Newslink Case-notes for December 2017 prepared 30 November 2017.

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Legislation Case-notes December 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".

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".

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 decisions on further applications for declarations relating to a long-running sequence of cases about attempts to obtain consent for proposed subdivision activities in Auckland's Waitakere ranges;
- Appeals against enforcement orders involving a Mr Lau and others who had undertaken illegal development and building work on several properties at Auckland;
- An interim decision on appeal against consent granted for re-development of Queenstown's Skyline Gondola and Restaurant;
- An interim decision about the appropriateness of provisions in the Bay of Plenty regional coastal plan to recognise areas of special cultural value to local iwi;
- A decision on appeal by HNZC to delete additional reference in the RPS to historic heritage for management of residential areas with a concentration of pre-1944 housing;
- An appeal to the High Court by the neighbour of a development site in Filleul Street Dunedin against the Environment Court's decision to uphold the resource consent granted by Dunedin City Council.

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CASE NOTES DECEMBER 2017:

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Mawhinney v Auckland Council - [2017] NZEnvC 145

Keywords: procedural; strike out; subdivision

P Mawhinney ("M"), as trustee of two applicant trusts, had applied for 87 declarations under s 311 of the RMA. The declarations were sought in respect of a proposal to subdivide about 90 ha of land in Auckland known as Waitakere Forest. Auckland Council ("the council") now sought to strike out many of the declarations sought. The Court stated, at first sight, the fact M and other unidentified trustees had applied for 87 declarations suggested they had failed to conduct proceedings in an efficient way. The piecemeal declarations applied for had the appearance of a contrivance to gain subdivision consents in steps. However, in view of recent case authority on subdivision and recent amendments to s 11 of the RMA by the Resource Legislation Amendment Act 2017, the Court considered that all the council's applications to strike out should be considered separately.

The Court considered the background of the matter, the principles applying to strike out under s 279(4) of the RMA; the relevance of issue estoppel; and time limits in pt 6 of the RMA. The

Court considered each of the declarations sought and made decisions on each as specified in the decision. The Court ordered that the applications for declarations (listed in a table to the decision) be struck out. The applications for the remaining declarations were adjourned. An application by M for interrogatories was declined. Costs were reserved. Leave was reserved to the council to apply for further security for costs before the remaining applications for declarations were heard.

Decision date 6 October 2017   Your Environment 9 October 2017

Mawhinney v Auckland Council - [2017] NZEnvC 162

***Keywords**: declaration; subdivision; information required; consent notice; covenant*

The Environment Court considered two proceedings by P Mawhinney ("M"): applications for declarations; and an appeal, made under s 358 of the RMA, against the decision made by Auckland Council ("the council") to return resource consent applications as incomplete. M and his co-trustees ("the trustees") in the Waitakere Forest Land Trust and the Forest Trust sought subdivision consents under the RMA regarding 80 ha between Bethells Rd and Anzac Valley Rd, Waitakere ("the land"). Two subdivision applications lodged in 2008 were currently deferred because Waitakere City Council, to which the council was successor, decided under s 91 of the RMA that further consents were necessary. In 2012, the trustees applied for two suites of other generic consents ("the 2012 applications") and in response to these the council decided under s 88(3) of the RMA that further consents and information were necessary to understand the proposal. The council confirmed its decision after the trustees objected. The present appeal was against the council's confirmation of its decision. In addition, the trustees had made applications for declarations, many of which were struck out by the Court in *Mawhinney v Auckland Council* [2017] NZEnvC 145. The Court in the present case considered six such remaining declarations, numbered 32 to 37, in respect of applications for resource consents.

After reviewing the history of the proceedings, the Court noted that the proposal was to create a total of 91 new allotments on the land, for sale to third party developers who would carry out the subdivision. The trustees submitted that no other parties would be affected and that as the trustees would carry out no physical work there would be no adverse effects, or that any effects could be managed by a consent notice or covenant. M submitted that the effects of the proposal would be no more than those already permitted in the plan and the permitted baseline should be taken into account. The Court stated that there were certain problems with this. First, the scope of activities which could be managed by a consent notice was limited by ss 220 and 221 of the RMA. Second, a covenant as to land use could not be imposed on a subdivision application (s 108(2)(d) of the RMA). Third, M was unable to use the "permitted baseline" argument because it raised factual matters and thus a declaration was not appropriate and also because the permitted baseline could not be relied on as a basis for limiting an Assessment of Environmental Effects ("AEE"), absent express relevant provision in the plan. The council raised other problems with the proposal, including that there were inadequate provisions in the AEE for road access and stormwater disposal.

