Newslink Case-notes for September 2017   prepared 20 August 2017.

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Legislation Case-notes – September 2017

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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".

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Summaries of cases from Thomson Reuter's "Your Environment".

This month we report on seven court decisions covering diverse situations associated with subdivision, development and land use activities from around the country; most result from decisions made in district and unitary plans:

- The final decision of the Court relating to the *MV Rena*, which ran aground on Astrolabe reef in the Bay of Plenty on 11 October 2011;
- The decision concluding a series of appeals against Proposed Change 8 to the Auckland Regional Policy Statement, which introduced new policy provisions for Outstanding Natural Landscapes ("ONLs") on Waiheke Island;
- A successful prosecution of a company that undertook earthworks in a Coastal Management Area ("CMA") without resource consent; at Otahuhu;
- The conclusion to an appeal against refusal by Auckland Transport to allow development of a site at Henderson that was partly affected by a designation for road widening;
- A decision of the Supreme Court following the High Court decision on judicial review of a decision not to notify a tenant of an application for redevelopment a business site at Manukau.
- The decision to grant an enforcement order relating to unauthorised partial demolition of a historic stone building in the Heritage Precinct at Clyde, Central Otago;
- The decision of the High Court relating to post-earthquake changes to land use zoning for a property at Addington, Christchurch that prevented re-establishment of pre-earthquake activities.

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CASE NOTES SEPTEMBER 2017:

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Ngāi Te Hapū Inc v Bay of Plenty Regional Council _ [2017] NZEnvC 73

Keywords: resource consent; conditions; vessel; coastal; contaminant

This was the final decision of the Court relating to the *MV Rena*, which ran aground on Astrolabe reef on 11 October 2011. Astrolabe Community Trust ("the Trust") applied for consent to abandon the remains of the wreck of the *Rena* and for permission for future discharges of identified contaminants, subject to conditions. The intention was that the owner of the vessel would transfer ownership to the Trust and give the Trust funds to be able to adhere to the conditions. Only two opposing parties now appealed against the consent granted by commissioners for the Bay of Plenty Regional Council ("the council"): Ngati Te Hapu Inc and Nga Potiki a Tamapahore Trust.

The Court reviewed the history of the wreck of the vessel, the contaminants discharged, and the cultural environment, in particular with regard to the provisions of s 6(e) of the RMA. There were different layers of Maori relationships, cultures and traditions with Otaiti (the Astrolabe reef) which required different forms of recognition and provision, and in this regard the Court described the relevant iwi and hapu groups and their history of association with Otaiti. While it acknowledged the Maori values described by all the expert witnesses, the Court stated there was only one immediately relevant issue: the state of the mauri of the reef.

The Court acknowledged that in the circumstances it was problematic to assess the existing environment, noting that all notices issued under the Marine Transport Act had expired or been complied with by 31 March 2016. It was therefore a realistic comparison basis for the Court to assess what changes had occurred relevant to the present application for the Court to compare the wreck as it presently existed with the environment prior to the *Rena* running aground. In doing so, there were a number of relevant planning instruments which had been formulated since the grounding of the vessel, some of which identified the vessel on the reef.

The Court considered evidence as to whether or not the wreck, or parts of it, could be removed and concluded this was not feasible without causing further damage to the reef and risk to divers. The only way in which removal of parts of the vessel might be considered feasible was if small parts of the bow were to break off and if these were safely recoverable. Overall, the Court was satisfied that all that could be done had been done.

The Court turned to assess the applications, for consent under s 15A of the RMA to dump a ship in the coastal marine area, and to discharge a contaminant to water under s 15(1), against the relevant provisions of the RMA and the planning documents. The Court addressed the relevant provisions of the New Zealand Coastal Policy Statement ("NZCPS"), the regional policy statement ("RPS"), the operative Regional Coastal Environment Plan ("RCEP") and other plans and statutory requirements to determine whether the policy and plan framework supported a grant of consent. Both the RPS and the RCEP identified particular values and attributes of the reef, and there was also a recognition of the presence of the wreck as an existing factor. That the Otaiti reef was identified as an area of significant cultural value ("ASCV") was not in dispute. The Court concluded that it should adopt a cautious approach in such circumstances and assume that the *King Salmon* decision applied to resource consents. The Court should seek to avoid adverse effects on the values and attributes which were identified. The present application would avoid such adverse effects on the reef, and the ability to impose conditions to enable monitoring and control over discharges was attractive to the Court. Further, the Court rejected the concern that to approve the wreck remaining on the reef would serve as a precedent in terms of cost avoidance in future cases. The owners and insurers in the present case had paid for and undertaken salvage to the full extent of feasibility and safety, at very significant cost. The Court concluded that there was the potential to explicitly recognise and provide for the relationship of Maori with Otaiti reef as a positive benefit of granting consent. The Court asked itself whether to refuse consent would better recognise and provide for the relationship of Maori and kaitiaki functions than to grant it. The Court said that it was clear that many questions as to effects on Maori values had been addressed by the offset mitigation measures agreed and the improved provisions relating to a Kaitiaki Reference Group together with the potential for direct recognition through the conditions of consent.

