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Legal Case-notes March 2019

Feedback Please! Any Feedback? Drop us a note!

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

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

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

This month we report on nine court decisions covering diverse situations associated with subdivision, development and land use activities from around the country;

- Conviction of a Unit Title body corporate for discharging untreated sewage from its property into a tributary of the Waikato River near Hamilton;
- A decision resulting from an appeal against activity status proposed in the Auckland Unitary Plan for subdivision activities in the Waitakere Ranges;
- An unsuccessful appeal against grant of subdivision consent by Kaikoura District Council;
- A successful appeal against refusal of consent by Auckland Council to demolish a heritage building that was subject to a dangerous building notice;
- Two decisions by the same appellant seeking declarations on zoning provisions for subdivision of land at Waitakere;
- A costs decision against Auckland Council arising from an appeal against interpretation of the unitary plan provisions for an application to subdivide a property near Warkworth.
- Two more court decisions resulting from prosecutions by Auckland Council of a person associated with a saga of offences under the RMA and Building Act on numerous properties around the region.

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https://www.surveyspatialnz.org/members/Article?Action=View&Article_id=23

CASE NOTES March 2019:

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Waikato Regional Council v Body Corporate 355972 - 2018] NZDC 23918

Keywords: prosecution; discharge to land; sewage disposal

The District Court sentenced Body Corporate 355972 ("the defendant") which had pleaded guilty to a charge laid by Waikato Regional Council ("the council") of permitting the discharge of wastewater containing untreated human sewage from an overflow pipe in its wastewater pumping station onto land where it entered Kirikiriroa Stream ("the Stream"), a tributary of the Waikato River. The defendant held title to the common property and amenities of The Sanctuary complex, a 5.8 ha gated community off Thomas Rd in Hamilton ("the site"). The Sanctuary comprised 107 residential properties, each with a Unit Title. Ownership of a unit provided equal share of the common property, part of which was a wastewater pumping station situated within the shared grounds.

Reporting to the defendant was a body corporate committee ("the committee"). The defendant entered an agreement with a property management company ("the management company") to maintain and manage common property. An on-site manager was employed by the management company. The management company's duties included reporting any aspect of the common property which needed repair to the committee. Thirty of the site's 107 dwellings used the sewerage system at the site; the remaining 77 dwellings discharged their wastewater directly to the council's wastewater system. The site's sewerage system comprised a pump

shed and an in-ground receiving tank. Within the tank there were two electrical sewage pumps, each wired to a float switch, with the objective that as the level of waste entering the tank rose, the float would activate the pumps. A further float switch was connected to an external visual flashing light, designed to be a warning device. At the time of the offending, this light was the only alarm in the system, which responded purely to an overfilling of the tank. There was no back-up facility in the event of power failure; any such failure would have disabled the pumps and the flashing light alarm. Near the top of the tank was an emergency overflow pipe which directed untreated wastewater reaching that level to exit the tank to discharge to the bank of the stream. At the time of the Sanctuary subdivision in 2008, the council had not required a consent for the design and construction of the wastewater system. However, discharge of untreated human sewage to water was a prohibited activity in the Waikato Regional plan. Council inquiries revealed that during the period the most current management agreement, but prior to the discharge, no examination or audited maintenance of the system was ever undertaken by the defendant. The Court considered the sentencing principles as established by the Sentencing Act 2002 and case authority. On 13 March 2017 council officers attended the bank of the Stream and found untreated sewage discharging from the overflow pipe and entering the Stream water at the estimated rate of 300 litres per hour, with indications that the discharge had been occurring for some time. The environmental effects of the offending were identified as being high concentrations of bacteria in the Stream, causing a high risk of people and stock being exposed to infection from contact with the water. Council investigation revealed deficiencies in the site's sewerage system, including that the alarm system was inadequate, the manager's understanding of the system was minimal, there was no oversight or check provided by the defendant and no individual within the defendant knew that the wastewater overflow pipe existed.

The Court stated that the discharge was serious and found that the culpability of the defendant was extremely careless, bordering on reckless. There were several astounding aspects to the case, including the complete lack of information about the outflow pipe and the lack of any condition attached to approval and operation of the private sewerage system which was part of the development approval for the Sanctuary.

