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Legal Case-notes October 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 seven court decisions covering diverse situations associated with subdivision, development and land use activities from around the country;

- Can an advice note appended to a resource consent decision stating that provisions in a regional plan would not be enforced in specified circumstances be unlawful? This High Court decision addresses the Environment Court decision about a land use application at North Canterbury;
- The prosecution of a land-owner of a property at Ngaio Wellington, for unauthorised earthworks;
- An unsuccessful appeal against refusal of consent for vehicle storage on a rural property near Christchurch airport;
- Another unsuccessful appeal against refusal of consent for temporary storage of relocatable houses on a rural property near Whangarei;
- Sentencing of three companies for unlawful construction of an access track for extraction of timber from a forestry plantation in steep country south of Kawhia Harbour;
- A decision on costs related to withdrawal of an application for enforcement orders seeking to prevent a pest eradication drop of 1080 poison in the Hunua Ranges south-east of Auckland;
- A prosecution of a businessman for illegal dumping of drums of old motor oil on several properties in the Auckland area including near a water supply reservoir in a Regional Park.

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CASE NOTES October 2019:

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Royal Forest and Bird Protection Society of New Zealand Inc v Canterbury Regional Council _ [2019] NZHC 2223

Keywords: High Court; regional plan; council procedures; policy; rule; enforcement; evidence

Royal Forest and Bird Protection Soc of New Zealand Inc ("FB") appealed against interim and final decisions of the Environment Court ("EC") by which the EC made a declaration that specified statements in an advice note issued by Canterbury Regional Council ("the council") ("the Advice Note") were unlawful. However, the EC declined to declare the entire Advice Note unlawful. The Advice Note purported to explain how the change of land use rules in the council's Hurunui and Waiau Rivers Regional Plan ("the HWRRP") would apply to dryland farmers. In particular, r 10.2 of the HWRRP (referred to as "the 10 per cent rule") was of concern to farmers. By this, a change in land use was determined, on a per property basis, as

being an increase greater than 10 per cent in long term average release of nitrogen or phosphorous to land which may enter water. If such specified nutrient load limits were breached, then a change of land use required resource consent. The Advice Note provided that "normal dryland farming" and "undertaking bona fide dryland farming" would not be considered a "change of land use" as defined and no resource consent would be needed.

In the present appeal, FB alleged the EC made three errors of law: in finding that the Advice Note was lawful to the extent that it expressed the council's policy of not enforcing the change of land use rules in relation to dryland farming; in finding that the only parts of the Advice Note which constituted an unlawful fetter on the council's enforcement discretion were the two statements which were ruled unlawful; and in the alternative, in finding that the council could have a policy not to enforce a rule in the HWRRP where the policy was contrary to the council's obligation under the National Policy Statement for Freshwater Management ("NPSFM").

The Court considered the Advice Note, and the relevant HWRRP provisions before addressing the first alleged error. FB argued it was unlawful to adopt a policy not to enforce a rule in the HWRRP. There was a detailed process in sch 1 of the RMA for the preparation of plans and such process would be undermined if a council were allowed to issue an advice note to the effect it would not enforce a rule which had been approved pursuant to that process. The EC decisions had the effect of sanctioning a policy not to enforce a rule. Citing case authority, FB argued it was not appropriate to suspend operation of a rule in this way. In reply, the council submitted that an advice note was merely one of a number of methods of enforcement of a plan and that the council had a discretion to determine the most effective way of carrying out its enforcement methods. The Court found that the only logical reading of the Advice Note was that the HWRRP would not be enforced in respect of certain categories of change of land use. Furthermore, the Court referred to evidence that farmers themselves understood the Advice Note meant that the council would no longer apply its 10 per cent rule to dryland farming. The Court found that the council adopted a policy of treating an identified class of cases as if the 10 per cent rule did not apply, which offended the principle in *R v Commissioner of Police of the Metropolis; Ex parte Blackburn* [1968] 2 QB 118, [1968] 1 All ER 763, which decision had subsequently been approved in New Zealand courts. In addition, the Court did not agree with the council that the unlawful nature of the Advice Note policy was overcome by saying that the HWRRP still had regulatory force and effect and the Advice Note did not act as an estoppel. Read as a whole, the Advice Note unlawfully purported to treat a category of activity as permitted and not amenable to enforcement action, and the EC erred by finding that it was not unsound. Such error was only partially resolved by declaring the two identified passages as unlawful. The council adopted an unlawful policy of not enforcing the plan in specified cases and the EC erred when it concluded otherwise.