The Court set the term of the consent at 10 years from the wreck of the *Rena* with a further 10-year maintenance period. Overall, the Court concluded that the grant of consent, with conditions, would achieve the purposes of the RMA by: recognising and providing for the relationship of Maori with the reef; identifying and if possible mitigating any adverse effects from 1 April 2016 and the continuing discharge from that date; identify and if possible seek to address any cumulative effects occurring, combined with the discharges from that date; and achieve sustainable management of the reef and the vessel remains. The Court directed the parties to consult on appropriate conditions, and asked the council and other parties to file memoranda setting out the proposed consent terms and conditions. A timetable for costs application was set by the Court.

Decision date 7 June 2017   Your Environment 08 June 2017

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Man O'War Station Ltd v Auckland Council _ [2017] NZEnvC 76
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Keywords: appeal withdrawn; regional policy statement; landscape protection

The Environment Court considered appeals against Proposed Change 8 to the Auckland Regional Policy Statement, which introduced new policy provisions for Outstanding Natural Landscapes ("ONLs"). Ten appeals were filed against the decisions of Auckland Council ("the council"), four of which were resolved prior to hearing. All but one of the remainder, that of Man O'War Station Ltd ("MOWS"), were resolved though alternative dispute resolution. MOWS progressed to Environment Court hearing, supported by two other appellants which did not take active part.

The Court now reviewed the history of the appeal. In its decision of 29 July 2014, the Environment Court rejected MOWS's submission that only coastal areas and particular inland areas of its land on Waiheke and Ponui Islands should be included in an ONL, and found that that ONLs should be at a regional level, without necessitating a national comparator. The High Court dismissed the subsequent appeal by MOWS, finding that: the Environment Court had appropriately assessed the disputed ONL areas; that conclusions as to what areas were ONLs were factual determinations and unable to be appealed; s 6 of the RMA was not intended to protect only nationally significant landscapes; and that it was not a consequence of the Supreme Court decision in *King Salmon* that identification of ONLs was made more restrictive. The Court of Appeal dismissed the appeal on 24 February 2017.

The Court stated that it had asked the remaining appellants to advise as to the status of their appeals, following the Court of Appeal's decision. Counties Power Ltd, Winstone Aggregates, Watercare Services Ltd, MOWS, Federated Farmers of New Zealand and Mighty River Power had all filed notices of withdrawal from the appeal. The Court confirmed that all six remaining appeals were withdrawn. There was no order for costs.

Decision date 13 June 2017   Your Environment 14 June 2017

(For the previous case summaries, see Newslink February 2014, December 2014 and June and August 2015. - RHL)

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Auckland Council v Supa Homes Ltd - [2017] NZDC 12780

Keywords: prosecution; earthworks; district plan; district plan operative; coastal marine area; abatement notice; hazardous substance

Supa Homes Ltd ("SHL") was sentenced after pleading guilty to three charges laid by Auckland Council ("the council") that it used land in a manner: which contravened a rule of the then operative Auckland Council District Plan: Isthmus Section ("the OP") in that it undertook more than five cubic metres of earthworks in a Coastal Management Area ("CMA") without resource consent; which contravened a rule in the OP in that it carried out earthworks without applying proper erosion and sediment controls; and contravened a rule in the proposed Auckland Unitary Plan ("PAUP") by undertaking earthworks without best practice erosion and sediment control measures. The charges all related to works at a property at 88 Fairburn Rd, Otahuhu ("the site") which bordered the Tamaki Estuary. Three other defendants had pleaded not guilty to related offending at the site: E Lau, as the property developer, Chen Hong Co Ltd as the property owner, and J Mao as the sole director of the property owner.