After reviewing case authority, the Court set the starting point at $70,000. The Court noted that this was the first case involving a body corporate in environmental offending. A five per cent discount was given for lack of previous conviction and a further five per cent for the defendant's cooperation. The discount allowed for the guilty plea was 15 per cent to take account of the defendant's challenges to the summary of facts and appearances necessary for this. Accordingly, the defendant was fined $53,550. Ninety per cent of the fine was to be paid to the council.

Decision date 14 January 2019 - Your Environment 15 January 2019

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Strategic Property Advocacy Network (SPAN) v Auckland Council _ [2018] NZEnvC 236

Keywords: consent order; waiver; time limit; subdivision; activity; heritage value

The Court considered the draft consent order submitted by Strategic Property Advocacy Network ("SPAN") and Auckland Council ("the council"), parties to the appeal by SPAN against the default activity status for certain subdivision activities in the Waitakere Ranges Heritage Area ("the WRHA") of the Auckland Unitary Plan ("AUP"). The Court also considered the application by J and G Young ("Y") for waiver of time limit to join the appeal.

The Court considered the relevant policy framework for the WRHA. The draft consent order proposed amendments which would allocate three additional lots in two specified subdivision properties as a non-complying activity, rather than the default prohibited activity status in the WRHA. The Court noted that the policy framework placed strong emphasis on protection, restoration and enhancement of heritage features, in keeping with the purpose and objectives of the Waitakere Ranges Heritage Area Act 2008. The Court acknowledged that the parties had gone to considerable effort to identify and evaluate whether non-complying status was appropriate for the two properties. However, the fact that such properties were located in an area where subdivision was historically and currently a contentious issue led the Court to conclude that it was more appropriate to hear and determine the matter on its merits rather by consent order. The order was accordingly declined.

Regarding the waiver application, the Court noted that it was significantly out of time and was opposed by the other parties. Applying the principles of s 281(1)(a) of the RMA and relevant
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case authority, the Court stated that normally to grant the waiver would be deemed unduly prejudicial. However, in the present case, when the consent order had been declined, the Court determined that any prejudice was outweighed by the need for the contentious matter to be addressed in Court. The waiver was accordingly granted.

Decision date 25 January 2019 - Your Environment 29 January 2019

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Fitzgerald v Kaikoura District Council _ [2018] NZEnvC 238

Keywords: resource consent; conditions; district plan; subdivision; land use consent; effect

A Fitzgerald ("F") appealed against the decision by Kaikoura District Council ("the council") to grant resource consent to F's neighbours A and C Gulleford ("G") to subdivide their property and build a second dwelling on the new site.

The Court observed that the appeal raised the issue of whether under the Kaikoura District Plan ("the plan") land use consent might be granted in the absence of building plans, as was the present case. Addressing s 104(1) of the RMA, the Court noted that the application was for restricted discretionary activities and the plan restricted such discretion to any particular non-compliance with minimum size requirements and any encroachment into separation distances from an internal boundary. Absent any other guidance, the Court fell back on the relevant provisions of the plan. Regarding the subdivision application, the Court was satisfied that the proposal's density would be in keeping with the character of the locality. Regarding the land use consents for setback intrusions and dwellings on undersized sites, the Court stated that in the absence of any building plans, it was unable to determine how a future dwelling, together with the cottage, would respond to the relevant plan provisions. However, the Court considered that the existing cottage on an undersized site would have no effect on F's amenity, and he had raised no other issues.

Accordingly, the appeal in relation to: the subdivision consent was declined and the subdivision confirmed; the land use consent was declined and the use of the land by the existing dwelling confirmed; the retrospective approval of a non-compliance of the "cottage" was upheld, and resource consent declined; and the land use consent for a future dwelling on lot 2 was upheld and resource consent declined. The Court directed that an amended subdivision plan be resubmitted and that the parties respond to the draft conditions of consent as attached to the present decision. Costs were reserved.