Regarding the second alleged error, whether the Advice Note unlawfully fettered the council's discretion, FB argued that there were other passages in the Advice Note which introduced an extraneous consideration into the way that enforcement officers were to approach the issue of whether there had been a change in use. The Court accepted it would have been legitimate for the council to identify priorities or identify the range of enforcement options to be considered or the factors to be taken into account. However, the Advice Note did not merely set out such general principles. It identified a category of activity that would be considered to be compliant with the HWRRP rules, when in fact it might breach them. This risked council officers taking into account an extraneous consideration. The Court now found that the removal of the two identified statements would not overcome this difficulty. The EC erred on this point. The Advice Note did unlawfully fetter council officers' discretion.

Regarding the third alleged error, the Court found that there was no factual basis on which it might be assumed that the policy in the Advice Note was contrary to the NPSFM, and so this error was not established.

The Court considered what relief should be granted, and stated there would be little utility in sending the matter to be reconsidered by the EC. Accordingly, the Court made the following declaration: the Advice Note was unlawful because it purported to adopt a policy of not enforcing a specific provision of the HWRRP in relation to "normal" or "bona fide" dryland farming; and it had the effect of unlawfully fettering the council's obligation to enforce the HWRRP. Costs were reserved.

Decision date 12 September 2019 _ Your Environment 13 September 2019.

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Keywords: prosecution; earthworks; interpretation

This was a decision regarding the charges laid by Wellington City Council ("the council") against Z Zhou ("Z") and L James ("J") ("the defendants") who had pleaded not guilty. The charges related to "earth works activities" allegedly undertaken by Z and J between 15 August and 16 November 2017 on a property situated at 77 Old Porirua Road, Wellington ("the site"). Z was the registered proprietor of the property at the time of the alleged offending and J was assisting her in undertaking work on the property. The Court stated the determinative questions to be resolved in these proceedings were: were the works undertaken by the defendants at the site "earthworks" as defined in the definitions section of the district plan? If so, were they a permitted activity?

The Court stated that the district plan's definition of "earthworks" included any removal or relocation of earth from a natural or constructed land formation, except for the various exclusions contained in the definition. The Court stated that even on the basis of the defendants' own evidence, they clearly undertook the activity of removal and relocation of earth from the banks along the driveway ("the banks") which constituted a constructed land formation.

The Court stated that the activity of shaving, trimming, or shaping the banks undertaken by the defendants could be described as "cutting" in common parlance. However, the cutting did not meet the criteria contained in conditions (i) – (iv) of r 30.1.1.1(a) of the district plan so as to constitute a permitted activity. The activity undertaken required consent as a restricted discretionary activity and no such consent was held by the defendants. The Court found the removal or relocation of earth undertaken by the defendants did not fit within any of the exceptions contained in the earthworks definition.

The Court stated that the defendants had been charged with both contravening or permitting the contravention of s 9(3) of the RMA by using or permitting the use of land in the manner alleged. The Court found the defendants used the land rather than permitted the use. Z contracted and paid the persons who undertook the work and J actively managed that process on her behalf. The works were not just permitted by the defendants, they were undertaken on the defendants' instructions and under the defendants' supervision. The Court found that the defendants undertook earthworks as part of driveway widening at the site which were not permitted by the district plan and were not allowed or authorised by any of the other instruments identified in the charging documents. The Court amended the charges to accord with the findings it made and found the defendants guilty. The permitting charges were dismissed.

