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Legal Case-notes June 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".

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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;

- A largely unsuccessful appeal to the High Court by owners of two areas of rural land north-east of Auckland 's airport against the decision of Auckland Council to decline a recommendation of the Independent Hearings Panel to alter the rural/urban boundary in that area;
- A prosecution of a contractor on a subdivision near Wanaka for causing excessive sediment discharges into the Clutha River;
- An unsuccessful application by a neighbour for an enforcement order to prevent removal of a large kauri tree from the proposed location of a new house in Titirangi, Auckland;
- The decision of the Court of Appeal to cancel a certificate of compliance issued for a proposed gun club proposing to establish a shooting range near Kaukapakapa, north-west of Auckland;
- A successful appeal by a building materials trade supplier, Bunnings Ltd, against refusal of Queenstown Lakes District Council to grant consent to establish new premises at Ladies Mile near Queenstown;
- A successful application for a declaration that making of motion pictures in premises in a Business zone was "manufacturing" and therefore a permitted activity in Auckland's unitary plan;
- The dismissal of an appeal by A Lau. Mr Lau had been convicted and imprisoned arising from the unlawful development of seven properties in various parts of Auckland.

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CASE NOTES June 2019:

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Gock v Auckland Council _ [2019] NZHC 276

Keywords: High Court; interpretation; district plan; regional policy statement; soil; rural; landscape protection; Maori values

The High Court considered appeals by J and F Gock ("Gock") and by J, A and R Self ("Self") against the decision of the Environment Court of 18 April 2018 ("the EC decision"). The matter concerned the location of the Rural Urban Boundary ("RUB") at Puhinui in the Auckland Unitary Plan ("AUP") and covered two separate but related areas of land east of Auckland International Airport: Crater Hill, most of which was owned by Self, and Pukaki Peninsula, owned in part by Gock. The Independent Hearings Panel ("IHP") appointed under the Local Government (Auckland Transitional Provisions) Act 2010 ("the LGATPA") recommended that the two areas should be included on the urban side of the RUB in the AUP. However, Auckland Council ("the council") declined to accept the IHP's recommendation and concluded that the two areas should

be on the rural side of the RUB. The appeal to the Environment Court by Self was dismissed.

The Court now reviewed the background and procedural history, noting that the relevant provisions of the RMA were those prior to the Resource Legislation Amendment Act 2017. The pertinent factors when considering the contents of a district plan were in ss 31, 32 and 72-77D, and the Court stated that district plan provisions must give effect to a national policy statement or the New Zealand Coastal Policy Statement ("NZCPS") and the regional policy statement ("RPS"). Referring to the Supreme Court decision in *King Salmon,* the Court stated that to the extent that the area subject to the appeal was within the coastal environment, pt 2 of the Act should not be referred to because the NZCPS applied, and none of the exceptions in *King Salmon* were relevant. The Court grouped the issues into five points of appeal: s 148 of the LGATPA – scope; elite and prime soils; outstanding natural features ("ONFs"); structure plan guidelines; the special purpose quarry zoned lands; and mana whenua issues. Addressing the first point of appeal, the appellants argued that the EC erred by holding that s 148(1) of the LGATPA did not require that a reversion to the PAUP be requested in submissions. They argued that such a reversion was beyond scope. However, the Court considered that the original PAUP was already in the public domain and that "scope" in the present case encompassed the notified PAUP. The Court found that the EC finding that the council's alternative solution (namely to revert to the notified PAUP) was within scope of the submissions for the purposes of s 148(1)(b)(ii) of the LGAPTA and that there was no error of law.

However, the second point of appeal succeeded. This related to the EC's interpretation of the relevant provisions in Chapter B2.2.2(2)(j) of the RPS relating to the significance of elite and prime soils in the location, or relocation, of the RUB. The EC considered that the phrase "significant for their ability to sustain food production" was a qualifier only to the reference in the RPS to "prime" soils and that, on the other hand, the location of the RUB was required, without qualification, to avoid "elite" soils, without reference to their significance in sustaining food production. The Court now rejected the EC's construction of the provision. The EC's interpretation would preserve rural islands which were unsuitable for such food production. Having considered the evidence of the expert witnesses, the Court found that the EC had considered an irrelevant factor. The EC, in assessing whether the relevant areas of premium soils were significant for their ability to sustain food production, erred by failing to take into account the insignificant area of such soils involved in the present case (100 hectares) in the context of the total area of such soils in the Auckland region (63,000 hectares) and by wrongly taking into account the principle of incremental loss in the context of the RUB involving lands already surrounded by urban development. The remaining points of appeal failed. The Court allowed the appeals to the respects indicated in the decision and otherwise dismissed them. Regarding relief, the Court stated that should be the subject of further submission and set the matter down for a telephone conference on 25 March 2019.

Decision date 8 March 2019_ Your Environment 11 March 2019.