Decision date 29 January 2019 - Your Environment 30 January 2019

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View West Ltd v Auckland Council _ [2018] NZEnvC 237

Keywords: resource consent; conditions; building; heritage value; safety

This appeal concerned the proposal by View West Ltd to demolish the St James Hall building ("the Hall") at 31 Esplanade Rd, Mt Eden ("the site"). Consent had been granted by Auckland Council ("the council") for renovation and partial demolition of the church on the site, but the council declined consent to demolish the Hall. The site was a historic place under the Auckland Unitary Plan ("AUP") and both the Hall and the church were heritage buildings.

The Court noted that the Hall was subject to a dangerous building notice under s 121 of the Building Act 2004 ("the BA") and the present appeal raised issues as to such buildings and the interrelationship of heritage issues under the AUP and public safety under the RMA. Such issues related to the condition of the building and the applicability and effect of the dangerous building notice. The Court considered the application as a discretionary activity under ss 104(1) and 104B of the RMA, and addressed evidence regarding heritage values, safety issues under the RMA and the BA, and any alternatives to demolition. Engineering experts were of the opinion that there was significant risk of structural failure and remedial action was required now. The Court noted that, although it was required to consider public safety, it had no emergency powers to avoid the public risk from the Hall's collapse. Refusal of demolition consent would result in the building remaining a danger. The Court was of the opinion that public safety was paramount and the present state of the Hall was an unacceptable hazard. The situation had gone on for six years and the Hall had been subject to further degradation. The Court noted the council's submissions as to an alternative to demolition; however, this would cost an estimated $10 million and would involve the demolition of most of the Hall anyway together with significant

increase in density and intrusion into height to boundary setbacks, which would likely be opposed by neighbours. Furthermore, there was no application for the alternative before the Court, it would not be a permitted activity and raised at least as many safety issues as the current application. In any event, the Court determined that the question of an alternative reconstruction was beyond scope of the present application.

The Court unanimously found that the Hall should be demolished to avoid safety issues to the public and to the adjacent properties. The Court stated there was merit in trying to salvage heritage elements from the structure. The proposed conditions of the consent were annexed to the decision and the parties directed to confer as to any amendments. Costs were reserved but not encouraged.

Decision date 29 January 2019 - Your Environment 30 January 2019

(Notes: The court hearing concluded in December 2018 and an interim decision was issued on 18 December. After the interim decision was issued, a fire substantially destroyed the church hall. The situation of the building highlights the predicament of property owners whose building is considered by an architectural heritage interest group and the Council as being of important heritage status. The hall had also been declared a dangerous building by the Council, but the owners were not financially able to maintain or restore it to a safe and usable condition so wished to demolish it and sell the site. For some background information and photos, see the links below. – RHL)

https://www.radionz.co.nz/news/national/352140/no-warnings-for-neighbours-about-dangerous-church-hall

https://www.radionz.co.nz/news/national/379232/mt-eden-church-fire-treated-as-suspicious

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Albert Road Investments Ltd v Auckland Council _ [2018] NZEnvC 241

Keywords: costs

This was an application for costs following *Albert Road Investments Ltd v Auckland Council* [2018] NZEnvC 121 where the Court allowed the appeal in part and granted consent to Albert Road Investments Ltd ("ARIL") for a two-lot subdivision at 102 Hudson Rd, Warkworth. ARIL now sought $172,298 in costs against Auckland Council ("the council"). ARIL claimed council witnesses misinterpreted the application and effect of the consent notices; precedent effect and plan integrity arguments were unmeritorious; the case was conducted in a manner which prolonged the hearing; the council failed to make appropriate concessions; the council placed incorrect reliance on Auckland Plan and Future Urban Land Supply Strategy; the council called irrelevant evidence on spatial and structure plan issues; and the council failed to explore possibility of settlement. The council submitted that costs should not be awarded, but if they were then within the range of 25 to 30 per cent of incurred costs would be appropriate.

The Court found that an award of costs was justified. It found the council's case was conducted in an unreasonable and blameworthy manner: in how the council approached interpretation of Auckland Unitary Plan provisions; how the council adopted an intractable position in continuing to defend its decision; and the approach taken to the planning evidence by the council was unhelpful and made the task of evaluating the evidence a difficult one for ARIL and the Court. The Court found the starting point for the costs award to be $141,884 being the actual legal and witness costs incurred by ARIL. The Court found that an award should be in the standard *Bielby* range, as the council's intractability favoured such an award. However, a higher than standard award would not fairly acknowledge certain deficiencies in ARIL's case. The Court found that an award of 30 per cent of the assessable costs, being $42,500 to be appropriate in the circumstances.