Decision date 1 May 2019 _ Your Environment 2 May 2019

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Rogers v Christchurch City Council _ [2019] NZEnvC 119

Keywords: district plan; resource consent; rural activity; precedent

J and A Rogers ("R") appealed against the refusal by Christchurch City Council ("the council") of resource consent to store up to 500 rental vehicles by or under a grove of walnut trees on their farm on the outskirts of Christchurch city. For some years R had been leasing that part of their farm to a vehicle rental company, Omega Car Rentals ("Omega"). At issue was whether the location of commercial activities in a rural area was in keeping with policies in the Christchurch District Plan ("the plan"). The council declined the application because the "need" to locate on rural land, as provided by Policy 17.2.2.5 of the plan, had not been established and the grant of consent would create precedent issues and undermine the integrity of the plan.

The Court considered the site, which was within the Rural Urban Fringe Zone ("RUFZ") and surrounding environment. The Court stated that the application was a non-complying activity and was considered under s 104D of the RMA. As it was agreed that the effects of the proposal on the environment would be minor, the application passed the threshold in s 104D of the RMA and was therefore assessed under s 104. The Court determined that the activity was a commercial one, under Policy 17.2.2.5 of the plan, and rejected argument that the plan had not given effect to the Regional Policy Statement such that recourse to pt 2 or other higher order documents was necessary. The Court expressed some criticism of the plan's Rural Chapter policy provisions, observing that the rural objective and policies were not expressly linked to any of the plans' several rural zones. Further there was an absence of zone statements which explained the purpose and outcome sought for individual zones. In this regard, the Court found that the use of "pop-up" descriptions on the online planning maps gave descriptions which were incomplete and did not form part of the plan. Such "pop up" descriptions were drafted by persons unknown without following the process mandated in the RMA. The Court expressed
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concerns that the council did not have control over the integrity of the electronic version of the plan. The Court found that such “pop up” zone descriptions, not being part of the plan, could not be relied on to interpret plan provisions. The Court recommended that the council consider this issue.

The Court considered the objective for the rural zones in Chapter 17 of the plan and stated that in the absence of a statement addressing the zone directly, the outcomes for the RUFZ were unclear. Policy 17.2.2.5 required that any economic development of rural land avoid the establishment of commercial activities not dependent upon or related to the “rural” resource”, unless demonstrating certain characteristics. The Court closely considered the relevant provisions, along with case authority, and concluded that vehicle storage found weak support from the provisions; “avoid” meant not allowing or preventing the occurrence of and was to be given significant weight; the focus was on the “need” for the location on rural land of a vehicle storage activity and there was no evidence of such strategic need for rural land per se; while Omega and the Rogers would obtain economic benefits from the arrangement, these did not outweigh the plan’s very directive policies and strategic objectives.

The Court then considered the precedent and plan integrity issues, finding that if consent were to be granted it would be contrary to the plan’s policies and the precedent thus created would be relied upon by others in future. The Court noted this was a comparatively rare case where a proposal had negligible adverse effects but was declined because it was directly challenged by directive policy weighing against it. The appeal was dismissed. Costs were reserved but not encouraged.

Decision date 1 August 2019 _ Your Environment 2 August 2019

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Haines House Haulage Northland Ltd v Whangarei District Council _ [2019] NZEnvC 124

Keywords: resource consent; conditions; effect adverse; jurisdiction

This was the final decision concerning the appeal by Haines House Haulage Northland Ltd (“the appellant”) against refusal by Whangarei District Council (“the council”) of resource consent to use a property for temporary storage of relocatable houses. An interim decision was issued on 22 March 2019, in which the Court made directions towards a final wording of the consent and conditions.

