recognise the new objectives and policies which might be introduced by the PAUP. They alleged that such provisions were likely to signal a shift in planning direction and if introduced would affect the site and Midpoint's site. Under the PAUP, the site was to be rezoned Light Industry, under which residential, office and retail activities were stated to be inappropriate.

After reviewing the council's processing of Midpoint's application, the Court considered the notification, consent and variation decisions made by the council, and the relevant statutory provisions, including ss 88, 95, 95B, 95E and sch 4 of the RMA. Regarding the notification decision, the matters in issue were: whether the council had adequate information to determine whether Tasti and/or NWPL were affected persons under ss 95B and 95E of the RMA; whether the adverse effects of Midpoint's proposed activity were such that they were affected persons; and whether the council erred in failing to consider relevant objectives and policies in the PAUP in determining who was an affected person. Regarding the issue as to adequacy of information, the Court was of the view that this, since the Resource Management (Simplifying and Streamlining) Amendment Act 2009, was no longer a matter falling within the scope of s 4 of the Judicature Amendment Act 1972. However, as it was common ground that, in determining who
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was an affected person for the purposes of notification, the council needed to have adequate information before it, the Court dealt with the issue, finding that council did have comprehensive information before it on which it should have been able to decide whether or not Tasti and/or NWPL were affected persons under s 95E of the RMA.

The Court found that the council made reviewable errors in its notification decision. First, it considered sites, not persons, so misconstruing a relevant statutory provision (s 95E(1) of the RMA); Second, it did not consider potential reverse sensitivity effects in a detailed and proper way, and this enquiry was too narrow and was only made in reference to the OP. The PAUP, however, provided that light industry zones should avoid the establishment of activities creating reverse sensitivity effects, such as residential activities, which Midpoint's application proposed; Third, the council posed too high a test when considering whether or not a person was affected. It considered whether the OP permitted activities would be "precluded" if the proposal were to proceed, when under the test in ss 95B and 95E of the Act, a minor effect was enough. Finally, the council failed to address the provisions of the PAUP at all. The Court said that the assessment of who was an affected person should not occur in isolation and needed to be considered in context. If the policies and objectives of a proposed plan were required, under s 104 of the Act, to be taken into account in making a substantive decision on a resource consent, the Court found it axiomatic that they must also be relevant in determining whether a person was affected by the application under s 95E(1). The council failed to ask itself the right questions and failed to take into account relevant considerations. Accordingly, the notification decision was held to be invalid. Given this conclusion, the Court stated it must follow that the consent decision was also flawed and the variation decisions must also fail.

Turning to consider whether to exercise it discretion to grant relief, the Court found there were no strong reasons to refuse relief to Tasti and NWPL, who had suffered prejudice as a result of the council exceeding its jurisdiction. Accordingly, the notification decision, the consent decision and the variation decisions were quashed and the matter sent back to the council to be considered afresh and according to law. Tasti and NWPL were entitled to costs.

Decision date 12 August 2016; Your Environment 15 August 2016

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Dunedin City Council v Saddle Views Estate Ltd - [2016] NZEnvC 170

Keywords: appeal procedure; waiver; time limit; undue prejudice

Saddle Hill Neighbours Group ("the Residents") applied under s 274 of the RMA to become a party to the appeal. The matter concerned whether or not quarrying activity on Saddle Hill near Dunedin might legally continue.

The Court stated that the time limit for notices under s 274 with regard to the present proceeding expired on 27 March 2015. However, the Residents did not apply for a waiver as to time limit. They submitted that they consisted of concerned Mosgiel, Dunedin and local residents who wished to save the iconic landmark of Saddle Hill. As no waiver application had been made, Saddle Views Estate Ltd ("the respondent") raised this as a jurisdictional bar to joinder. Further, the Court raised doubts as to whether the Residents might qualify under s 274 of the RMA. The Court stated that the Residents had not identified its members and had not complied with three of the four "mandatory" requirements of the form of notice, meaning that the "notice" could be struck out.

The Court then considered whether a waiver should be granted under s 281 of the RMA. The Court accepted the respondent's submission that it, and other parties, would be unduly prejudiced by the joining of the Residents at this stage of the proceeding. The application was refused.

Decision date 23 September 2016; Your Environment 29 September 2016

(See previous decisions reported in Newslink in September 2016 and the previous two years and the news item below.)

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This month's cases were selected by Roger Low, rlow@lowcom.co.nz, and Hazim Ali, hazim.ali@aucklandcouncil.govt.nz.

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Other News Items for November 2016

Auckland boundary dispute causes damage to backyard

Stuff reports that an Auckland property owner is locked in a dispute with a neighbour over construction works. Read the full story here.

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Consultation begins on property damage law change

Interest.co.nz reports that groups representing both tenants and landlords have weighed in on a Government proposal that would see tenants liable for damage caused by carelessness or negligence up to the value of their landlord's insurance excess, but not exceeding four weeks' rent. Read the full story here.