Decision date 31 January 2019 - Your Environment 1 February 2019

(See previous reports in Case-notes October and December 2018)

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Mawhinney v Auckland Council _[2018] NZEnvC 233

Keywords: declaration; subdivision; activity

The Court considered applications by P Mawhinney ("M") for six declarations. The declarations were the remainder of 87 declarations sought by M in 2015 relating to 80 hectares of land in Waitakere. The proceedings for determination in the present decision were: applications for

declarations 5, 6 and 7; and rehearing of applications for declarations 29 to 31.

The Court first addressed declarations 5, 6 and 50, which sought declarations as to the activity status, under the specified versions of the stated plans, of the subdivision of the land described in specified applications for subdivision consent. The Court considered the history of the proceedings and the effect of ss 86F and 88A of the RMA. Regarding declaration 50, the Court concluded that it should not make the declaration on both substantive and discretionary grounds. Regarding 5 and 6, after finding that it might take into account the views of the registered proprietors of the relevant land, the Court concluded that in the circumstances, including the fact of the complete absence by W or of the trusts controlled by him, of any registered interest in the relevant land, the declarations should be refused.

Similarly, regarding declarations 29-31, the Court noted that Auckland Council did not object to having the applications reheard, but submitted that the declarations had no utility. The Court was now of the firm view that there was no utility in considering the matters and accordingly these applications were also refused.

Decision date 22 January 2019 - Your Environment 23 January 2019

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Mawhinney v Auckland Council _ [2018] NZEnvC 239

Keywords: declaration; strike out; subdivision

The Court considered the appeal by P Mawhinney ("W") against Auckland Council's findings in its decision of 5 July 2018 about conditions of subdivision consent. The council processed the subdivision application on the basis that the activity was a discretionary activity. M now argued that the correct status was a controlled activity, or at worst a restricted discretionary activity, and as a consequence the conditions imposed were ultra vires.

The Court noted that the reason for the council's approach was that it treated the proposed subdivision as a "boundary adjustment", which approach M disputed. After considering the application and the history of the proceedings, the Court considered the subdivision rules in the then Waitakere District Plan and whether there had been a subdivision in the present case under s 218 of the RMA. The Court, after addressing relevant case authority, found that the council had correctly decided that the subdivision application was for a discretionary activity. Accordingly, the appeal was declined and the application by M for declarations for a boundary adjustment were struck out.

Decision date 30 January 2019 - Your Environment 31January 2019

(*Previous cases relating to Mr Mawhinney have been noted in Newslink editions dated July 2005, June, November & December 2006, April 2008, March and June 2009, July 2011, September 2012, December 2017 and June 2018 - RHL.)*

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Lau v Auckland Council _ [2018] NZEnvC 148

Keywords: strike out; enforcement order

This was a decision concerning enforcement orders sought in 2017 by A Lau ("Lau") against Auckland Council ("the council") by which: homeless people would be prohibited from staying in public places; the council would be prohibited from issuing any resource consents in any area which was on the combined sewer and stormwater system; the council would be compelled to redirect such combined systems to a proper sewage treatment system; and the council would be compelled to evict all tenants or occupants from leaky homes. The Court noted that Lau was presently serving a sentence of imprisonment for offences against the RMA. The Court stated it was required by s 269(1A) of the RMA to regulate its proceedings in a manner to best promote their timely and cost-effective resolution. The Court noted it had the power to strike out all or part of a pleading if it disclosed no reasonably arguable case or was likely to cause prejudice or delay or was frivolous and vexatious or otherwise an abuse of the process of the Court.

To enable Lau to be heard the Court had informed the parties by a minute that it was considering whether to strike out the application for delay and want of prosecution. The minute was delivered to Lau at a Department of Corrections facility, but no communication to the Court was received from him. The Court found that Lau had not taken the opportunity to address deficiencies in his application and the Court's directions had not been complied with. The application for enforcement orders was struck out for want of prosecution. There was no order

for costs.