The Court now stated that annexed to the present decision was a copy of the memorandum issued by the Court, from which it was apparent that Lot 1 and Lot 2 were required to be amalgamated as a condition of subdivision in 2016. In the interim decision the Court had expressed concerns about the way the application had changed, incrementally increasing in scope between the time it was filed and the time of the hearing whereby Lot 1 was eventually incorporated into the activity notwithstanding that it was never part of the application. The Court further noted that since the present hearing in December 2018, and after the interim decision was issued, a relocated house had been placed on Lot 1. The Court accepted that the appellant could place a house on Lot 1 as of right. However, the issue was that in doing so the appellant had precluded the ability to fulfill the conditions of consent envisaged by the Court in the interim decision. The Court was satisfied that incrementalism had been established regarding the use of both Lots jointly.

In the circumstances, the Court stated that the interim decision requirements could not be fulfilled given that the appellant had acted precipitously while the decision was pending and notwithstanding the clear terms of the interim decision. The Court concluded that the activity requiring resource consent could not be granted consent if such activity prevented the mitigation required. This conclusion was based not only on legal principle but also the inability to provide conditions that would satisfy the Court as that the effects of the activity could be sufficiently contained and that Lot 1 would be free of buildings and used as rural pastureland. The Court stated that the outcome was of the appellant’s own making. The appeal was refused and the council decision confirmed. Directions were given as to applications for costs.

Decision date 12 August 2019 _ Your Environment 13 August 2019

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Waikato Regional Council v Rula Developments Ltd _ [2019] NZDC 10336

Keywords: prosecution; forestry; erosion; discharge to land; discharge to water

Three defendants, Rula Developments Ltd (“Rula”), Johnston Drainage and Contracting Ltd (“Johnston”) and RedBull Power Co Ltd (“RedBull”) were sentenced in the District Court, having each pleaded guilty to charges relating to the unlawful creation of an access track on a 830 hectare farm at Te Anga in the Waikato (“the farm”). Rula owned the farm, on which stood plantations of pine trees. The directors of Rula wished to harvest several areas of the trees and, to facilitate access, the earthworks the subject of the decision were undertaken by contractors engaged by or on behalf of Rula. The farm was within a High-Risk Erosion Area (“HREA”) as defined by the Waikato Regional Plan (“the plan”). HREAs included areas close to watercourses and wetlands and with slopes of exceeding 25 degrees. There was a waterfall and a tributary of the Tawarau River on the farm. The plan contained strict conditions relating to earthworks in HREAs and resource consent was required for disposal of overburden.

Between 1 April and 30 April 2017, earthworks were undertaken on behalf of Rula consisting of placement of a culvert across a tributary of the Tawarau River, and the creation of a track, without any erosion or sediment controls in place. The resulting overburden was discharged onto 40-degree slopes. There was no resource consent for the works. In October 2017, Johnston was engaged to continue the earthworks, and added to the culvert, extended the waterfall culvert and cleared a previously existing tract of debris in preparation for blasting. Johnston also stripped topsoil from around the track and built another new track suitable for forestry machinery. These works also were undertaken without erosion or sediment controls and the resulting debris was discharged onto 30-degree slopes. The charges against RedBull concerned its blasting operations and clearance of debris from around the blast sites, onto land where it might enter the tributary, all undertaken without erosion or sediment controls and without resource consent. The council was notified of these activities by a fisherman who photographed the machinery and the sediment discharging from the tributary and then into the Tawarau River.

The Court considered the sentencing principles as established by the Sentencing Act 2002 (“the SA”) and relevant case authority. The Court found that the environmental effects from the unlawful works were moderately serious, due to the scale of the earthworks and the length of time over which they occurred. The Court noted that none of the defendants had sought to ensure the requirements of the plan and the RMA would be met before works began. Regarding capability, the Court found that Rula’s culpability as head contractor was high. Johnston’s culpability was also high, as the Court considered its actions were careless at the higher end of the scale when it should have been alerted to issues by the absence of erosion and sediment controls. The Court assessed RedBull, as sub-contractor for blasting works, as being careless and somewhat, but not significantly, less culpable than the others. RedBull had applied for a discharge without conviction, under s 106 of the SA, submitting that a conviction would endanger its ability to obtain future work. The Court declined the application, finding that the offending was of some seriousness and the proportionality test was not made out. RedBull also applied for suppression of parts of a specified affidavit, submitting that such evidence contained commercially-sensitive information which would not have been disclosed but for RedBull’s application for discharge without conviction. The Court determined that, although the grounds for suppression were not made out, the Court would exercise its powers under r 5(2) of the District Court (Access to Court Documents) Rules 2017 and ordered that specified paragraphs of the affidavit might be accessed only with the permission of a Judge, on the grounds that they contained commercially-sensitive information.