Regarding the 2012 applications, the Court noted that the first of these was for three large scale consents, each qualified by the statement that the trustees "did not intend to do anything", and that the AEE attached denied that there would be any environmental effects. The second 2012 application was for minimal and trivial activities, eg, "remove one gorse bush", and earthworks "to remove one teaspoonful of soil". The Court observed that this was so that the trustees had covered the extremes of activities possible and that the sole purpose was to stop the deferral by the council under s 91 of the RMA of the 2008 applications.

The Court considered the council's determinations under s 88 of the Act that the applications for subdivision did not include an adequate AEE or information required. The Court reviewed the relevant provisions of ss 88, 91, 218, 11 and pt 10, especially ss 223 and 224, of the RMA and discussed the scheme of the Act in relation to subdivision and the purpose of managing subdivision. The Court stated that s 11 of the RMA was unique among the duties in pt 3 in that it also required other linked and co-dependent actions before the consent required might be acted upon: these were to submit a survey plan and deposit the plan in the Land Transfer Office. While the Court recognised that in certain circumstances parts of an allotment might be sold prior to subdivision completion (under s s 225(1) of the Act), this obliged the vendor to submit a survey plan, for which a s 224 certificate was required, and so a consent-holder could not pass

on responsibility for conditions except in the restricted way specified. The power to impose conditions on subdivision consents in ss 106 and 220 of the RMA demonstrated how important it was for a territorial authority to have enough information to coordinate the provisions of services before subdivisions occurred.

The Court considered the council's application to strike out the present appeal. The grounds advanced were that the issues were *res judicata* and that M's conduct with respect to security for costs disqualified it from proceeding further. The Court found that the issue in the present appeal was whether the council was correct in refusing to accept the applications for consent under ss 88 of the Act. In contrast, the earlier decisions cited by the council involving M had been determined under s 91 of the RMA. Accordingly the issues were not the same and the *res judicata* ground failed. The second ground for strike out was that M had been 32 working days late in paying security for costs, and that some of such moneys came from proceeds of illegal logging. The Court was unable to determine the issues raised in this ground. Accordingly, strike out of the appeal was declined.

The Court made further determinations. First, it rejected M's argument that the simple act of lodging the 2012 applications had the effect of lifting the council's deferment under s 91 of the RMA; the Court held that s 91 required a complete and accurate application for the necessary further consents and it was not sufficient to lodge an unrealistic application. The consent process in pt 6 of the RMA and the linked process in pt 10, were focused on practicalities and substance at the margins of the existing and reasonably foreseeable environment and not at some hypothetically and fanciful limits. Accordingly the Court held that the s 91 deferral was not lifted and declaration 35 was refused. The Court further held that certain alleged administrative errors by Waitakere City Council did not invalidate that council's actions and so refused declaration 36. The Court then addressed its role under s 358 of the RMA, noting that the test, established by case authority, was whether the decision appealed from was "fair and reasonable" and that the Court had jurisdiction to step into the council's shoes and decide the issue. The Court rejected M's "no work, therefore no effects" argument, accepting the council's submission that merely because the trustees did not propose to carry out any of the necessary consequential work did not mean there would be no effects. Partitioning of the land as proposed by M could not as a matter of law be passed on the purchasers, in such a way as to absolve the vendors of all responsibilities under pt 10 of the RMA. Accordingly, declaration 34 was refused.

The Court considered relevant provisions of the then Auckland District Plan relating to land use consents and the Auckland Regional Plan relating to sediment control, and noted that there was a distinction as to what was the "environment" under the respective plans and found that the AEE was inadequate and incomplete and that in the circumstances it was fair, reasonable and proportionate to require further information to be supplied. Declaration 37 was refused. Declarations 32 and 33 related to rain, which the Court found to be vexatious and not relating to a real issue, and accordingly they were struck out. The appeal was declined. The declarations were refused. Costs were reserved.

Decision date 14 November 2017   Your Environment 15 November 2017

(*Previous cases have been noted in Newslink editions dated July 2005, June, November & December 2006, April 2008, March and June 2009 and July 2011 and September 2012- RHL.)*

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Auckland Council v Lau _ [2017] NZEnvC 160

Keywords: enforcement order

The Environment Court considered applications by Auckland Council ("the council") for enforcement orders against nine respondents: Yingqui Zhang; Yinyue Zhang; Q Lu; M Chen; E Lau; Jesus (2016) Company Ltd ("JCL"); X Cao; Cindy Property Management Ltd ("CPML") and L Mao. The council sought the orders in respect of activities undertaken at six properties: 436 Paraemoremo Rd; 56 Albany Highway; 2 Werenui Rd; 676 Mount Albert Rd; 41A Candia Rd; and 13 Memorial Avenue.