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Otago Regional Council v Civil Construction Ltd _ 2019] NZDC 869

Keywords: prosecution; discharge to land; discharge to water; earthworks; river

Civil Construction Ltd ("CCL") was sentenced in the District Court after pleading guilty to one charge laid by Otago Regional Council ("the council") under s 15(1)(b) of the RMA. In August 2017 CCL was undertaking site works on a residential subdivision at Wanaka ("the site"). Silt and sediment was discharged into the Clutha River downstream of the Lake Wanaka outlet and discoloured the river water for a distance of 500 metres. The site comprised large areas of unvegetated ground. Detention ponds and silt traps on the site were inadequate to cope with sediment run-off during a period of heavy rain. CCL sought discharge without conviction.

The Court considered the sentencing principles as established by the Sentencing Act 2002 ("the SA") and case authority. The environment affected was the Clutha River which was a particularly significant water body in the region, although the extensive sediment discharged would have been dissipated quickly due to the river's very high flow. The Court expressed concerns about the cumulative effect of such discharges on water degradation and stated that in the present case there had been a proven amenity effect on the river's aesthetic qualities. In setting the starting point, the Court had regard to factors including that it was a substantial discharge, the sediment came from development works on a sloping site during winter when heavy rains could be expected and that the fine should not be simply a licensing fee. After comparing relevant previous cases, the Court adopted the starting point of $40,000.
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Regarding CCL's application under s 106 of the SA, CCL submitted that the consequences of a conviction would be reputational and commercial and might lead to a loss of business in the competitive construction industry. The Court stated that the requirement of the SA was not that there be no consequences from a conviction but that such consequences be out of all proportion, which set a high bar. The present case involved a civil engineering contractor committing an offence, which was not trivial, in the course of its business. Taking all matters into account, the Court determined that the consequences of conviction were not out of all proportion to the seriousness of the discharge offence and declined the application.

Returning to the penalty, the starting point was reduced by five per cent to reflect CCL's previous good character and a further 10 per cent was given for its tangible demonstration of remorse. A 20 per cent deduction was made for guilty plea. Accordingly, CCL was convicted and fined $25,500 and ordered to pay solicitor costs and disbursements in addition to court costs. Ninety per cent of the fine was to be paid to the council.

Decision date 12 April 2019 _ Your Environment 15 April 2019.

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Maehl v Lenihan _ [2019] NZEnvC 58

Keywords: enforcement order interim; tree protection

This decision concerned an application for a permanent enforcement order to replace an interim order made by the Court in *Maehl v Lenihan* [2017] NZEnvC 78. The interim order was made when there were relevant proceedings before the High Court. A Maehl and W Charlesworth ("M and C") sought permanent enforcement orders to protect a large kauri tree. J Lenihan and J Greensmith sought the discharge of the interim enforcement order.

It was now acknowledged by counsel for M and C that in terms of the now operative Auckland Unitary Plan, the removal of this kauri (and any other on the property) was permissible. The Court concluded that the plan was very clear that the removal of such trees was a permitted activity. This in terms of s 314(1)(a)(ii) of the RMA was not an entire answer to the issue given that there remained jurisdiction for the Court to intercede in appropriate cases not withstanding that the activity may hold a consent or otherwise be permitted.

The Court noted it was bound by the laws which were passed by Parliament which saw an amendment to s 76(4A) and (4B) of the RMA which removed the ability for a council to have general blanket protection of trees within urban areas and instead required that particular and specific protections be put in place in a district plan. The Court stated that there was no protection for the kauri tree because it was not within a Significant Ecological Area nor was it individually identified for protection under the Unitary Plan. The Court said that a combination of s 319 and the terms of s 314 of the RMA were clear that there must be some threshold which the applicant must reach before the Court will interfere in the otherwise lawful undertaking of activities which are either permitted or subject to resource consent. The law was clear that this could not simply be an aversion by members of the public to the proper exercise of legal rights by owners.

The Court noted the tree had survived notwithstanding Kauri dieback disease being confirmed at the site and also being ring barked in December 2015. However, it could not conclude that those events were of such significance that they would justify the Court in interfering with the clear rights of the landowner to undertake a permitted activity on their property. Whilst the consequences of the removal of large numbers of kauri trees in the Waitakere Ranges would be devastating, this was nevertheless permitted by the legislation which was introduced with the clear intent of allowing such activity. The Court discharged the interim order as from 26 April 2019 and refused the application for permanent enforcement order.

Decision date 10/5/2019 Your Environment 13.05.2019.

(See Newslink case notes August 2017)

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Vipassana Foundation Charitable Trust Board v Auckland Council _ [2019] NZCA 100

Keywords: certificate of compliance; evidence; earthworks; noise; contaminant;

This decision of the Court of Appeal considered the matter of an application by Vipassana Foundation Charitable Trust Board ("the Trust") for judicial review of the decision by Auckland Council ("the council") to issue a certificate of compliance ("certificate") under s 139 of the RMA to R O'Brien and V Pichler. The certificate was issued in respect of a proposed outdoor

shooting range to be located in a rural setting at 273 Tuhirangi Rd in Kaukapakapa ("the site"). The site was about 1.2 km from the Trust's meditation retreat. The Trust claimed the certificate should not have been issued because the activity for which the certificate was sought did not comply with the relevant district and regional plan provisions.