The Court reviewed the facts and considered the sentencing principles as established by the Sentencing Act 2002 and case authority. The Court acknowledged that there was a difficulty in the present case in accurately establishing the seriousness of the offending because, after the present offending occurred, further offending had taken place on the site. However, Mr Zhang, director of SHL, accepted that filling a site adjoining an estuary was reasonably likely to have adverse effects on the environment. Regarding the deliberateness of the offending, the Court rejected a submission that SHL was simply acting on instructions. The company was a building company and could be expected to be familiar with the controls in the plan relating to earthworks. Further, the works had resulted in two environmental infringement notices being issued to SHL. The damage caused had potential adverse effects of sediment runoff into the coastal environment, although the seriousness was to be treated at the lower level.

The Court then considered the attitude of the offender. Mr Huang had denied all knowledge of the offending and any responsibility for the employee who actually undertook the digging work.
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The Court accepted submissions from the defendant that there is no duty in criminal law on a person to cooperate, as distinct from being obstructive. However, for the purposes of sentencing where remorse considerations were relevant, in particular in relation to offending under the RMA, where the purpose of the legislation included avoiding, mitigating or remedying adverse environmental effects, the Court found, referring to case authority, that a lack of cooperation could be a relevant aggravating factor. In the present case, the Court found that the defendant was uncooperative to a degree that indicated a lack of acceptance of its responsibility for the offending.

After considering the levels in *Chick* and relevant case authority, the Court found that the offending was moderately serious and set the starting point for a fine at $28,000. Twenty-five per cent was deducted for early guilty plea, but no further deductions were made. Accordingly, reflecting the global approach adopted by the Court, SHL was convicted and fined $21,000, with solicitor's fee and court costs, on the first charge, and convicted and discharged in respect of the other two charges. Ninety per cent of the fine was to be paid to the council.

Decision date 12 July 2017   Your Environment 13 July 2017

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Western Properties Ltd v Auckland Transport _ [2017] NZEnvC 19

Keywords: resource consent; stay; costs; procedural; designation

The Court considered whether, pending resolution of the appeal from its previous decision to grant resource consent ("the consent") to Western Properties Ltd ("WPL"), to stay certain issues arising from that decision. The consent was to construct a building over most of an Auckland Transport designation. The Court had made directions for further survey of the site and asked the parties to consult as to the area affected.

The Court stated that, following a telephone conference, it was clear that: the parties agreed that the question of costs in the Environment Court should be stayed pending the appeal; and that WPL had undertaken not to act upon the consent granted. The Court concluded that the matter of costs should be stayed until the matters of principle under appeal were resolved. Further, the Court decided that the Environment Court decision should be finalised so far as the dimensions of the specified triangle of land on the site. Such a final decision would assist the High Court on appeal to understand the impact of the Environment Court's findings and decision. Accordingly, the Court finalised the consent, attaching the survey plan. Costs were stayed pending the outcome of the appeal. WPL was stayed from using the consent pending resolution of the appeal or further Court direction.

Decision date 24 March 2017   Your Environment 27 March 2017

(See previous reference in Newslink case-notes April and May 2017 – RHL.)

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Auckland Council v Wendco (NZ) Ltd _ [2017]NZSC113

Keywords: Supreme Court; resource consent; district plan; rule; traffic; access; effect adverse

The Supreme Court considered the appeal by Auckland Council ("the council") against the judgment of the Court of Appeal ("the CA") of 18 December 2015 ("the CA decision"). The matter concerned an application by Wendco (NZ) Ltd ("Wendco") for judicial review of the council's decision not to notify the application by Wiri Licensing Trust ("the Trust"), owner of a property at 639 Great South Rd ("the site"), for resource consent to develop the site ("the proposal"). Wendco was a tenant on the site and operated a restaurant and drive-through facility there. The Trust's proposal was a restricted discretionary activity ("RDA") under a rule in the relevant district plan. The proposal required a resource consent under the RMA because, relevantly, associated works included alterations to two vehicle access points between the site and Great South Rd ("the access alterations"). In its decision not to notify the application, the council assessed only those adverse effects on traffic and safety which were external to the site. Wendco argued that it would suffer adverse effects which arose within the site, such as parking and manoeuvring issues, and that the council overlooked these. Wendco was unsuccessful in the High Court ("the HC"), but succeeded on appeal. The CA granted judicial

review, granting declaratory relief with directions to the council to reconsider the decision not to notify the Trust's application for consent.