The starting points set for the defendants were $55,000 for Rula, $55,000 for Johnston and $35,000 for RedBull. From these figures, each defendant was allowed a five per cent discount for good character, and each a further 25 per cent for early plea. Rula raised its capacity to pay a fine and the Court considered the affidavit containing a set of unsigned financial accounts. Rula submitted that while it owned the farm, it did not own the trees. The Court concluded that all the matters required by a declaration as to financial means under s 42 of the SA were not satisfied. In any event, the Court determined that Rula’s assets included land and buildings to the value of $4,202,762 and, notwithstanding its sizable liabilities, the company was able to pay any fine imposed. Accordingly, Rula was fined $39,187, Johnston was fined $39,187 and RedBull was fined $24,937. Ninety per cent of all fines was to be paid to the council.

Decision date 16 September 2019 _ Your Environment 17 September 2019

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Friends of Sherwood Trust v Auckland Council _ [2019] NZEnvC 140

Keywords**: **costs; enforcement order
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Auckland Council (“the council”) and the Director-General of Conservation (“DoC”) sought costs against Friends of Sherwood Forest Trust (“Friends”) and Ngati Paoa Trust Board (“Ngati Paoa”) (together “the applicants”) in relation to the withdrawal by the applicants of their application for enforcement orders, which was recorded in the Court’s decision of 15 March 2019. The withdrawal followed applications by the council and DoC to strike out the enforcement order application. The matter concerned efforts by the applicants to prevent a 1080 poison drop in the Hunua Ranges. The council now claimed indemnity costs against both applicants of $29,258 for legal costs incurred in preparing the strikeout. DoC claimed indemnity costs against Friends totalling $18,327. The applicants opposed costs, citing the public interest and lack of financial resources.

The Court reviewed the litigation, noting that after the applicants’ application for interim orders was declined on 21 September 2018 (“the first decision”), costs had been awarded against Friends in the sum of $22,826 to the council and $19,451 to DoC. The Court considered the legal principles relevant to its discretion to award costs under s 285 of the RMA, noting that the Court was more likely to award costs in enforcement proceedings and following late withdrawal of proceedings. Further, the Court stated that parties which brought proceedings in the public interest were not immune from being ordered to pay costs. In the present case, the grounds for seeking costs included that: arguments were advanced without substance; the matter was an abuse of process; the matter was poorly conducted; and the application for enforcement orders was withdrawn on the day of the hearing.

First, the Court decided that it was not an appropriate case for the award of indemnity costs. The Court considered that the costs claimed were unreasonably high, given the amount of work required to be undertaken and that no new evidence was filed, or legal argument prepared. Furthermore, the Court stated that it should have been clear to the council and DoC that the first decision had disposed of the legal matters at issue. However, the Court concluded that it was just that the council and DoC should be awarded costs against Friends, as the case had little substance. Accordingly, the Friends was ordered to pay the council and DoC $5,000 each in costs.

Decision date 10 September 2019 _ Your Environment 11 September 2019

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R v Prakash _ [2019] NZDC 9839

Keywords: prosecution; discharge to land; discharge to water; district plan; rule; home occupation; prison

D Prakash (“P”), and his company D Bhagyanil Co Ltd (“the company”), were sentenced after pleading guilty to a total of 28 charges, under ss 9(3) and 15(2) of the RMA, concerning discharges of engine oil from drums onto land and in circumstances where it could have entered water. The offending comprised three events, between 8 December 2017 and 10 April 2018, of dumping oil drums. Eight drums were discarded at 161 Browns Rd, Manurewa; 32 drums were dumped in the Waitakere Ranges Regional Park (“the regional park”) and a further 14 drums were dumped again at the regional park. A search warrant was executed at 567 Massey Rd, Mangere (“the property”), where P was living, and 15 further oil drums were discovered there with varying levels of oils in them. P was running his business from the property. P was also charged with home occupation offences under the relevant rules in the district plan.