Decision date 20 September 2018 - Your Environment 24 September 2018

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R v Lau _ [2018] NZHC 2935

Keywords**: **High Court; prosecution

The High Court considered appeals by the Crown against the sentence imposed against E Lau ("Lau") and that imposed against J Mao ("Mao") as being manifestly inadequate. In addition, Lau appealed against his sentence as manifestly excessive.

Regarding Lau, he was sentenced to 24 months' imprisonment after pleading guilty to 16 offences, many of which were representative, under the RMA, 10 offences under the Building Act 2004 and one offence under the Companies Act 1993. The Court stated that the offences related to five residential properties which Lau managed "in contemptuous disregard for planning or building regulation or enforcement authorities". The Crown submitted that the sentencing should have been approached cumulatively, that a separate starting point should have been fixed for the CA offending and that the 20 per cent discount for guilty plea, made over 12 months after the charges were laid, should not have been given. Lau submitted that the sentence was excessive because the Judge did not allow a discount to reflect an offer of reparation, Lau's ADHD, or the hardship of a prison sentence on Lau's children.

The Court reviewed the sentencing framework in environmental cases, and observed that, although a non-custodial sentence was generally regarded as an effective alternative to imprisonment in such cases, this should not be elevated to a presumption. After considering the aggravating and mitigating factors in sentencing cases under the RMA, with particular regard to the Court of Appeal decision in *R v Conway* [2005] NZRMA 274 where a custodial sentence was upheld, the Court said rather than examining whether in the present case there had been specific sentencing errors, the issue in the appeal was whether the sentence was manifestly excessive or inadequate. The Court applied the orthodox sentencing steps of identifying the starting points, any aggravating or mitigating factors and a discount for guilty plea. The Court established starting points for each set of Lau's offending, on a property by property basis. The offending spanned three years and resulted in 26 illegal dwellings, which were insanitary and unsafe and tenanted by vulnerable people. The breaches were undertaken for financial gain, Lau had ignored notices requiring him to stop and had obfuscated investigation by Auckland Council, whose ratepayers had incurred a million dollars remediation and legal costs as a result of the offending. The outcome of the Court's analysis was that the combined starting point for the offending could be in the order of 32 months to 42 months over the five properties.

Turing to consider the CA offending, the Court noted that Lau had set up a "phoenix" company" when his first company was placed into liquidation by the Inland Revenue Department. Although there was little authority dealing with such offending, the Court was not persuaded that a non-custodial starting point should be assumed, as such cases involved a clear and premeditated attempt to avoid creditors. If the Court adopted a strictly cumulative starting point on all offending, the range would be a total of between 38 and 52 months imprisonment. However, with reference to case authority, the Court concluded that a strict arithmetic approach to a cumulative starting point would be unduly punitive. Accordingly, the Court found a combined starting point of two years eight months, with an uplift of six months for the phoenix offending, properly reflected the totality of the offending. From this the Court considered that a modest discount of five per cent for Lau's diagnosed ADHD was appropriate. Disagreeing with the sentencing Judge's approach to reparation, the Court now considered that the offer by Lau's mother was a relevant discounting factor and so allowed a further five per cent. The guilty plea on the main offending was not made at the first opportunity; in fact, Lau had made a pre-trial application to defend the charges. Accordingly, a discount of 15-20 per cent was available. As the result of its fresh sentencing analysis, the Court found that if it were to sentence Lau, a sentence of 27 months would be imposed. From this, the Court concluded that the sentence handed down to Lau was not manifestly excessive. Lau's appeal against sentence was dismissed.

Regarding the Crown's appeal, the Court now stated that although it considered that the sentencing Judge's starting point was inadequate, it was the Court's settled practice to increase sentence only in clear-cut cases. By a slim margin, the Court refused the Crown's appeal.

The Court then considered the Crown's appeal against the fine (of $64,000) and reparation (of $155,000) sentences imposed on Mao. The Court stated that it was plainly available to the
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sentencing judges to find that Mao had a secondary role in the offending at some of the properties, although her failure to intervene was an aggravating factor. The Court concluded that reparation of $155,000 and a fine of $64,000 was not manifestly inadequate having regard to the range of sentences available for Mao's offending. Furthermore, Mao's personal circumstances were a strong reason to impose a non-custodial sentence. The Crown's appeal concerning Mao was also dismissed.