The Court noted that none of the Court's directions made pre-hearing had been complied with and accordingly the matter was determined on the basis of affidavit evidence of the council. Such evidence described unlawful building work and vegetation clearance, and unlawful
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dwellings and tenancies, on each property, in addition to non-compliance with provisions of the Auckland Unitary Plan ("the AUP") and with fire safety and sanitary requirements.

The Court considered the orders sought regarding each property. First, regarding the Paremoremo Rd property, which was in the Rural Countryside Living zone in the AUP, the Court found it appropriate to make orders against specified respondents requiring: the disestablishment of all but one dwelling at the site; prohibition of establishing further dwellings at the site; termination of specified tenancies; and rectifying of specified wastewater issues.

Regarding the 56 Albany Highway property, which was in the Residential Large Lot zone in the AUP, the Court found it appropriate to make enforcement orders against the specified respondents requiring: the disestablishment of all but one dwelling on the site; prohibition of the establishment of more than one dwelling on the site; termination of tenancies on the site; waste water disposal compliance; and re-vegetation of the site.

Regarding the property at 32 Werenui Rd, which was in the Residential Mixed Housing zone of the AUP, the Court found it appropriate to make orders against the specified respondents requiring: disestablishment of specified dwellings; prohibition of establishment of any dwellings without resource consent; tenancy termination as specified; and the removal of asbestos.

Regarding the property at 676 Mount Albert Rd, in the Residential Terrace Housing and Apartment Buildings zone of the AUP, the Court found it appropriate to make orders against the specified respondents requiring: disestablishment of dwellings; prohibiting the establishment of further dwellings; and termination of tenancies as specified.

Regarding the property at 41A Candia Rd, in the Residential Single House zone in the AUP, the Court found it appropriate to make the orders sought against the specified respondents requiring: a dwelling disestablishment; a dwelling prohibition; and a tenancy termination.

The last property, at 13 Memorial Ave, was in the Residential Mixed Housing zone in the AUP. The Court found it appropriate to make the orders sought against the specified respondents requiring: disestablishment of dwellings; prohibition of dwellings as specified; tenancy termination and prohibition; and orders relating to site coverage as specified.

The Court stated that the orders were made under ss 319(1)(a), 314(1)(a)(i), 314(1)(a)(ii) , 314(1)(b)(i) and (ii), 314(1)(c), 314(1)(da) and 314(5) of the RMA. The Court directed that the orders provide that a copy of the present decision with the relevant order was to be held on each property file in the council's records and be disclosed to any person seeking a LIM report, and that similar disclosure be served to the mortgagee of each property. The Court observed that the sustained and deliberate course of illegal buildings and other activity by the respondents gave rise to genuine concerns as to their willingness to comply with any orders made by the Court. Central in this was E Lau who was responsible for and controlled activities on the properties. The Court stated that the combination of factors of deliberate illegal behaviour and past non-compliance with court orders justified the making of an order under s 315(2) of the RMA. Costs were reserved in favour of the council.

Decision date 10 November 2017 Your Environment 13 November 2017

(See also Auckland Council v Mao - [2017] NZEnvC 110 (Your Environment 23/8/2017. *Previous cases involving activities of these respondents at several other properties around the Auckland region have been reported in Newslink editions dated December 2016, and February 2017- RHL.)*

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Skyline Enterprises Ltd v Queenstown Lakes District Council _ [2017] NZEnvC 124

Keywords: resource consent; conditions; tourism; landscape protection; amenity values

This was the interim decision of the Environment Court on the proposal by Skyline Enterprises Ltd ("Skyline") to redevelop its facilities, including replacement of the existing gondola and significantly redeveloping the upper and lower terminal buildings ("the proposal"). The proposal was directly referred to the Court under the provisions in ss 87D-87I of the RMA. The decision was not a final one because there remained two outstanding issues: concerns raised regarding the need for additional carparking, which Skyline proposed to address by making a companion
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resource consent application for 350 extra carparks; and issues regarding stormwater management, for which Skyline sought further time to resolve.

The Court considered the proposal, the proposed conditions of consent and the statutory framework, in particular ss 104D, 104, 104B, 108 and pt 2 of the RMA. Regarding the latter, the Court noted there was a point of distinction between the present case and the High Court decision in *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 in that in the present case there was a proposed district plan. It was fundamental to *R J Davidson Family Trust* that the plan had already given effect to pt 2; however, where there was also a proposed plan the position appeared to be materially different. It was agreed that overall the proposal was a non-complying activity. The relevant statutory instruments to which the Court had regard were the existing Queenstown Lakes District Plan ("the plan"), the proposal district plan, the existing Otago Regional Policy Statement and the proposed regional policy statement.