The Supreme Court was divided. The majority, comprising William Young, O'Regan and Ellen France JJ, allowed the appeal. Noting that that the plan was not easy to construe in a coherent way and the case was finely balanced, the Court stated that, in deciding whether to grant consent for the RDA under consideration, the council was entitled to have regard only to those matters over which it had restricted its discretion in the plan. The Court considered the relevant statutory provisions, including ss 87A(3), 104C, 95B, 95C and 95E of the RMA and stated that the two questions to be determined were: did the adverse effects on Wendco of the access alterations and associated circulation and parking "relate to" matters in respect of which discretion had been reserved; and, if so, in making the non-notification decision, did the council ask itself the right question and have sufficient evidence to justify its conclusion? Regarding the first question, the Court referred to the relevant provisions and rules of the plan relating to transportation and stated that the purpose of r 8.10.3, which required RDA consent for access to the primary road network, was protection of the roading network and that the assessment criteria were, in most respects, material only to the impact of the proposed activity on that network. Further, the rules did not deal in any detail with vehicle circulation within a site. Wendco's argument was that effects of the circulation and parking arrangements associated with the proposal "related to" matters over which a discretion was reserved, ("the on-site effects"). The HC had found that the discretion reserved included such on-site effects. However, the CA found that only adverse effects on roading networks ("roading network effects") might be considered under the rules. The Supreme Court now stated that the matters in respect of which discretion was reserved, in r 8.25, were expressed in general terms and could not sensibly be seen as referring and relevant only to possible roading network effects; they therefore necessarily encompassed on-site effects. The CA was of the view that under the plan rules discretion had been reserved in respect of parking and circulation only to the extent of potential roading network effects, but nonetheless concluded that the council was required to consider whether Wendco was required to be heard on what steps should be taken to avoid roading network effects to minimise associated adverse effects on Wendco. This was because the CA considered that, although discretion was not reserved in respect of on-site effects, such effects were nonetheless required to be taken into account because they might be caused by an arrangement devised to minimise adverse roading network effects. The Supreme Court now found that this approach would introduce a disconnect between s 95E(2) and s 104C of the RMA, which was not correct. Under s 104C of the Act, unless the effect in question could be said to be a matter over which discretion was reserved, it must be disregarded.

Addressing the second question, the majority was of the opinion that, contrary to the finding of the CA, the council did in fact take into account the possibility of on-site adverse effects, both specifically in relation to the particular on-site adverse effects relied on in Wendco's statement of claim and more generally in respect of the appropriateness of the access alterations. Further, addressing the question of whether there was an adequate evidential basis for the HC's conclusion that such effects were less than minor (and therefore that non-notification was appropriate), the Supreme Court concluded that there was. The information before the council, and the basis upon which the council decided not to notify, showed that sufficient attention was given to Wendco's existing resource consent conditions and that there was adequate material available as to on-site effects to enable the council to make its decision. The Supreme Court found that the council's analysis of such material was rational and free from any obvious error. Accordingly, the majority of the Court set aside the CA judgment and reinstated that of the HC. The Court considered that costs should follow the event and awarded the council and the Trust costs in the Court of Appeal and in the Supreme Court.

The minority comprised Glazebrook and Arnold JJ. They agreed with the majority that the relevant plan rules required consideration of the on-site effects of the proposal independently of any roading network effects. However, they disagreed that the council had taken such on-site effects into account appropriately when deciding that no one was adversely affected in a way that was more that minor, and so finding that limited notification under s 95B of the RMA was not required. The minority stated that the focus of limited notification was different from that of public notification under the Act. In relation to limited notification, the issue was whether any person was affected, if the activity's adverse effects on the person were minor or more than minor. The minority considered that the effects on Wendco included the fact that the inward

lane of the new access road onto Great South Rd ran across Wendco's leased land, encroaching onto its site. The minority concluded that the evidence showed that the council did not turn its mind to such possible adverse effects on Wendco. Accordingly, they concluded that the decision not to give limited notification was not properly based and was susceptible to review.

Decision date 27 July 2017   Your Environment 28 July 2017
(For previous reports see Newslink October 2014 and April 2016– RHL.)

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Central Otago District Council v Flanagan _ [2017] NZEnvC 98

Keywords: enforcement order interim; heritage value; building; resource consent

Central Otago District Council ("the council") applied for interim enforcement orders against R and J Flanagan ("F") in respect of buildings on F's property at 13 Sunderland St, Clyde ("the building"). The building was in the Clyde Heritage Precinct. The building was not identified as a heritage building under the district plan. Any alteration or demolition of any structure within the Heritage Precinct required resource consent. Historically, the building housed offices of the newspaper the *Dunstan Times*. F had applied for resource consent to undertake works at the property but the application was incomplete. Although the council and Heritage New Zealand had provided advice to F as to what information would be required to be included with the resource consent application, F had nevertheless embarked on demolition works on the building, including removal of the roof and timbers supporting the stonework structure. The council submitted that an interim order was necessary to prevent further works being undertaken.