The Court considered the sentencing principles as established by the Sentencing Act 2002 and case authority. The Court agreed with counsel that P’s actions were deliberate and undertaken with the purpose of commercial gain, to avoid paying for the proper disposal of the drums. The offending occurred over a period of five months which indicated a concerted effort to get rid of the drums in a secretive way in public locations. On two occasions the drums were dumped in a regional park that had cultural and historic value to the community. The Court noted that some of drums were dumped near the Nihotupu Dam walkway, several metres from a water body and that this was reckless. The Court stated it was fortunate that Auckland Council was able to remediate the contamination which occurred from leakage from the drums. The cost of this was $17,195. P had offered to pay reparation. The Court determined that this was serious offending with some environmental effects, fortuitously not at the higher end of the scale.

The Court considered cases where a term of imprisonment was imposed for environmental offending. The Court determined that if it were to impose a fine on P, it would be in the range of $50,000 to $80,000 but concluded that a fine would be inappropriate in this case for P. Further, a sentence of community work or community detention would not meet the sentencing purposes
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and principles of denunciation and deterrence. The Court was of the view that imprisonment was the appropriate sentence, with a term of six months an appropriate starting point. P was allowed a five per cent discount for lack of previous convictions and a further five per cent for good character. Twenty-five per cent was also allowed for early guilty pleas. This left a term of imprisonment of four months and three weeks. Finally, the Court considered whether to impose home detention instead of imprisonment and determined that this was the most appropriate outcome for P and his family. The term of home detention was reduced to three months. The Court ordered that P pay reparation of $17,195 to the council within 28 days. The Court by a narrow margin decided not to impose a fine on the company but convicted and discharged it.

Decision date 22 July 2019 _ Your Environment 23 July 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.

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

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Other News Items for October 2019

NZLS: Warnings issued to Landonline unsupported software users

Land Information New Zealand has issued another warning about use of unsupported software to access Landonline.

LINZ says using unsupported software has the potential to cause unexpected security issues for the user's computer, office network, and even Landonline.

It says "unsupported software" is any software that is no longer supported by the supplier. LINZ has provided a table which shows the timeline for support of a number of software systems.

- Please follow the link for the full statement. media release

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Neighbours bring in lawyer over backyard hole

Stuff reports neighbours in south Auckland have pooled resources and hired a lawyer in a bid to compel Auckland Council to cancel a development's resource consent, out of concern that three metre-deep excavations and a retaining wall are encroaching on their land.

Read the full story here.

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Plans for up to 34,500 new houses around Drury and Pukekohe

The New Zealand Herald reports that Auckland Council has approved high-level plans for 22,000 new homes in the Drury-Opāheke area, including the land west of the motorway, and another 12,500 homes in undeveloped areas around the edges of Pukekohe and Paerata. Development will be phased over the next 30 years. Read the full story here.

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Survey reports that roading project likely contributed to sediment build-up in Porirua Harbour. *Radio New Zealand* reports that a survey completed by Porirua City Council and Greater Wellington Regional Council of Porirua Harbour shows sediment rates have more than doubled in the last five years. Sludge was smothering wildlife such as fish and invertebrates and destroying biodiversity. Run off from the Transmission Gully highway construction project was likely to be contributing to silt entering the waterway. Read the full story here.

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Newmarket mega-mall opens *The New Zealand Herald* reports that the first stage of Westfield's $790 million retail mall development in Broadway, Newmarket, Auckland has opened, with 40 shops open for business. The whole site is planned to be completed and open by Christmas. Read the full story here.

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Christchurch rail yards possible site of future housing. *The Press* reports that a transport and housing group in Christchurch has mooted a proposal to convert the Middleton rail yard to a site suitable for affordable residential housing. Read the full story here.