The Court considered the High Court's ("HC") decision on the matter in *Vipassana Foundation Charitable Trust Board v Auckland Council* [2017] NZHC 1457. The HC had found two errors, which it considered to be material. In deciding whether to grant the relief sought, the HC took into account several factors, including that: the first error could be corrected by removal of the building concerned; the effects of both errors appeared to be minor, if not de minimis, and did not affect the Trust; the applicants were diligent in assessing the viability of the range site and had shown good faith in investing in the purchase of the land and establishing the shooting facility. The HC had subsequently decided to refer the matter back to the council to reconsider in light of its decision but did not quash the certificate.

The Court first dealt with an application by the Trust for leave to adduce further evidence contained in an affidavit of a trustee and the office manager of the Trust. The Court rejected the application except in relation to evidence about what had happened during the reconsideration of issues by the council directed by the High Court.

Turning to the main part of the appeal, the Court noted that the council's reconsideration of the application had followed in accordance with the HC's direction. The council commissioners determined that the proposal was a permitted activity on the day the application for the certificate was made and directed that the certificate be reissued.

The Trust now put forward the following five arguments. The HC Judge erred in holding that the council had sufficient information to conclude that the earthworks to be undertaken could comply with the earthworks rules, which restricted both the volume and area of earthworks. As to noise effects, the council and an acoustic consultant had not assessed the activity by appropriate techniques. As to the discharge of contaminants, the HC Judge misconstrued relevant rules in the council's Air Land and Water Plan which, properly construed, meant the prospective discharge of contaminants (lead) from shooting activities to land, or to land in circumstances where it might enter water, required a resource consent. As to the existing building on the land, the Trust said the HC Judge erred in allowing the council to accept an undertaking not to use the existing building (of more than 25 m^2) on the land in conjunction with the shooting range activity. Finally, the Trust complained that the HC Judge, in exercising his discretion to decline relief by quashing the certificate, did not properly take into account the fact that the issue of the certificate would establish a permitted baseline on the site, able to be relied on for the purposes of a subsequent resource consent application.

Regarding earthworks, the Court concluded that the council had insufficient information to properly assess the extent of earthworks involved in the proposed activity. Further, it was not sufficient for a council to take the view in issuing a certificate that compliance can be assumed in respect of the relevant plan rules. The certificate, in fact, clearly concerned a proposal that contained a significantly larger number of shooting ranges than could be provided within the earthworks limitations in the plan. Such a certificate should not have been issued. Regarding noise, the Court considered the HC Judge was entitled to hold that the acoustic design certificate given by an acoustic consultant in the present case provided a proper basis for the council to conclude that the proposal would comply with the applicable noise standards and the Court rejected the Trust's argument on this issue. As to discharge of contaminants and the existing building issue, the Court rejected the Trust's contentions on these parts of the case.

Regarding exercise of discretion to grant relief the Court said this case was unusual because of the fact the HC Judge found there had been material errors but nevertheless declined to set aside the certificate and required further consideration from the council. The present Court's consideration of the legal issues raised against the certificate had resulted in a conclusion that the council had insufficient information properly to assess the extent of earthworks involved in the activity, and that the number of shooting ranges authorised by the certificate would necessarily exceed the extent of earthworks permitted by the council's plans. The Court accepted the Trust's submission that the issue of a certificate had the effect of establishing a permitted baseline on the site. If left in place a wrongly granted certificate would be effective to establish a right to use the land and create a permitted baseline that might affect persons not before the court. It could not be said here that there would be no point in granting a remedy. Quashing the certificate would remove the ability of the shooting club to rely on it, and as matters would then stand a resource consent would be required for the activity recorded in the certificate. All this would be of practical value to the Trust. It was probable the Trust (and

possibly others) would be able to participate in that consent application. Whether or not that was the case, it would enable a proper focus to be brought on the extent of earthworks required and consequentially the intensity of any development permitted on the site. There had been no delay or disentitling conduct on the part of the Trust. Nor did the Court consider there were extremely strong reasons to decline granting relief.

Having considered all the circumstances the Court concluded that the appeal should be allowed. The certificate issued by the council was set aside. The respondents were jointly and severally liable to pay the Trust one set of costs on a band A basis and usual disbursements. Costs in the HC were to be determined in that court.