The Court considered the application under s 320(3) of the RMA. The Court was satisfied from the evidence that if the order was not made there could be irreparable damage caused to the heritage values and features on the building. The Court did not consider it was necessary for F to be heard; the Court said it was disappointing that F had proceeded with demolition despite the help they had been given by Heritage New Zealand and the council. Under "any other matters", the Court was satisfied that the proposed remediation works by a qualified stone mason should be carried out without delay. The application was granted. Costs were reserved.

Decision date 9 August 2017   Your Environment 10 August 2017

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KI Commercial Ltd v Christchurch City Council _

Keywords: High Court; district plan; zoning

KI Commercial Ltd ("KICL") appealed against a decision of the Independent Hearings Panel ("the Panel"), established to prepare the replacement district plan for Christchurch ("the RDP"). By its decision, the Panel rejected KICL's request for a site-specific exception to the zoning rules in the RDP for Addington, a suburb outside Christchurch CBD where KICL owned two properties ("the buildings"). Before the earthquakes, the buildings housed commercial tenants but, after suffering damage, were in the process of being repaired and had not been re-tenanted. The panel established zoning rules which constrained KICL regarding the uses to which it could put the buildings, compared with the uses permitted prior to the earthquakes. KICL, following a previous unsuccessful appeal to the High Court against the zoning decision ("the previous decision"), now alleged the Panel made nine errors of law in its decision to reject the site-specific exception.

The High Court reviewed the legislative background, including the Canterbury Earthquake Recovery Act 2011, the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ("the 2014 Order") and the role and obligations of the Panel. The Court noted that the 2014 Order modified the application of some RMA processes, but did not erode the RMA purpose of sustainable management. The Panel was obliged to be satisfied that the RDP would give effect to identified higher order planning documents including the Canterbury Regional Policy Statement ("the CRPS"). The Court stated that Chapter 6 of the CRPS reflected a desire to reverse the existing permissive approach to commercial retail development in the city and introduced a centres-based approach whereby such activities were restricted to specified locations, called Key Activity Centres. Against this context, the Panel introduced rules which

would constrain KICL's use of its land. Specifically, offices, retail and commercial services were not permitted activities in the Commercial Mixed Use zone for Addington, unless they were already occurring or consented at the date of the decision. The buildings were not in use at the date of the Panel's decision, and, as they had not been in use since sustaining earthquake damage, they did not fall into the definition of existing activities. Accordingly, KICL would need to seek resource consent to resume its previous activities in the buildings. The Court addressed the nine grounds of appeal against the Panel's decision to refuse a site-specific zoning exception for the buildings. The Court agreed with submissions of Christchurch City Council ("the council") that the question of weight to be given to relevant considerations was not for reconsideration by the High Court as a point of law: if the decision reached was a permissible option on the evidence then it could not be re-visited. The Court, however, accepted KICL's submissions that there was a nuanced boundary between matters of merit and those of law. The question was now to decide whether the Panel addressed itself to the proper processes and the right questions.

The Court made certain findings. First, the effect of the previous decision was not to confine the Panel in its consideration of the application for a site-specific exception, and the panel made no error of addressing the wrong question. Secondly, the Panel had not misunderstood the degree of flexibility available to it under the RDP; the Panel correctly identified the issue and clearly turned their minds to all relevant matters. The second alleged error was not established. Third, the Panel had understood the site-specific nature of the relief sought by KICL and it was open to it, and not unreasonable on the evidence, to conclude that this gave rise to a precedent risk. The third ground was rejected. The fourth and fifth grounds raised allegations of breach of natural justice. The council had previously told KICL that it would not oppose the relief sought, but then reneged and produced evidence supporting the Panel's decision to reject the relief. The alleged errors were that the Panel erred: in permitting the council to adduce evidence in contravention of their agreement; and by failing to allow KICL more time to prepare rebuttal evidence. The Court found that the issues raised were to be considered in the context of a public process by which the Panel's function was not to settle disputes but to draft a plan which incorporated the most appropriate provisions for implementing the CRPS. The Panel was not constrained by the submissions it heard, but was entitled, and obliged by the terms of the 2014 Order, to reach its own conclusions. There was never an expectation that the parties' positions would confine the Panel's enquiries. The Panel had an inquisitorial role, with powers to seek further information and advice, and the council was obliged under the terms of the 2014 Order to assist the Panel. The Court was satisfied that the Panel made no error in law, either by requiring the council to present evidence or by refusing further adjournment.