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Minister: Public support for Waimakariri red zone plans

The Minister supporting Greater Christchurch Regeneration Gerry Brownlee has welcomed the broad public support of proposed future land uses in the Waimakariri District's red zones.

About 84 hectares of mainly residential land in Kaiapoi, Pines Beach in Kairaki sustained severe land damage in the 2010 and 2011 earthquakes.

The Crown subsequently bought more than 1,000 properties in the district to allow people to move on with their lives.

"Despite the widespread destruction, the earthquakes have provided unique opportunities to transform and future-proof affected communities," Mr Brownlee says.

"In September 2015, I directed the Waimakariri District Council to develop a Draft Recovery Plan outlining the intended uses of the land.

"This process has enabled the Waimakariri District Council to work with communities and develop a plan that promotes the wellbeing of residents and supports economic development and growth in an affordable and consistent manner.

"Public feedback on the draft plan closed last month and, of the 60 comments received, there was broad support for the land uses outlined."

Please click the link for the full statement. Media Release

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Court finds against Saddle Views Estate

Radio New Zealand reports that the Environment Court has found that quarry operator Saddle Views Estate has no current consent to take stone from Saddle Hill near Dunedin. Read the full story here.

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New Zealand could face a $72 billion greenhouse gas bill

Radio New Zealand reports that Ministry for the Environment climate change director Kay Harrison told a conference that the cost to New Zealand to meet its Paris climate change agreement obligations hit $72 billion, or nearly 30 per cent of New Zealand's annual GDP. That amount would cover the period 2021 to 2030. Read the full story here.

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Superfund sell-down of fossil fuel investments
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Radio New Zealand reports that the New Zealand Superannuation Fund has announced it will begin to end its investments in fossil fuel companies.

Read the full story here.

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Changes needed for construction industry - report

Stuff reports that a new report, commissioned by the Construction Strategy Group and NZ Construction Industry Council, says the construction sector will not be able to meet the demand for housing in Auckland without changing its approach. The report says construction was expected to peak next year at $37.2 billion, and be worth more than $270b in the six years to 2020. Read the full story here.

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$17.5 million bridge project

The *Marlborough Express* reports that design plans for the new Opawa Bridge in Blenheim have been released by the New Zealand Transport Agency. If consents are granted, construction is expected to start in 2018. Read the full story here.

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$125 billion to be spent on infrastructure between 2012 and 2025

The New Zealand Herald reports that Finance Minister Bill English is to unveil plans to spend an additional $15 billion on infrastructure by 2025. Around $125b will be spent in New Zealand between 2012 and 2025 on infrastructure - the equivalent of 42 Auckland City Rail Links. Read the full story here.

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Supreme Court rejects appeal from Te Atatu land descendants

The New Zealand Herald reports that the Supreme Court has again denied a bid to reclaim $70 million worth of Auckland waterfront land under public works legislation. Read the full story here.

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Social Housing Minister: More housing on its way for vulnerable families

Vacant Crown land in Auckland will be turned into a 51-home development to provide transitional housing for families before they move into permanent accommodation, Social Housing Minister Paula Bennett has announced.

The 1.6ha site at Luke St, Otahuhu, has been earmarked by its owner the Ministry of Education for a future school, but in the meantime will be developed into 27 two-bedroom, seven three-bedroom and 17 four-bedroom homes for families on the social housing register.

Please click the link for the full statement. Media Release

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QV: Wellington housing market now rising faster than Auckland

The latest monthly QV House Price Index shows that nationwide residential property values for September 2016 have increased 14.3 over the past year. Values rose by 4.9 per cent over the past three months and are now 49.5 per cent above the previous market peak of late 2007. The average value nationwide is $619,660.

The Auckland market has increased 15.0 per cent year on year and 5.8 per cent over the past three months. The average value for the Auckland Region is $1,031,253.

QV National Spokesperson Andrea Rush said “the Wellington market continues to show strong levels of activity and demand. Values in the capital have risen faster than the Auckland region over the past three months and year on year.”

“Despite a clear slowing in activity and demand in the Auckland, Hamilton and Tauranga markets since the introduction of the new LVR restrictions for investors, we are seeing little evidence of a slow-down in value growth in these main centres,” Ms Rush said. Please click the link for the full statement. Media Release

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Partition case in Court of Appeal

Stuff reports on the long-running land partition case between sisters Jocelyn Bayly and Marion Hicks, which is being heard in the Court of Appeal. Read the full story here.

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Charges laid in mortgage fraud probe

The New Zealand Herald reports that charges have been laid against three people, including a lawyer and a bank staff member, in relation to a large-scale mortgage fraud. Read the full story here.