The Court stated that it could now make findings on several issues: the appropriate response to fire risk; whether the proposal was appropriate in terms of landscape, streetscape and visual amenity effects; whether there should be conditions as to the relocation of the helipad, the management of the reserve, mitigation of construction disruption for ZJV (NZ) Ltd; whether the proposed operational and construction noise measures were appropriate; and whether the various settlements with submitters were appropriate. Regarding the risk of fire, the Court stated that under s 5 of the Act, this must be properly managed. The concerns centred on the proposed overhead powerline running over a Douglas Fir plantation. After considering the evidence, the Court was satisfied that the conditions imposed by Queenstown Lakes District Council ("the council") were appropriate.

Addressing effects on landscape and visual amenity values, the Court concluded that the bulk, location and design of the proposed terminals and the modified gondola were appropriate and that, subject to specified amendments, the conditions properly addressed such effects. The Court found it was not necessary to include a condition as to the helipad. Regarding issues relating to the Bob's Peak and Ben Lomond Reserve, the Court accepted that the potential effects on the various adventure tourism activities required an appropriate response. However, the Court found there was no valid RMA purpose in requiring any additional conditions. ZJV, which operated Ziptrek Ecotours on Bob's Peak, sought special conditions seeking assurances regarding use of the access road when the gondola was not working and also compensation for loss of business during the construction of the proposal when its customers could not use the gondola. However, the Court, after considering relevant case authority, found that s 108(10) of the Act prohibited financial contribution conditions. The gondola was Skyline's property and Skyline was no under any obligation to ensure its continued use by ZJV's customers. ZJV had chosen the business model of ferrying its customers to and from the zipline on Skyline's gondola and it ought to carry all the business consequences of such election. The Court rejected any condition as to compensation to ZJV. However, the conditions already specified the access road was to be made available to Ziptrek. The Court stated it accepted that the expert evidence that the proposed operational and construction noise mitigation measures met the requirements of the RMA and were appropriate. Finally, the Court made findings regarding the settlements made with the various submitters.

The Court concluded that there was nothing in the issues considered in the present decision which would render the proposal incapable of or inappropriate to be granted consent, subject to the conditions and amendments approved by the Court. The Court made directions as to reframing of the proposed conditions and set timetables for serving an amended set of conditions on the parties and the Court. No further procedural directions were to be issued until the consent applications regarding the additional carparking and stormwater issues were lodged with the appropriate consent authorities.

Decision date 14September 2017   Your Environment 18 September 2017

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Ngāti Mākino Heritage Trust v Bay of Plenty Regional Council _ [2017] NZEnvC 72

Keywords: regional plan; Maori culture; heritage value

In this interim decision, the Court considered which provisions in the proposed Regional Coastal Environmental Plan ("RCEP") were the most appropriate, under s 32 of the RMA, and would
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satisfy the provisions of ss 6(e) 7(a) and 8 of the Act. In particular, the Court considered the significant relationships of Ngati Makino with the coastal area near Maketu; and what were the most appropriate mechanisms to recognise and provide for such relationships.

The Court stated that the present decision was set in the context of previous decisions on appeals relating to the RCEP, in particular the decision of 30 March 2017, and that most provisions of the RCEP were now settled. The present issues were: whether there should be an extension of/additional area recognising the area of special cultural value ("ASCV") within the coastal marine area ("CMA") in relation to Ngati Makino; and what appropriate control mechanisms should be in place to provide for this in relation to such coastal areas. The Court said it was clear that there was the potential for further controls (methods or rules) to be included in the RCEP to ensure that cultural issues were addressed in any consideration of resource consents, and there was also concern as to permitted activities in the CMA. A number of parties to the appeals did not want to see a derogation of existing provisions which permitted infrastructure activities in the CMA. The Court therefore concluded that the present decision would be issued as an interim one, to allow all the parties to integrate outcomes into the RCEP provisions.

The Court considered the ASCVs. Ngati Makino proposed a special, additional ASCV zone including and extending beyond, most of the ASCV 7 in the RCEP. Other iwi and hapu expressed concern that this proposal was as an assertion of mana whenua. The Court stated that the overwhelming evidence was that Ngati Makino was not the only hapu to have an interest in the area. By the end of the hearing the Maori appellants had adopted plan attachment 38, attached to the present decision as Annexure A. The Court considered that the area was of significant interest to a number of iwi, hapu and marae with features likely to lead to it being an area of significance. The Court addressed the relevant objectives and policies of the RCEP and concluded there was no reason why ASCVs needed to be confined to the CMA and could include coastal areas. However, the Court was satisfied that the most appropriate methodology for the expanded ASCV 7 was to extend it within the CMA but not to include any further landward areas. The Court therefore confirmed that the only change to be made to ASCV 7 was that it was expanded within the CMA with the inclusion of the additional area shown in Annexure A.