Decision date 26 April 2019 _ Your Environment 29 April 2019

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Bunnings Ltd v Queenstown Lakes District Council _ [2019] NZEnvC 59

Keywords: resource consent; amenity values; activity non-complying

This decision concerned an appeal by Bunnings Ltd (“BL”), against the decision of Queenstown Lakes District Council (“the council”) to decline resource consent for BL to develop its 1.62 ha property (“the site") at 148-150 Frankton-Ladies Mile Highway, Frankton, to construct and operate what it described as a trade supplier activity. The proposed trade supplier activity included a large warehouse, a nursery and a yard for timber trade sales, and space for building and landscaping materials with associated parking, access, site landscaping, earthworks, and signage. Subsequent to the council hearing, the application had been re-designed both to fit in to the surrounding area and to contribute positively to the amenity values of the wider gateway to Queenstown. Adjustments had been made to the site layout such as landscaping and use of materials and colours in response to comments received from the council.

The Court stated that the issues before it were: what was the adverse effect of the proposal on the supply of industrially-zoned land in Queenstown; did the proposal pass one of the threshold tests in s 104D of the RMA; did the proposal implement the objectives and policies of the operative district plan (“ODP”) better than the status quo; did the proposal implement the other relevant statutory instruments; were there other relevant considerations; and overall, should consent be granted having regard to all the relevant considerations?

The Court noted the site and surrounding area was zoned as Frankton Flats Special Zone B (“FFB”), Activity Area E1 under the ODP. The planners and the economists in their joint witness statements had all agreed that the development was classified as a "retail activity" and was therefore a non-complying activity in that zone. That meant that one of the threshold tests in s 104D of the RMA had to be passed before s 104 matters could be considered.

Regarding the effect of the proposal on industrial land capacity, the Court stated that it was a matter of simple arithmetic that the proposal would reduce the quantity of land zoned for industrial activities. As to whether the proposal would pass a threshold under s 104D, the Court held that the s 104D(1)(a) test under the ODP was the effect of the proposal on the capacity of undeveloped but zoned land in which industrial activities could take place under the ODP's zonings. The Court found that a 5.5 per cent reduction in the "supply" of industrial zoned land in the Wakatipu Basin was a less than minor effect. The first threshold test having been passed, there was no need to consider the second.

The Court considered whether granting the proposal would undermine the ODP’s integrity. The Court found the proposal was not contrary to the strategic objectives and policies in Chapter 4 of the ODP. The proposal achieved most of the ODP's objectives and policies relating to the Frankton Flats. However, it was contrary to policies 10.3(a) and 10.4 and was inconsistent with objective 10 and policy 10.1 of the FFB zone.

Considering whether the application gave effect to the National Policy Statement on Urban Development Capacity (“NPS”), the Court considered that the spirit and intent of the NPS was to open development doors rather than close them and that policy PA3 of the NPS expressly required the local authority to have particular regard to providing for choices, promoting efficient use of urban land and limiting adverse impacts on the competitive operation of land matters as far as possible. The Court stated this was a strong test and it was difficult to see how policy 10.4 of the ODP could survive it. The Court stated that this favoured the present application. The Court stated that it would give minimal weight to a strategic policy in the proposed district plan (“PDP”) to avoid non-industrial activities occurring in industrial zones.

The Court concluded that proposal would have an indirect and minor effect on both the
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industrial land development capacity and the supply of industrial land in the district. It accepted that the proposal would not implement all the policies of the FFB zone under the ODP or of the PDP, although it would implement many of them. The Court considered the proposal was consistent with the NPS, and that it should place considerably more weight on the latter, and higher-order, NPS than on the ODP or PDP. Notwithstanding the inadequately quantified extent of potential retail activity, the undisputed scale of industrial/trade supply activity associated with the BL proposal meant that it was appropriate to allow it to locate in the vicinity of four competitors, particularly with a view to its consistency with the NPS. The effect on industrial land capacity could be remedied as set out in the NPS. Under that instrument and having regard to the efficient use of the site, the Court considered the more appropriate use of the site was for BL's proposal. In the circumstances it was not necessary to consider pt 2 of the RMA beyond having particular regard to the efficient use of the land resource under s 7(b) of the RMA which the Court found (qualitatively) favoured the proposal over the status quo. The Court found the resource consent should be granted on conditions specified. Costs were reserved.

Decision date 13 May 2019 _ Your Environment 14 May 2019.

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Tonea Investments (NZ) Ltd v Auckland Council _ [2019] NZEnvC 61

Keywords: declaration; activity; interpretation; activity non-complying

This was an application by Tonea Investments (NZ) Ltd and Studio New Zealand Ltd ("the applicants") under s 310(a) of the RMA for a declaration that the creation/manufacture of motion pictures, including pre-production, production, and post-production was an industrial activity, being manufacturing, "making items by physical labour or machinery", by reference to the definitions in the Auckland Unitary Plan ("the plan"). The applicants contended that film making was a permitted activity, while Auckland Council ("the council") had advised them that a non-complying activity consent was required because film making activities did not fall under the definition of "manufacturing" in the plan. The applicants contended that the issue of activity status should be resolved by way of a declaration from the Court, not only for "new build" proposals, but also for future activities in temporary or leased facilities. The council had conceded that a declaration could properly be made in relation to one zone, the Business-Light Industry Zone, and in relation to some of the activities of film making but not others.