Decision date 12 February 2019 Your Environment 13 February 2019

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The above brief summaries are extracted from "Alert 24 - Your Environment" published by Thomson Reuters and are reprinted with permission. They are intended to draw attention to decisions that may be of interest to members. Please consult the complete decisions for a full understanding of the subject matter.
Should you wish to obtain a copy of the decision please phone Thomson Reuters Customer Care on 0800 10 60 60 or by email to judgments@thomsonreuters.co.nz.

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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 March 2019

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Concern over proposal allowing Government to seize land for KiwiBuild

Newshub reports there is growing concern amongst industry experts over new legislation drafted by Housing Minister Phil Twyford which provides for an Urban Development Authority with powers to build quickly - including the ability to force landowners to sell up if they need the land for housing. Under the Public Works Act, the Government can acquire land for infrastructure such as roads and schools. There is concern the new law will increase the frequency with which these powers are used. - Read the full story here.

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Record Tauranga building consents

The *Bay of Plenty Times* reports that a record $83 million in building consents were issued by Tauranga City Council in January, including the multimillion-dollar transformation of Melrose Retirement Village. Read the full story here.

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Wellington City Council wants reporting building conditions to be legal requirement _

1 News reports Wellington City Council are calling for a law change which would require business owners to report building conditions, especially whether they are vulnerable to damage in an earthquake, and would allow the Council to investigate in certain cases and enforce strengthening. - Read the full story here.

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LINZ reviews Crown pastoral land regulatory system _

Land Information New Zealand (LINZ) has published a review of the Crown pastoral land regulatory system. The system covers how LINZ manages Crown pastoral leases. Most of these are in the South Island high country. There are 171 leases, which are 33-year leases with the perpetual right of renewal. - Please follow the link for the full statement. Media release

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Government to end tenure review

Land Information Minister Eugenie Sage has announced that the Government will end tenure review in the South Island high country.

Tenure review is a voluntary process where Crown pastoral land can be sold to a leaseholder and areas with high ecological and recreational value can be returned to full Crown ownership as conservation land.

"Tenure review has resulted in parcels of land being added to the conservation estate, but it has also resulted in more intensive farming and subdivision on the 353,000 ha of land which has been freeholded. This contributed to major landscape change and loss of habitat for native plants and animals," said Eugenie Sage.

"We want to ensure that we are good stewards of the remaining 1.2 million hectares of pastoral lease land; that farmers can farm while safeguarding the high country's landscape, biodiversity, social, economic and cultural values for present and future generations."

With tenure review ending, the remaining Crown pastoral lease properties, currently 171 covering 1.2 million ha of Crown pastoral land, will continue to be managed under the regulatory system for Crown pastoral lands.

An announcement about the future of Crown pastoral land management will be made on Sunday.

Ending tenure review will involve law changes to the Crown Pastoral Land Act 1998.

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

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Land purchases by overseas companies approved.

The Overseas Investment Office has approved three purchases of New Zealand land by foreign-controlled companies. Please follow the link below for the full statement. Media release

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Christchurch CC seeks $3m cut in Regenerate Christchurch's budget.

Stuff reports that the rebuild agency Regenerate Christchurch is facing a cut in funding from city councillors of about $3 million, in order to reduce the planned and controversial rates increase. Read the full story here.

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Legal expert calls for regulation of property managers.

Stuff reports an Auckland property law expert says the property management industry needs a regulatory body to stop agents running roughshod over tenants, following recent media coverage of south Auckland-based property manager, Easy Rent Shop, leaving a trail of irate tenants and owners across the city. - Read the full story here.

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Samoa: Former head of state and bank become defendants in customary land law case _

Radio New Zealand reports the Samoa Solidarity International Group's action against the Land and Titles Registration Act 2008 has asked the Court to amend its statement of claim to include Samoa's former head of state Tui Atua Tupua Tamasese Efi and the Asian Development Bank as the sixth and seventh defendants in their legal action. - Read the full story here.