The Court then considered whether the RCEP achieved and implemented the regional policy statement ("RPS) and the New Zealand Coastal Policy Statement ("NZCPS"), in accordance with the Supreme Court decision in *King Salmon*. The Court concluded that it was intended that the RCEP might identify and include ASCVs. In the present case, however, the Court was satisfied that the ASCVs in the RCEP represented a fulfilment of the policy requirement for their identification, but not for their provision. This was because the ASCVs were identified but there were no methods requiring their consideration when a resource consent was sought. Activities which were permitted excluded ASCV issues from the ambit of consideration, and so failed to meet the purpose of the RMA, the NZCPS and the RPS. The Court concluded that provision should be made for particular tangata whenua values in ASCVs by taking them into account explicitly in applications for resource consent. For permitted activities, the Court concluded that the provisions should be modified to include a new standard requiring that the applicant consider and record potential impacts on ASCVs.

In undertaking its assessment under s 32, the Court stated that there was concern that tangata whenua values had been eroded in coastal areas in the region and that the RCEP and the RPS should balance such issues by recognising and providing for such cultural values. The appropriate course was to have a very limited range of permitted activities, and where these were undertaken within an ASCV there should be a requirement for a written assessment of the potential cultural impacts. Accordingly, the Court directed the council to provide to the parties the proposed wording in respect of the provisions identified in the decision. A timetable was set for the responses, after which time the Court would further review the provisions. Costs were reserved.

Decision date 6 June 2017 Your Environment 07 June 2017

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Housing New Zealand Corporation v Auckland Council _ [2017] NZEnvC 120

Keywords: regional policy statement; heritage value
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This was an appeal against a decision made by Auckland Council ("the council") regarding the recommendations of the Independent Hearings Panel ("IHP") on provisions of the Regional Policy Statement ("RPS") chapter of the Auckland Unitary Plan ("the AUP"). Housing New Zealand Corporation ("HNZC") challenged the council's decision not to adopt the IHP's recommended wording concerning the provision which referred to historic heritage values and to protection. The council adopted a different provision from that in the notified version of the Proposed Plan ("the PAUP"). HNZC now sought that the IHP's version be reinstated, arguing that the council erred by declining to adopt the IHP's recommendation for the terms of the objectives for Special Character Areas.

The Court considered the notified version, the IHP's version and the council's version of the objective regarding historic heritage. The notified version objectives referred to Auckland's significant historic heritage places and special character areas and required that a precautionary approach be taken to the management of such areas and places. The IHP version of Objective B5.3 referred to the character and amenity values of identified special character areas being maintained and enhanced. The Court stated that the difference between the IHP's version and the final council version was that the council had added a direct reference to "historic heritage values" and also incorporated the terminology in s 6(f) of the RMA of "protected from inappropriate subdivision, use and development", and also referred to "amenity values" being maintained and enhanced, which was the wording of s 7(c) of the Act. Further, the council's version of the provisions had removed the RPS objective of a precautionary approach to the management of areas with a concentration of pre-1944 buildings until evaluated for historic heritage or special character significance.

The Court reviewed the statutory framework, included ss 59, 61, 62, 32 and 45 of the RMA. The Court concluded it was not necessary to determine whether the scope of the changes made by the council were outside the scope of any original submission on the PAUP because the Court had determined that the appeal should be upheld on its merits. The Court stated that it was left in considerable doubt as to the rationale for and potential implications of the council's inclusion of the new objective and it was not persuaded that adding such objective to the RPS was the most appropriate approach.

Accordingly, the appeal seeking the deletion of Objective 5.3.1 of the RPS as included by the council in its decision was allowed, which the Court stated effectively meant that the IHP's Special Character Objective was reinstated as the sole Objective. Costs were reserved but applications were not encouraged.