The Court stated that the principal dispute came down to concern on the part of the council that some elements of the film making process did not fall within the definition of "industrial activity", and in particular the word "manufacturing" in that definition, itself defined as "making items by physical labour or machinery".

The Court considered witness evidence as to the phases and processes of film making and found that each of them had significant elements of physical labour, which the Court considered could include light tasks utilising computers and electronic equipment and means of communication. Further the Court could see no difference for present purposes between the Light Industry and Heavy Industry zones.

The Court made a declaration that the creation/manufacture of motion pictures, including development, pre-production, production, and post-production, distribution/merchandising, was an industrial activity, being manufacturing, "making items by physical labour or machinery", by reference to the definitions, controls, and context in the plan in the Business - Light Industry Zone and Business - Heavy Industry Zone. Costs were reserved.

Decision date 14 May 2019 _ Your Environment 15 May 2019

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Lau v Auckland Council _ [2019] NZCA 15

Keywords: Court of Appeal; leave to appeal

By this decision the Court of Appeal dismissed the application by E Lau ("Lau") for leave to appeal against the decision by District Court Judge O'Driscoll of 22 December 2017 ("the DC decision"). Before Judge O'Driscoll, Lau faced 35 offences under the RMA and the Building Act 2004 arising out of the unlawful development of seven properties in Auckland. Lau's company faced a further 12 charges. Lau elected trial by jury and applied pre-trial for severance of each of the 47 charges. It was the decision to decline severance that was the subject of the present application for leave to appeal.

The Court of Appeal noted that Lau had subsequently pleaded guilty to the charges which were

not withdrawn and was convicted and sentenced to a term of imprisonment. Accordingly, the proposed appeal against the DC decision was now moot, but Lau had not returned a notice of abandonment. On 29 November 2018, Gilbert J made directions that Lau was to give notice whether he wished to proceed, but he failed to comply.

The Court now noted that s 338 of the Criminal Procedure Act 2011 ("CPA") empowered the court to dismiss an application for leave to appeal if the applicant failed to comply with a timetable or other procedural orders. The applicant for leave must be given 10 working days' notice of the court's intention to dismiss the application.

The Court stated that the criteria in s 338 of the CPA were met in the present circumstances. Lau's application for leave was entirely without merit and was moot. In view of his failure to comply with procedural orders, the Court found it appropriate to dismiss the application for leave to appeal.

Decision date 1 March 2019 _ Your Environment 04 March 2019

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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 June 2019

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Wellington councillors unable to prevent "low-rise" inner city housing development

Radio New Zealand reports that some Wellington City councillors have objected to the proposal to build 150 two-storey terrace houses on a site in the centre of the city, saying that such inner city residential blocks should be used for high-rise housing in order to meet the anticipated rise in Wellington's population. Read the full story here.

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Protest against expansion of plastic bottle production in Eastern Bay of Plenty

The Bay of Plenty Times reports that about 500 people protested at Omanu beach, Tauranga, against the proposal by Cresswell NZ, owned by Chinese bottling corporation Ngonfu Springs, to expand its production of plastic bottles in the Eastern Bay of Plenty. Read the full story here.

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Stricter penalties for greenhouse gas emissions proposed

Radio New Zealand reports that Climate Change Minister James Shaw says that New Zealand must comply with its obligations under the emissions trading scheme and the Government will introduce a range of higher costs and penalties to be imposed on carbon emitters. Read the full story here.

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Taranaki RC to decide on stadium repair at reduced cost of $50m

Taranaki Daily News reports that a reduced-cost plan to restore and upgrade the Yarrow Stadium to earthquake standard, which is backed by the regional rugby union,
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will be voted on by Taranaki Regional Council. Read the full story here.

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Government underwrite obligation regarding unsold Kiwibuild homes triggered again

Radio New Zealand reports that properties which remain unsold in Mike Greer's development in Canterbury and Auckland have triggered the government's undertaking to again buy back houses, under the terms of the Crown underwrite for Kiwibuild homes which is triggered if houses are unsold after 60 days. Read the full story here.

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Genesis Energy pledges to end use of coal by 2030

Radio New Zealand reports that the owner of the Huntly Power Station, Genesis Energy, has announced it plans to abandon its coal-powered units and to "exit coal-fired generation" altogether by 2030. Read the full story here.

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Kiwi Property Group plans new development in Drury

The New Zealand Herald reports that Kiwi Property Group has released a concept plan for the development of its 51-hectares of land in South Auckland and is in consultation with Auckland Council regarding a draft structure plan for shops, offices, bars and restaurants on the site. The company has indicated it may invest hundreds of millions of dollars in the proposed Drury development. Read the full story here.