The sixth ground of appeal was that the Panel erred in concluding that the KICL proposal was a material risk to the redevelopment of the CBD. The Court, dismissing this ground, said this was a challenge to the merits and involved no question of law. Question seven was whether the Panel considered irrelevant questions. The Court found that the Panel had not dismissed the costs to KICL by wrongly assuming that KICL could rely on obtaining a resource consent for the building's activities. The Court found that the question of a subsequent resource consent was in fact a relevant consideration, and dismissed this ground. Similarly, the Court rejected the eighth ground, which related to the Panel's approach to existing activities. The Court found there was no error in the Panel's interpretation of the term "existing" in the relevant provisions of the RDP. Finally, the Court considered that, in the light of its previous finding, it was not necessary to address the ninth ground of appeal. The appeal was dismissed. Directions were given as to applications for costs.

Decision date 10 July 2017   Your Environment 11 July 2014

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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 September 2017

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Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2017

These regulations come into force on 14/09/2017, other than those specified as coming into force on 18/10/2017 (the date on which subpart 2 of Part 1 of the *Resource Legislation Amendment Act 2017* (the amendment Act) comes into force).

These regulations amend the *Resource Management (Forms, Fees, and Procedure) Regulations 2003* (the principal regulations).

The amendments are required to give effect to the changes enacted by the amendment Act by updating a number of the forms in the principal regulations and providing new forms, replacing certain regulations to reflect the reforms brought into effect by the amendment Act, and correcting minor errors in forms. The amendments relate to —

- the changes to the fees structure and fees payable, including the waiver of fees, when certain criteria are met:
- requirements to support the operation of the new consenting processes and exemptions introduced by the amendment Act, including a fast track process for "boundary activities":
- appeal rights in various contexts:
- 2 new planning processes, the collaborative planning process and the streamlined planning process, included by the amendment Act in Schedule 1 of the *Resource Management Act 1991*:
- a new approach to national direction:
- miscellaneous updating amendments, including those required as a consequence of the enactment of the judicature modernisation legislation.

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Communications Minister: New consenting regime to speed up UFB access

A new regime that makes it quicker and easier for people living down shared driveways or in apartment complexes to connect to Ultra-Fast Broadband (UFB) has begun, Communications Minister Simon Bridges said.

According to Mr Bridges the Telecommunications (Property Access and Other Matters) Amendment Act, which passed into law in April 2017, introduced a consenting process that telecommunications companies must follow when installing modern networks like UFB, in instances where there are multiple interests in a property.

"These changes are critical for helping us speed up and streamline the rollout of faster broadband to New Zealanders, allowing people who may not otherwise be able to connect to UFB to do so," Mr Bridges said.

The Act also created a new disputes resolution scheme to protect property owners, while ensuring that any disputes that arise as a result of the new consenting regime are dealt with fairly and efficiently.

Utilities Disputes Ltd was recently appointed as the approved provider of the scheme. Network operators must be members of the scheme in order to make use of the new regime. Chorus became the first member.

Mr Bridges said the Act also incentivises telecommunications companies to use lower impact methods of installation to avoid property disruption, and enables the use of existing infrastructure such as electricity lines for deploying fibre in rural areas.
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"People living on shared property who might previously have had problems connecting to UFB due to consent issues are encouraged to contact their retail service provider to enquire about whether fibre can be installed at their property under the new regime," Mr Bridges said.

- Please click on the link for full statement: Media Release

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Associate Justice Minister: Regulations for real estate agents updated _

Associate Justice Minister Mark Mitchell stated that regulations governing the education and training of real estate agents have been updated to reflect new qualifications.

Mr Mitchell said the changes to the Real Estate Agents (Licensing) Regulations followed a review of real estate qualifications by the New Zealand Qualifications Authority.

"Since the Real Estate Agents Act was implemented, the law has ensured more consistent training and education for real estate agents along with improved licensing and processes to deal with complaints," Mr Mitchell said.

"The regulations governing real estate agents need to keep pace with changes in industry training and education. These changes will ensure that the graduates of the new qualifications w r Mitchell also announced that the Government has moved to ensure that New Zealand Institute of Forestry members will be able to continue forestry sector work without needing to be registered real estate agents.

Institute members will be granted an exemption under the *Real Estate Agents Act 2008*.

The exemption will take effect on 1 November 2017.

- Please click on the link for full statement. Media Release

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Christchurch convention centre to cost $475m.

Radio New Zealand reports that rebuild minister Nicky Wagner says the total cost of Christchurch's planned convention centre, including land acquisition and professional services, will be around $475 million. Read the full story here.