Decision date 13 September 2017   Your Environment 14 September 2017

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Salis v Dunedin City Council - [2017] NZHC 2281

Keywords: High Court; resource consent; building; earthworks; district plan; rules; conditions

S Salis and C Robertson ("the appellants") appealed against the Environment Court's ("the EC") decisions of 2 March and 19 June 2017 to uphold resource consent granted by Dunedin City Council ("the council") to Filleul Apartments JV Ltd ("the applicants"). The applicants sought to construct and use an apartment building on 19 Filleul St, Dunedin ("the site"). The appellants owned a neighbouring property uphill of the site, from which they operated a dental practice. The development included excavation up to the boundary between the appellants' property and the site and the appeal raised concerns as to possible damage to the appellants' building and/or carparks by such earthworks. Resource consent was required for the restricted discretionary activity ("RDA") because the proposed earthworks exceeded the limits set under the district plan for a permitted activity.

The Court reviewed the proposal and considered the previous decisions of the council and the EC, in particular addressing the relevant conditions confirmed by the EC. Noting that an appeal to the High Court must be on a question of law and not be used as an occasion to revisit the merits, the Court considered that only two relevant grounds were advanced: whether the consent authority failed to carry out the required assessment under r 17.7.5(iii) of the plan; and whether the EC erred in delegating its RMA decision-making obligations. As the activity was a RDA, under s 87A(3) of the RMA and r 17.7.5 of the plan, the council's discretion to grant
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consent in the particular circumstances was limited to: adverse effects on amenity; effects on archaeological or cultural sites; effects on transportation; effects from sediment release beyond the site boundary; and cumulative effects relating to those matters. Further, the council had regard to matters listed in rr 17.8.1 to 17.8.6 of the plan, whether "excavation, fill and retaining structures were to be designed and the work undertaken in accordance with engineering standards".

After considering the submissions, the Court concluded that the EC had not erred by not requiring specific engineering standards. Further, there was sufficient information before the council to make a proper assessment. From the wording of the relevant rules in the plan, the Court found that detailed designs were required only after the formal consent had been granted. The Court stated that the minutiae of detailed implementation conditions for a consent were not the principal concern of the RMA but were the province of the Building Act 2004. In the Court's view, the information requirement for a RDA would be set too high if full engineering plans and specifications had to be submitted prior to consent being granted. The Court found from the finalised conditions that some care had been taken to ensure the appellants' property was protected from adverse effects such as slumping or damage to tar seal. The conditions required that building consent was to be obtained prior to the commencement of the earthworks. Turning to consider the delegation issue, the Court applied the reasoning of the Court of Appeal in *Turner v Allison* [1971] NZLR 833, (1970) 4 NZTPA 104 (CA) and found that the conditions of consent in the present case did not involve any unlawful delegation of the EC's powers. Having concluded that there was no error of law made by the EC, the Court dismissed the appeal. Costs were reserved.

Decision date 13 October 2017 Your Environment 16 October 2017

(Note: The previous Environment Court decision relating to this matter was reported in the May 2017 issue of Newslink.)

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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 October 2017

New rural land ministerial directive announced _ *The New Zealand Herald* reports that the Government has issued a new ministerial directive under the Overseas Investment Act to the Overseas Investment Office which is designed to ensure it is a privilege for overseas investors to buy rural New Zealand land. Effective 15 December 2017 the new directive will apply and will mean the Act's criteria will apply to all rural land larger than 5ha, other than forestry. Read the full story here.

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Northport vision for Marsden Point development. *Radio New Zealand* reports that Northport, jointly owned by Marsden Maritime Holdings and the Port of Tauranga, is seeking public discussion on its vision for growth, which includes doubling its wharf length and increasing its land area. The plans are in response to a doubling of cargo volumes and ship calls since the port opened in 2002. Read the full story here.

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Napier City Council opts for commercial development of civic site. *Stuff* reports that Napier City Council has decided to sell or lease its civic building site to a private developer. In
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June the council building and the adjacent library were found to be earthquake-prone. Temporary accommodation has been found for council and library staff. Read the full story here.

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Landcorp: QEII covenant for South Island wetlands.

Pāmu Farms of New Zealand (Landcorp) has guaranteed the protection of 1,456 hectares of land at its Mt Hamilton Station, near Te Anau, with the establishment of a QEII National Trust Covenant.

Pāmu CEO Steve Carden says the covenant will protect the wetlands and Red Tussock land and the regenerating Silver Beech forest for future generations.

"We decided to put the large area into covenant following a review of development potential of the farm and the recognition of the biodiversity value of the area.

"This means the area will be protected, in perpetuity, and is not impacted by the sale of the farm, which is likely to be remarketed in the coming summer. "We are also pleased to be able to name the Covenant after Phil McKenzie, an employee of Pāmu for 37 years. Phil was passionate about the environment, and was until recently the General Manager responsible for the Pāmu environment team.