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New office block in Christchurch said to have "serious" design flaws Radio New Zealand reports that three expert engineering reports have warned that a new building at 230 High St, Christchurch has multiple flaws in its earthquake design, despite the fact that Christchurch City Council has approved the structural plans. Read the full story here.

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Strategies to combat national wasp threat Radio New Zealand reports that concerns have been raised about the significantly increasing wasp population in New Zealand. Auckland Council reports that rangers are unable to enter parts of the Waitakere Ranges due to wasp danger at certain times of the year. The Wasp Tactical Group, comprising experts from universities, iwi, regional councils and the Department of Conservation, has been formed to come up with ways to control the wasp numbers. Read the full story here.

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High Court reserves decision on Island Bay cycleway in Wellington The Dominion Post reports that that the High Court has reserved its decision on the application for review made by The Island Bay Residents' Association. The case concerned the consultation process undertaken by Wellington City Council concerning the proposal to construct a cycleway at Island Bay. Read the full story here.

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Bunnings selling ready-made homes Stuff reports that Bunnings says it has sold 50 of its ready-made "Clever Living homes". Bunnings says the houses are designed by Licensed Building Practitioner draughtsmen to building code specifications. Read the full story here.

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Government investigation of Otago Regional Council regarding water permit concerns

The Otago Daily Times reports that the Government has begun an investigation of Otago Regional Council. The investigation has been launched over concerns the council is not prepared for a coming influx of water permit replacement applications. Read the full story here.

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"Let's get Wellington moving" project announced RNZ News reports on the "Let's Get Wellington Moving" transport project announced by transport minister Phil Twyford and city and regional mayors Justin Lester and Chris Laidlaw which is aimed at catering for the capital's transport needs given a a forecast population increase of 50,000 to 80,000 over the next 30 years. Read the full story here.

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Canterbury Regional Council declares a climate emergency

Radio New Zealand reports that Canterbury Regional Council has voted to declare a climate emergency. It is the first council in the country to do so.

Read the full story here.

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Funding sought for $50m Rotorua museum restoration Stuff reports that Rotorua Mayor Steve Chadwick says discussions are progressing to secure central government funding for the strengthening and restoration of the Rotorua museum. Rotorua Lakes Council closed the historic building in November 2016 after damage was discovered following the Kaikoura earthquake. Read the full story here.

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Housing Accords and Special Housing Areas (Tasman) Amendment Order 2019 (LI 2019/89)

This order, which comes into force on 17/05/2019, amends the Housing Accords and Special Housing Areas (Tasman) Order 2017. It alters the criteria for qualifying developments in the Richmond (Angelus Avenue) special housing area by increasing the maximum calculated height that buildings must not exceed from 7.5 metres to 12 metres.

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NZLS: New privacy guidelines for Kiwi landlords and tenants

Can a landlord justify collecting nationality or ethnicity information from a prospective tenant? Almost never says the Office of the Privacy Commissioner.

To coincide with Privacy Week, the Office has produced a new set of guidelines outlining what information should and should not be collected by landlords when deciding whether someone will make a suitable tenant. Please follow the link for the full statement. The guidelines can be accessed here. media release

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Withdrawal of New Zealand Chart, Catalogue NZ 202

NZ 202 will be permanently withdrawn from publication on 30 June 2019 and no further corrections will be announced from that date.

NZ 202's replacement, the online New Zealand Chart Catalogue, is already available in a spatial viewer and in list view format. The online catalogue allows users to search for all LINZ ENCs or paper charts by region or chart name/number.

Please follow the link for the full statement. media release

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Farmer wants pre-sale archaeological land surveys scrapped

The New Zealand Herald reports a Motutangi farmer says the law requiring archaeological assessments of land prior to sale is unfair, given that the owner has to pay the cost of a process over which they have no control and cannot avoid. The farmer claims two attempts to sell part of the farm had fallen through in two months because of the fear generated by "archaeological issues", while a neighbour had accrued a debt of around $300,000, "and rising fast", over a period of three months. - Read the full story here.

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EPA approves introduction of moth plant beetle

Radio New Zealand reports that the application by Waikato Regional Council to introduce into New Zealand a root-feeding beetle, to control the moth plant, or Araujia hortorum, has been approved by the Environmental Protection Authority.

Read the full story here.

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Budget overrun of $1.2m for Tauranga City Council's Durham St Upgrade

The Bay of Plenty Times reports that construction cost rises have meant that the streetscaping upgrade of Durham St, Tauranga, originally budgetted to cost $6.1 million, will cost at least a further $1.2 million. Funding for the project, which is to make the area more pedestrian-friendly, is to be shared by Tauranga City Council, Waikato University and the New Zealand Transport Agency.

Read the full story here.