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Controversy over new fence beside mayor's house.

Waikato Times reports Hamilton mayor Andrew King has come under scrutiny for getting council permission to erect a fence between a road reserve and the bank leading down to the Waikato River, next to his property. The council expected him to pay for the fence and the fence would then transfer to council ownership. Read the full story here.

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OMV starts offshore project in NZ.

Radio New Zealand reports that the oil and gas company OMV is undertaking a well intervention and maintenance programme on the Pohokura platform off north Taranaki. This is to ensure that the wells continue to produce gas at optimum levels. Read the full story here.

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Polar bears moving south cause human emergency in Russia.

BBC News reports that a state of emergency has been declared in the Novaya Zemla islands because polar bears, driven south due to climate change and melting ice, are looking for food and have attacked people. Read the full story here.

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Increased number of consents issued for dwellings.

The New Zealand Herald reports that Statistics New Zealand has released figures showing that consent authorities across the country in 2018 issued consents for 32,996 new dwellings, a 6.1 per cent increase on 2017, with the largest rises being in Auckland and Wellington. Over the 2018 period, $14.1 billion of residential building work was approved. Read the full story here.

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Melbourne CBD apartment building blaze prompts cladding fears.

The Age reports that a blaze in a Spencer Street, Melbourne apartment building had fast-moving flames ravage the building's middle floors. The building is clad in the same materials involved in the Grenfell Tower fire. Read the full story here.

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DOC seeks extended public input on new management plan for national parks.

Radio New Zealand reports that submission deadlines have been extended by the Department of Conservation for public feedback on draft management plans for national parks Aoraki/Mt Cook and Westland Tai Poutini, which will govern issues such as the impacts of climate change and tourism. Read the full story here.

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Te Papa refused funding for new building facility.

Radio New Zealand reports that the Government has declined an application by the Te Papa Museum for $17 million to purchase land and to build a new facility for its spirit collection. The collection is presently stored away from the museum at a site which requires earthquake strengthening. Such strengthening will cost around $2 million. Read the full story here.

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Dunedin housing shortage predicted.

The *Otago Daily Times* reports that a Dunedin City Council report has predicted that, given estimates of population growth, the city will be short of 1,000 houses by 2028 unless extra land is provided for residential development. Read the full story here.

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$4.5m refurbishment and extension of Hamner Springs pools.

Radio New Zealand reports that Hurunui District Council has granted resource consent for an extension of the facilities at Hamner Springs Thermal Pools and Spa expected to cost $4.5 million. Read the full story here.

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New Queenstown hotel granted resource consent.

The *Otago Daily Times* reports that a new, top of the range 130-room hotel will be built in Thomson St, Queenstown. Well Smart Investment Holding of Singapore owns the site and has been granted the required consents for the development. Read the full story here.

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Sea level rise could affect $14bn of council infrastructure.

Radio New Zealand reports that a report by Local Government New Zealand says that up to $14 billion worth of council-owned assets across New Zealand are at risk from a sea level rise of 1.5 metres. Read the full story here.

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Heritage NZ understanding of probable demolition of former Cadbury building.

The Otago Daily Times reports that while Heritage New Zealand is hoping some features of the
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former Cadbury building can be retained in the new Dunedin hospital, it appears to accept the category 2 historic place will be demolished. Read the full story here.

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SkyCity convention centre construction further delayed to remove fire-risk cladding at extra cost of $25m.

Radio New Zealand reports that the removal of aluminium composite panels, linked to fire risk, will cost about $25 million and cause further delays to the completion of the international convention centre being built by Fletcher Construction for SkyCity Entertainment. Read the full story here.

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Big spend by Dunedin CC on water infrastructure to reduce flooding.

The *Otago Daily Times* reports that ageing water infrastructure and recent serious flooding events have prompted Dunedin City Council to allocate millions of dollars to fund stormwater improvements across the city. Read the full story here.

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Six-seater ski lift planned for the Remarkables.

The *Otago Daily Times* reports that NZSki chief executive Paul Anderson is hopeful that a $16 million chairlift will be approved at the Remarkables ski field this year. The Department of Conservation has given provisional approval which meant that consent for the project from the district and regional councils was more likely to be forthcoming. Read the full story here.