"Today's official establishment of the McKenzie Covenant marks the culmination of a lot of hard work and planning between the QEII National Trust and Pāmu and it is exciting to see the McKenzie Covenant become a reality, and ensure this home to over 140 native plant species and 15 bird species – many classified as endangered – will be protected forever. - Please click on the link for full statement. Media Release

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Pest control in Kahurangi National Park a success for breeding kea. The *Nelson Mail* reports that the aerial 1080 drops in Kahurangi National Park by the Department of Conservation to control rats and stoats has resulted in a significantly higher success rate for nesting kea. Read the full story here.

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More delays in construction of Christchurch Metro Centre building because of rising costs. *Radio New Zealand* reports that construction of the Christchurch Metro Sports Facility, which was supposed to have been completed in 2016, has been deferred by Rebuild Minister Megan Woods after the costs, originally budgeted at $217 million, rose to over $300 million. Read the full story here.

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Consultation on managing Clutha river flow. The *Otago Daily Time*s reports that Otago Regional Council will enter public consultation regarding the flow management and water allocation limits of the Clutha, Kawarau and Hawea Rivers. Read the full story here.

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2018 Environmental Law Conference.

The inaugural Environmental Law Conference, organised by Thomson Reuters, will be held on 20 March 2018 at the Stamford Plaza in Auckland. It brings together environmental practitioners, members of the judiciary, academics and experts in the field to discuss the evolving state of environmental law, recent amendments to the RMA, the impact of new Government policies and review of enforcement actions and case law interpretation. The conference will cover:

- Recent changes in freshwater policy
- Procedural requirements of alternative adjudicatory forums
- Solutions for accelerating urban development
- Managing Iwi participation in the planning process
- An in-depth case law roundup of recent decisions and key takeaways
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The conference will be chaired by the Hon Peter Salmon CNZM QC, Retired Justice of the High Court of New Zealand, and you will hear from: Principal Environment Judge Laurie Newhook | Environment Judge John Hassan | Berry Simons | Environmental Defence Society | Minter Ellison Rudd Watts | AUT | and many more!

Please click on the link below for the full conference programme and to register. Conference Details.

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New building fire rules will be costly to construction industry. *Radio New Zealand* reports that the Ministry of Business, Innovation and Employment has fast-tracked new fire safety rules, to take effect this week, which will apply to hospitals, care homes, high-rises over 20 storeys, stadiums, transport terminals and large shopping malls and are anticipated to cause significant increases to construction and building costs. Read the full story here.

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Arrowtown community centre building work to start next year. The *Otago Daily Times* reports that Queenstown Lakes District Council has awarded Brosnan Construction the tender to construct a new community and sports facility in Arrowtown, to comprise a bar, kitchen, changing rooms, bathrooms and function areas. Funding will be provided by the council and also by Central Lakes Trust, Lottery Grants Board, Wilding Trust and Arrowtown Rugby Club. Read the full story here.

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Tenants say Wellington CC should comply with its own rental rules. *The Dominion Post* reports that an officer of Wellington City Council agrees with tenants that the council's Pukehinau rental flats in Brooklyn Hill would definitely not pass the council's rental voluntary, or warrant of fitness, standards. The council is working on a 20-year, $400 million upgrade programme in order to meet the standards by 2028. Read the full story here.

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Auckland Council to vote on closure of Waitakere Ranges Regional Park to save kauri. *Radio New Zealand* reports that Auckland Council is seriously considering closing all or part of the 16,000 hectare Waitakere Ranges Regional Park to the million visitors which normally enter it each year. The reason is the incidence of kauri die back disease, which has doubled in the park over the past five years. Read the full story here.

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Council surprised tenants quit lease in Arrowtown. *The New Zealand Herald* reports the Queenstown Lakes District Council mayor Jim Boult has expressed surprise that Bill Swann and his partner, tenants of a "Glasgow lease" in Arrowtown, which had come up for market review, have chosen to quit on the first day of a new five year lease which the mayor believes was quite advantageous to them. Read the full story here.

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Opt in class action against James Hardie to go ahead. *Stuff* reports that the Supreme Court has rejected an attempt by James Hardie to prevent an opt in class action by people who suffered leaky homes as a result of its defective cladding products Harditex and Titan board. The action will be self-funded and the opt-in period extends to the end of January 2018. Read the full story here.

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HNZ to start building 40 new houses in Mt Albert. *The New Zealand Herald* reports that early next year Housing New Zealand will start to build 40 new houses, of which half will be social housing, on its land at 33 Asquith Ave, Mt Albert, which once was the site of a hostel for Mt Albert Grammar School. Read the full story here.