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New cycling and walking path approved for Wellington to Hutt Valley

Radio New Zealand reports that Associate Transport Minister Julie Anne Genter has announced government approval to fund a shared, 5m wide cycling and walking path between the Hutt Valley and Wellington.

Read the full story here.

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Indian family claims it was denied tenancy due to ethnicity

The New Zealand Herald reports prospective Auckland tenants claim they were turned down from a Pakuranga rental because the landlord believed "all Indians are dirty". The property manager denies the landlord rejected the prospective tenants on the basis of race. One of the tenants has filed a complaint with the Human Rights Commission.

- Read the full story here.

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Auckland hotel issues City Rail Link Ltd cease and desist letter over building works

Stuff reports that Auckland's Stamford Plaza Hotel has served City Rail Link Ltd with a cease and desist letter regarding its ongoing City Rail Link construction works. The hotel's main concerns are severely restricted vehicular and pedestrian assess, as well as "excessive dust, noise and vibration" caused by the works. Read the full story here.

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Retirement village boom in Queenstown and Central Otago

The Otago Daily Times reports that two new retirement villages, Remarkables Park and Leaning Rock, north of Alexandra, will create 167 units between them. This will add to the existing nine retirement villages in the Queenstown/Wanaka/Alexandra area.

Read the full story here.

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Healthy Homes Standards laws in force 1 July

Stuff reports the Government's Healthy Homes standards have officially been signed off homes and cover improvements to heating, insulation, and ventilation, and address issues with moisture ingress and drainage and draught stopping. Landlords have just and will take effect from 1 July. The standards aim to increase the quality of rental over two years to ensure rental properties meet the standards contained in the new regulations. - Read the full story here.

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NZLS: Residential property sale volumes tipped to improve gradually

Winter will bring a further reduction in residential property sales, but longer term property information and analytics provider CoreLogic projects volumes to improve gradually later in 2019 and through into 2020.

This is due to the influence of the recent drop in the official cash rate, stronger-than-expected migration and the ruling out of a more comprehensive capital gains tax in sustaining demand for residential property. - Please follow the link for the full statement. media release

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Owners of swimming pools face costly upgrades

Stuff reports that pool owners are facing costly upgrades to upgrade their pools to meet legislative requirements. After being granted waivers by councils allowing them to have pool covers instead of fencing, they have now been told a 2017 legislation change requires they construct a fence. Read the full story here.

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Marine protection plan for coast of South Island

Radio New Zealand reports that the Government is proposing marine protection over an area the size of Auckland on the coast of the South Island. The proposed marine protection network would include six marine reserves, and five marine protection areas. Read the full story here.

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Plans for more onshore waste recycling.

Stuff reports that the Government intends to unveil moves towards more recycling being carried out in New Zealand. Proposals include improving kerbside collections, sorting and reprocessing recyclable waste. Read the full story here.

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First modular hotel in New Zealand nearing completion

Stuff reports that New Zealand's first modular hotel, built using 17 metre-long double room and corridor modules made in a factory in Vietnam, will be finished next month. The 80-room hotel in central Christchurch, will be run as the Arden Hotel. Read the full story here.

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Residential Tenancies (Healthy Homes Standards) Regulations 2019 (LI 2019/88)
These regulations are made under the Residential Tenancies Act 1986 (the Act) as a consequence of its amendment by the Healthy Homes Guarantee Act 2017. The substantive part of those amendments will take effect on 01/07/2019.

The Act will then require the landlord under a residential tenancy to comply with healthy homes standards prescribed by regulations. These regulations prescribe those standards.

Commencement and compliance dates

These regulation come into force on 01/07/2019, but there is a transitional period before landlords have to comply with the standards. Compliance is being phased in for different types of tenancies, starting with boarding house tenancies on 01/07/2021, and with all tenancies being covered by 01/07/2024. The relevant dates (the HH start days) are set out in clause 2 of Schedule 1.

Healthy homes standards

The starting point for the healthy homes standards is regulation 6. It requires a landlord to ensure that—

- the premises (or, in some cases, the building that the premises are part of) meet
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the standards set out in subparts 2 to 6 of Part 2; and

- anything installed or provided at the premises for the purpose of complying with the standards is fit for purpose and is maintained in good working order (or, if it cannot be maintained, is replaced).

The standards in subparts 2 to 6 that the premises (or building) must comply with relate to heating, insulation, ventilation, draughts, and moisture and drainage.

Heating standard

The main living room must have 1 or more qualifying heaters with a total heating capacity of at least the required heating capacity for the living room (as determined in accordance with Schedule 2). The formulas for determining the required heating capacity are designed so that the standard will require heaters that will be capable of maintaining the living room temperature at 18°C.

Qualifying heaters are prescribed in order to exclude various types of heaters that are dangerous, unhealthy, inefficient, or unreasonably expensive for tenants to operate.

There are exemptions for certain certified passive buildings (because they are designed to remain warm without heating) and if it is not reasonably practicable to install complying heating.