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Wellington town belt added to. *Stuff* reports that the Wellington City Council has purchased a just over one acre (4,220-square metre) piece of Crown land in the Aro Valley to add to the Town Belt. In May 2016 a bill sponsored by Grant Robertson MP on behalf of the Council was passed to protect the Town Belt and 120 hectares of green land was added immediately. Read the full story here.

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Preferred option for new roofed arena in Christchurch. *The New Zealand Herald* reports that the Government has released a feasibility report which says that the preferred option for a new roofed arena in Christchurch is for a 25,000-seat arena with a solid roof and retractable pitch and the project would cost nearly half a billion dollars. The arena is to be a long-term replacement for Lancaster Park. Read the full story here.

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Palmerston North housing pledges. *Stuff* reports that Labour and National have announced plans to address housing problems in Palmerston North, with both parties promising to build about 70 new state and social houses. Read the full story here.

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Ngati Rangi to vote on deed of settlement. *The Wanganui Chronicle* reports that a delegation from Ruapehu iwi Ngati Rangi initialled a deed of settlement at Parliament on 17 August 2017 and will take the deed back to the iwi so they can decide whether to ratify it. Among the items of redress is the iwi's desire to work with the Department of Conservation regarding land in its area. The $17 million financial redress could be used to purchase land in

the Karioi Forest and other Crown land on which it will have a right of first refusal. Read the full story here.

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Hawke's Bay RC puts hold on water consents in Heretaunga Plains. *Radio New Zealand* reports that Rex Graham, Chairman of Hawke's Bay Regional Council, says that new consents for water takes from the Heretaunga Plains aquifer will no longer be acceptable. Read the full story here.

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Subdivision proposal for Hawea township. The *Otago Daily times* reports that Terrace Peak Developments has applied to Queenstown Lakes District Council for resource consent to develop a 25-lot subdivision in Moraine Pl, in Hawea. Read the full story here.

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Construction Contracts legislation may cause collapse of building companies. *The New Zealand Herald* reports that James MacQueen, of business advisory and accountancy firm BDO, has predicted that some building companies may fail because they may not be able to comply with recent amendments to the Construction Contracts Act, which requires retention payments for sub-contractors to be held back for a period after completion of construction. Read the full story here.

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Norway burns waste to generate electricity and will bury carbon emissions under water. *The Telegraph* reports that Nordic power company Fortum is using British rubbish to generate electricity and heat for an Oslo heating project and plans soon to take CO2 from factories across Europe, to be piped on ships and brought to Norway where the gas will be injected deep under the seabed. Read the full story here.

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Consent for Wellington high-rise mixed-use building. *The Dominion Post* reports that a corner site at Victoria and Bond Streets in Wellington will be the site of a 22-storey mixed use development with retail and residential apartments. Read the full story here.

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Auckland buildings fitted with dangerous electric cables. *The New Zealand Herald* reports that hazardous electric cables have been installed in many Auckland buildings, including the under-construction Park Residences at 33-35 Albert St. Energy Safety, part of Work Safe, say that the faulty cables were imported by Lyon Electrical Ltd and if any are found they should be replaced immediately. Read the full story here.

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Plans for four-lane highway between Tauranga and Katikati. *The New Zealand Herald* reports that Transport Minister Simon Bridges has announced that the Tauranga-Katikati highway qualifies as a Road of National Significance which means that the consenting process to make it a four-lane highway will be streamlined. Read the full story here.

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Housing New Zealand to expand use of prefabricated homes.

Radio New Zealand reports that Housing New Zealand wishes to expand its use of prefabricated homes to cope with the demand for social housing. Housing New Zealand has set up a panel with suppliers to look at increasing the use of modular and prefabricated housing. Read the full story here.

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Crown and Ngati Maniapoto agree in principle on redress for Treaty breaches.

RNZ News reports that the Crown and Ngati Maniapoto have signed an agreement in principle that could see the southern Waikato iwi receive $165 million in compensation for Treaty breaches. In 1883 the iwi allowed the main trunk railway through its lands and soon after came
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the Native Land Court. In redress the Crown will apologise, among other things, for its aggressive purchasing tactics leading to the alienation of Maori land.

Read the full story here.

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Crown is recipient of 'ownerless' land in Christchurch. *Stuff* reports that the Crown has become the owner of a piece of land in central Christchurch which once belonged to a former mayor William Barbour "Cabbage" Wilson after LINZ's efforts to track down any living beneficiaries of his estate were unsuccessful. Mr Wilson died in 1897. The Crown will use the land for the south frame development. Read the full story here.

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WCC to launch voluntary rental property warrant of fitness scheme.