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High cost for protection of Napier and Hastings coast from inundation. *Stuff* reports that the cost to Hastings and Napier residents of protecting their coastline against coastal inundation

over the next 100 years has been estimated to be between $131.2 million and $286.5 million. Read the full story here.

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Community given no input on Devonport housing development. The *North Shore Times* reports that Devonport Peninsula Precincts Society spokesperson Iain Rea is unhappy that community groups have been excluded from consultation and decisions regarding the proposal by iwi Ngāti Whātua Ōrākei to demolish 82 existing houses and build 334 new homes on the 8.4 hectare Hillary Block, a special housing area in Belmont, Devonport. Auckland Council granted resource consent to the proposal without public notification, under the the Housing Accords and Special Housing Areas Act 2013. Read the full story here.

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2700 Queenstown hotel rooms being built or proposed. The *Otago Daily Times* reports that 2700 hotel rooms are planned or under construction in Queenstown. Plans have recently been announced by Auckland-based Shundi Customs for a $60 million, 68-room hotel on Frankton Rd. Read the full story here.

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Will Govt's new foreign buyer rural land policy affect prices? *RNZ News* reports on the views of two people from the rural sector on the possible effect of the Government's new policy regarding foreign investment in land. Terry Copeland of Young Farmers believes the land prices will drop 10 per cent and provide opportunities for people wishing to get in to farming. Farm consultant John Ryan believes there will be no rise in farm prices. Read the full story here.

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Auckland Council seeks financial help for America's cup works. *Radio New Zealand* reports that Auckland Mayor Phil Goff wants central government and the private sector to make major financial contributions to the cost of constructing the multi-million dollar America's Cup waterfront base. Auckland Council will decide in 10 days which of the proposals to approve. Read the full story here.

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Government plans to reverse resource consent non-notification law. *Stuff* reports that Environment Minister David Parker says the Government plans to reverse law changes from the Resource Legislation Amendment Act 2017 that removed the public's right to participate in discretionary resource consent processes. Read the full story here.

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Trend reversal in global CO2 emissions. *BBC News* reports that recently published research predicts that global emissions of carbon dioxide will have risen during 2017, for the first time in four years. The continued use of coal in China is given as the explanation of the increase in greenhouse gas emissions. Rad the full story here.

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Chinese construction company to be partner on Wellington Airport runway extension.

Radio New Zealand reports that Wellington Airport has signed a memorandum of understanding with a Chinese firm to work as construction partner on the proposed runway extension. The appeal on safety grounds against the proposal by the Pilots Association has not yet been decided by the Environment Court. Read the full story here.

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Auckland Council looks at America's Cup village options. *Radio New Zealand* reports that six options which have been developed for a competitor's village for the defence of the next America's Cup competition in Auckland are being considered by Auckland Council. Team New Zealand most favour the option by which Halsey Street wharf would be extended into the inner harbour. Read the full story here.

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UK Budget plan to allow owners to increase height of properties without planning permission. *The Telegraph* reports that the UK Chancellor is considering proposals to enable houses and apartment buildings to be raised to the height of the highest building or tree in the same area without owners incurring the delay and costs of obtaining council planning permission. The plan is to help alleviate the housing shortage without having to resort to building and construction on green-field land. Read the full story here.

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New 3,500 residence development to be built south of Orewa. *The New Zealand Herald* reports that developer Fulton Hogan is in the process of creating the infrastructure necessary for a new 3,500-residence suburb and town centre south of Orewa, to be called Milldale. Read the full story here.

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Consultation begins for Flaxmere affordable housing proposal. *Hawke's Bay Today* reports that Hastings District Council, concerned about homelessness in the area, is supporting an affordable housing proposal to build over 100 houses on 15.5 ha of land in Flaxmere. The council is working with Te Taiwhenua o Heretaunga, U-Turn Trust and Te Aranga Marae on the project. Read the full story here.

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Large retirement village and care home complex for Napier. *Stuff* reports that BUPA has filed an application with Napier City Council to build a large retirement village and care home complex on the rural outskirts of Napier. The proposal includes 99 villas, 19 apartments and 49 care home rooms together with a cafe, dining room and other amenities. Read the full story here.

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Assistance for Wellington buildings needing earthquake work. *The New Zealand Herald* reports that Wellington City Council is considering providing further support for the owners of 96 buildings ordered to secure unreinforced masonry and facades to protect the public in another major earthquake. Read the full story here.

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Auckland Council apology for consent delays. *Stuff* reports that Auckland Council says building consents have had "unacceptable" delays. The council says this is due to high staff turnover and increasingly complex consent applications. Read the full story here.

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