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East Coast land returned to hapū

Radio New Zealand reports that former school land on the East Coast is being returned to local hapū, after the Māori Land Court ruled the land had originally been gifted to the Crown. Read the full story here.

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Concern over effect of proposed MoJ overhaul on Maori Land Court

Stuff reports the Ministry of Justice has issued a consultation paper to employees proposing changes to its operations and service delivery, which will affect courts and tribunals across the country, and the head office in Wellington. The Maori Land Court is facing a disproportionately large impact, with more than 35 jobs appearing set to be disestablished, with around 15 new positions created. Read the full story here.

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Rolling over of loans ruled unconscionable

Stuff reports that the High Court has ruled the "rolling over" of $90,000 worth of loans unconscionable. The borrower had no income and was borrowing the money for the benefit of her husband's business, using her home as security. Read the full story here.

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Indonesian slum dwellers challenge eviction law in landmark case

(Thomson Reuters Foundation) - Slum dwellers in Indonesia have launched a landmark legal case to challenge a decades-old law which has been used to forcibly remove thousands of families, amid a wave of evictions in the country's capital.

The case comes as authorities ramp up efforts to clear housing along a main river bank in Jakarta, the sprawling capital of 10 million people, to pave the way for an ambitious flood mitigation project.

Local residents have asked the court to declare a law enacted in 1960 as unconstitutional as it "gives the government a great authority to take the land from the people" without due consultation, court documents show.

"I see more and more people suffering like me. This is wrong, this is inhumane," said Mansur Daud who was evicted last year from a slum in west Jakarta to make way for the project.

The 54-year-old hawker launched the legal challenge with two others this week, saying they want justice to be upheld.

"There was no dialogue, no compensation. I have to live at my parents' house now, my children were traumatised by the eviction, where is the justice?" he told the Thomson Reuters Foundation on Friday (30 September 2016).

The 1960 law prohibits the use of land without permission from the rightful owner, but land rights advocates argue it has long been invoked in favour of the authorities.

Lawyer Alldo Fellix Januardy said the law unfairly targets slum dwellers and the poor who cannot provide proof of land ownership, due to a legacy of unclear and overlapping land titles, as well as bureaucracy in Indonesia.

However he said this was exacerbated by the fact that the law does not require the government to provide the same proof of title when it is used to evict the residents.

"The problem with land evictions in Indonesia is that nobody has a (land ownership) certificate," said Januardy, who specialises in land rights cases and represents the slum dwellers.

"If nobody has a certificate, then the court should be the one to decide whose land it is but the government never sends cases to court, they just evict people because of this law.

"If we win the case, every forced eviction must be decided through the court before it happens," the lawyer added.

The Constitutional Court has yet to fix a date to start hearing the case.

The Jakarta city government has defended its move and vowed to push ahead with the evictions despite criticism.

Governor Basuki "Ahok" Tjahaja Purnama said the project was necessary to prevent annual floods during monsoon season and alternative housing had been provided to those affected.

According to the Jakarta Legal Aid Institute, which has been helping evicted families, there were 113 forced evictions last year, with each round typically involving many dwellings. A total of 8,145 families and 6,283 small businesses were affected in 2015, the group said.

Another 325 evictions were set to take place this year, the institute said, citing the government's planning documents.

The latest round of eviction took place on Wednesday, which saw bulldozers demolish a waterfront shanty town in Jakarta. It went without protest but past evictions have sometimes resulted in violence.

In August last year, security forces fired teargas and water cannon after they clashed with residents while clearing a flood-prone area in the capital, with 27 people arrested.

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LVR restrictions begin to have effect

Stuff reports that new 40 per cent loan-to-value restrictions for investors seem to already be having an effect on the market, but one analyst believes there will be further RBNZ intervention. Read the full story here.

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NZLS responds to proposed cadastral survey rules for greater Christchurch

The New Zealand Law Society Property Law Section has responded to the proposed cadastral survey rules for greater Christchurch consultation document.

The consultation document states that new cadastral survey rules are needed to support the Canterbury Property Boundaries and Related Matters Act 2016 (Act), which came into force on 30 August 2016. The Act has introduced new principles for determining boundaries particular to greater Christchurch. Cadastral rules are needed to provide a means to assist surveyors to make judgements about the location of boundaries post-earthquake so that their surveys and cadastral survey datasets are adequate for cadastral and land tenure purposes.

The consultation document emphasises that it is “important that [the proposed new] rules are a workable and reasonable response to the new law”. The Law Society has significant reservations about the proposed rules and recommends that they be redrafted to address the concerns listed. Please click the link for the full statement. Submission

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Landwrap October 2016

In Issue 131 of Landwrap LINZ covers Landonline availability; new rules for Canterbury land surveys; realigning the digital cadastre in Christchurch; updates to release notes for Surveyors; and planned changes to the Land Transfer Tax statement. - Please click the link belowfor the full issue. Landwrap 131

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