RNZ News reports that Wellington mayor Justin Lester has announced the Wellington City Council will be launching an opt in voluntary warrant of fitness scheme for rental housing in the capital starting 28 August 2017. In a national first the Council is collaborating with public health experts from the University of Otago with the aim of lifting rental property standards via the scheme. mRead the full story here.

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Hawaii tree disease could eradicate NZ pohutukawa plant family. *Radio New Zealand* reports that Department of Conservation principal scientist Peter de Lange says the fungal disease Rapid ōhi'a death, which has killed thousands of Hawaii's native pohutukawa trees, would have a drastic effect if it were allowed to get into New Zealand. Read the full story here.

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Environment Court sees no reason decline Queenstown Skyline proposal. The *Otago Daily Times* reports that the Environment Court has approved on an interim basis, and subject to conditions being agreed, the $100 million proposal by Skyline Enterprises Ltd to redevelop and extend its Queenstown operation. Read the full story here.

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Papamoa sports ground to be rezoned for housing. The *Bay of Plenty Times* reports that Tauranga City Council has approved Plan Change 25 by which 13.2 hectares of sports fields and open ground at Papamoa East will be rezoned residential to allow for special housing. Read the full story here.

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Salvation Army report says 2,000 social houses needed each year. *Radio New Zealand* reports that a minimum of 2,000 social houses have to be built annually for a decade for the country to meet existing demand. Without this, the author of the report warns that street homelessness and poorer housing conditions will increase. Read the full story here.

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Security of tenure needs greater consideration. Writing in *RNZ*'s Comment & Analysis section Victoria University's Mark Bennett applauds the Opportunities Party's Gareth Morgan for his desire to improve tenants' rights in the current environment of "generation rent". However he believes there are still many issues to be resolved and Germany is not the only model to follow. He points to reforms in Ireland and Scotland as also providing useful pointers in this complex business of providing better policy settings for tenants' rights. Read the full item here.

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Australia: Property spruiker made false or misleading representations. The Australian Competition and Consumer Commission (ACCC) stated that the Federal Court found on 11 August 2017 that We Buy Houses Pty Ltd (We Buy Houses) and its sole director, Rick Otton, made false or misleading representations in promoting a number of wealth creation strategies involving real estate, following ACCC action.

We Buy Houses promoted these strategies throughout Australia via published material, seminars, boot camps and mentoring programs. Consumers were enticed by these false or misleading representations to attend training programs, including paid boot camps and mentoring.

The court found that We Buy Houses did not have a reasonable basis for representing that, by following its strategies, consumers could:

- buy a house for A$1, without needing a deposit, bank loan or real estate experience, or using little or none of their own money
- create passive income streams through property and quit their jobs
- build a property portfolio without their own money invested, new bank loans or any real estate experience, and
- start making profits immediately and create or generate wealth.

The court found that We Buy Houses failed to sufficiently inform consumers that the strategies could only realistically be successfully implemented by a consumer who already owned real estate, or who was able to finance a bank loan.

The court also found that Mr Otton had made false or misleading representations that he had successfully implemented the wealth creation strategies he taught. In addition, a book authored by Mr Otton, and websites operated by We Buy Houses and Mr Otton, included testimonials from 'students' claiming they were able to buy a house for A$1 which the court found were false or misleading.

"We Buy Houses sold a lie to vulnerable consumers that home ownership could be achieved easily through strategies taught by Mr Otton," ACCC Deputy Chair Delia Rickard said.

"Around 2,000 consumers spent around A$3,000 per ticket to attend Mr Otton's boot camps, and approximately 700 consumers participated in the mentoring program at a cost of up to A$26,000," Ms Rickard said.

"Consumers who attended We Buy Houses seminars, boot camps and mentoring should be aware that, in her judgment, Justice Gleeson stated that for ordinary consumers seeking to achieve the outcomes represented by We Buy Houses and Mr Otton, the free seminars were a waste of time, and that the boot camps and the mentoring programs were an expensive waste of time."

Her Honour also said: "I formed the view that Mr Otton was a very unreliable witness who was prepared to maintain or defend statements that were obviously untrue or misleading and who is habitually careless with the truth in making statements and claims designed to promote [his and We Buy Houses'] business interests."

The court held that Mr Otton knew and approved of all the materials published by We Buy Houses, and was both knowingly concerned in and a party to the conduct of We Buy Houses.

The ACCC will now prepare the matter for a hearing seeking relief against both We Buy Houses and Mr Otton, including penalties, and a disqualification order against Mr Otton.

- Please click on the link for full statement. Media Release

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