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Riverbank case to go to the Court of Appeal.

Radio New Zealand reports that the Court of Appeal will decide where the bank of a braided river, such as the Selwyn River, is located. Environment Canterbury is challenging the High Court's recent finding that a river is as wide as the area between its "reasonably observable banks". The issue is of importance to farmers whose land adjacent to rivers might be deemed out of bounds. Read the full story here.

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House-builders seek special clearance in face of foreign buyer ban.

The New Zealand Herald reports some of New Zealand's biggest house builders who are overseas-controlled, including Fletcher Building and Universal Homes, are applying for clearance from the Overseas Investment Office so they can continue building homes. Pre-approval to buy residential land in the form of standing consents has been applied for under a set of conditions the Overseas Investment Office has set out. - Read the full story here.

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Airbnb unit owners in Victoria face fine and ban while house owners unaffected.

Domain reports new laws introduced in Victoria provide members of an owners' corporation or strata community can take their grievances about owners of rowdy short-stay apartments to the Victorian Civil and Administrative Tribunal, which can lead to fines of up to $1,100 for owners in question and $2,000 in compensation for affected residents. The unit can be banned from short-stay letting if it commits three breaches or more within a two-year period. The new laws do not apply to homes not part of the strata committee or body corporate, leaving neighbours of some party-prone properties with no recourse for noisy Airbnb guests. - Read the full story here.

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Beyond Congress, property owners stand between Trump and U.S.-Mexico border wall. _

Lost in the argument between lawmakers and U.S. President Donald Trump over funding for a potential wall along the U.S.-Mexico border is the effect such construction would have on private property owners, legal experts warned on Wednesday [13 February].

The 2,000-mile border already has about 700 miles of fencing, and Trump is pushing for $5.7 billion to add to that barrier — a key election promise that he says would cut down on illegal migration into the United States.

Democrats and some Republicans have pushed back for months, calling the wall a waste of
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money and even immoral. The impasse resulted in last month's 35-day partial government shutdown — the longest in history.

"Not a lot of people realize this wall is not just at the border," said Mary McCord, a senior litigator with the Institute for Constitutional Advocacy and Protection at Georgetown Law School.

"Housing communities would be cut off. People would have to go through a gate to get to their house — and these are U.S. citizens," she told an audience at the New America Foundation, a think tank.

Elsewhere in Washington on Wednesday, legislators worked to finalise a tentative deal that would avert another shutdown and fund just 55 miles of fencing. It is unclear if Trump will sign it.

The president has threatened to declare a state of emergency and reapportion federal money to build the wall if Congress won't provide the funds.

The wall, as Trump envisions it, could harm thousands of property owners, said Ilya Somin, law professor at George Mason University and expert on eminent domain, the legal mechanism by which the federal government can take private property.

He, and others, said the wall would run through Native American lands, wildlife preserves, state parks, and even a church - La Lomita Chapel - on whose behalf McCord has sued, contending the wall would infringe on religious practice.

Landowners, meanwhile, have already been receiving requests to survey their property, said the panel's participants.

Further, the legislative debate has obscured the fact that Congress authorized $1.6 billion last March that included construction of 33 miles of border fence in Texas' Rio Grande Valley.

"Already there are sightings of bulldozers and massive protests going on pretty regularly," said Kiah Collier, who has reported extensively on previous construction on the border wall, much of which took place after 2006.

That process was rushed and "botched", Collier, who works for the Texas Tribune, said.

Now, Texas is "ground zero," Collier said, for a clash of priorities.

The state sees much of the illegal immigration into the United States, and 95 percent of Texas land is privately owned, putting the state squarely in the debate over the wall and eminent domain.

And while property owners who have their land taken under eminent domain are supposed to receive fair compensation, legal experts say that almost never happens.

"President Trump has often said that these property owners would get a windfall if their land was taken," Yuliya Panfil, organiser of Wednesday's panel, told the Thomson Reuters Foundation.

"In fact, that's not true," said Panfil, director of the foundation's Future of Property Rights program. "Generally there's a history of being undercompensated, and it really splits along economic and racial lines, where the vulnerable get less compensation."

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