Insulation standard

Ceilings and suspended floors of domestic living spaces must be insulated with qualifying insulation unless there is another domestic living space immediately above the ceiling or below the floor, or it is not reasonably practicable to install insulation.

To be qualifying, insulation must have the requisite R-value (which is a measure of its thermal resistance), have been installed in accordance with the applicable New Zealand Standard, and be in reasonable condition.

The insulation standard is very similar to the general rules applying under the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016, but see below about the transitional provisions.

Ventilation standard

A habitable space must have an openable window or external door. Habitable spaces include the living room, lounge, dining room, kitchen, and bedrooms, but not the bathroom, laundry, or hallways. Rooms that were lawfully constructed without openable windows or doors are exempt.

A kitchen or bathroom must have an extractor fan of the prescribed size or capacity. There is an exemption if the room was lawfully constructed without an extractor fan and it is not reasonably practicable to install one.

Draught stopping standard

Any open fireplace must be closed off or have its chimney blocked to prevent draughts. However, if the tenant requests (in writing) that the fireplace be available for use, the landlord may leave the fireplace open (but is not required to do so).

The premises must be free from unreasonable gaps and holes that allow draughts into or out of the premises.

Moisture ingress and drainage standard

The premises (or, if the premises are part only of a building, the building) must have a drainage system that efficiently drains storm water, surface water, and ground water to an appropriate outfall. The drainage system must include appropriate gutters, downpipes, and drains for the removal of water from the roof.

If the premises (or building) have a suspended floor and the subfloor space is enclosed, it must have a ground moisture barrier, unless it is not reasonably practicable to install one.

Exemptions

For all of the exemptions that depend on it being not reasonably practicable to install something, regulation 4 provides a definition of that term.

There are also some general exemptions applicable to all the standards. Regulation 30 provides a complete exemption from regulation 6 if the tenant is the immediate past owner of the premises. Regulation 31 also provides a complete exemption in certain circumstances if the premises are due to be demolished or substantially rebuilt. These exemptions only apply for 12 months.

If the premises are part only of a building and the landlord does not own the whole building, this may impede the landlord's ability to comply with the healthy homes standards. Regulation 32 modifies regulation 6 in those circumstances to require the landlord to take all reasonable steps to ensure the standards are complied with to the greatest extent reasonably practicable.

Transitional modifications for things installed before 01/07/2019

As part of the transitional arrangements, clauses 4 to 9 of Schedule 1 modify the standards in various cases where things, such as heaters or insulation, were installed before 01/07/2019. Note that even if one of these modifications applies, regulation 6(2)(d) still requires the landlord to maintain and, if necessary, replace the thing; and if the thing is replaced, the transitional provision will cease to apply.

Information in tenancy agreements or renewal

From 01/07/2019, section 13A of the Act will require a tenancy agreement or renewal to include a statement about compliance with the healthy homes standards, which must include any prescribed information. Regulations 33 to 39 set out the information that must be included.

These provisions apply to a tenancy agreement or renewal that is made and signed by the landlord on or after 01/07/2020 (even if that is before the tenancy's HH start day). But they do not apply to a fixed-term tenancy that will expire before the HH start day (see clause 11 of Schedule 1).

If these requirements apply before a tenancy's HH start day and the landlord does not yet comply with the healthy homes standards (because it is before the landlord is required to do so), it may not be possible for the landlord to provide some of the required information. Clause 12 of Schedule 1 modifies the information that the landlord needs to provide in such a case.

Record keeping

Section 123A of the Act requires a landlord under a tenancy to retain various records during, and for 12 months after the termination of, the tenancy, and to produce them on request to the chief executive. From 01/07/2019, this will include prescribed records relating to the landlord's compliance with the healthy homes standards.

Regulation 40 sets out the records that a landlord must retain in relation to a tenancy. It applies to all tenancies on and after 01/07/2019, but only in relation to compliance with healthy homes standards that apply, or will apply, during that tenancy (see clause 13 of Schedule 1).

Transitional insulation regulations

The Healthy Homes Guarantee Act 2017 will repeal former section 138B of the Act. This was the section under which the insulation provisions of the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016 (the 2016 insulation regulations) were made. In accordance with clause 13 of Schedule 1AA of the Act, clause 3 of Schedule 1 of these regulations continues the 2016 insulation regulations as if they were healthy homes standards with effect from 01/07/2019.

The continued 2016 insulation regulations are then amended by Part 4 of these regulations. New regulation 10A provides for the phasing out of the 2016 insulation

regulations on the same dates as the healthy homes standards are phased in. The healthy homes standards will be fully in operation by 01/07/2024, so from that date the 2016 insulation regulations will be redundant as there will be no tenancies left to which they apply. Therefore, new subpart 4 is inserted, which will, on 02/07/2024, amend the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016 to delete all the provisions relating to insulation, and change their title to the Residential Tenancies (Smoke Alarms) Regulations 2016.

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