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Fish and Game survey show two-thirds of people want Government action on water pollution. *Radio New Zealand* reports that a survey commissioned by Fish and Game New Zealand has revealed that 66 per cent of the population don't think the Government is doing enough to end the contamination of the country's waterways. Read the full story here.

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Mosgiel resident uses drone film as evidence of non-compliant structures of neighbours

The New Zealand Herald reports that up to 20 property owners in Mosgiel will have to remove structures which don't comply with council rules, after a neighbour used a drone to provide the evidence on which to base complaints to the council. Dunedin City Council says that it has to act on complaints made, despite concerns that the evidence might have been acquired illegally. Read the full story here.

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Kettle Park landfill might be excavated to prevent future contamination as part of Dunedin CC's Ocean Beach review.

The *Otago Daily Times* reports that Dunedin City Council is undertaking a review of Ocean Beach, including considering the possible impact of large sea swells on the old landfill under Kettle Park. Such a review has become more relevant since the recent spills of rubbish from landfills in the West Coast. Otago Regional Council has confirmed there are more than 250 historic closed landfill sites across the region, including more than 50 in Dunedin. Read the full story here.

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Dams at risk in NZ without safety regulations, says expert.

Radio New Zealand reports that Dan Forster, a dam safety engineer and vice chair of the New Zealand Society on Large Dams says dams in this country need proper safety regulations, to prevent a situation like that in the UK's Whaley Bridge. He says that although the construction of dams is governed by the Building Act, the maintenance and operations are covered only by voluntary guidelines. Read the full story here.

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Couple in fence view dispute await council action. *Stuff* reports that New Plymouth couple Roy and Marilynn Bridger are frustrated with the New Plymouth District Council after nothing has been done after 10 months to fix a non-compliant fence that blocks their view. The council says it is continuing to seek a solution to the dispute. Read the full story here .

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Hectare of native forest felled to make way for subdivision. *Radio New Zealand* reports that conservationists in Northland have criticised the Whangārei District Council after a hectare of native forest was felled to make way for a subdivision. A council spokesperson said the developer was planning a housing subdivision on the site in Kamo, and trees on residential land were not protected in the District Plan. Read the full story here .

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1905 Auckland villa may be demolished for redevelopment. *The New Zealand Herald* reports that heritage protection group Save Our St Heliers is concerned that the 1905 homestead at 9 Springcombe Rd, St Heliers, might be demolished by its recent purchaser who has submitted plans to Auckland Council to replace it with a new modern mansion. The villa has
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no heritage protection under the Auckland Unitary Plan and may be removed or demolished without resource consent. Read the full story here .

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Dunedin man blames district council for failing to prevent illegal excavation by neighbour. The *Otago Daily Times* reports that a resident of Morrison St, Dunedin, Mr R Proctor, says that Dunedin District Council has failed to take decisive action about the illegal excavation undertaken by Mr Proctor's neighbour which has undermined his home. The council's community services general manager Simon Pickford agreed that the excavation work was illegal and undertaken without resource consent. The council has given the offending neighbour 12 months to construct a permanent retaining wall. Read the full story here .

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Te Papa's expansion plans in South Auckland abandoned. *Radio New Zealand* reports that the storage facility which Te Papa planned to construct in Manukau in south Auckland has been refused government funding for a second time and the project has been abandoned. Read the full story here .

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PM announces community funds to clean up waterways. *Radio New Zealand* reports that Jacinda Ardern has announced that $12 million of government funding will be offered to community-led programmes to clean up water catchments, with the first moneys going to improve the polluted Kaipara estuary. Read the full story here .

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Christchurch rail yards possible site of future housing. *The Press* reports that a transport and housing group in Christchurch has mooted a proposal to convert the Middleton rail yard to a site suitable for affordable residential housing. Read the full story here.

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Audit of NZ litter pollution. *Radio New Zealand* reports that the charity Keep New Zealand Beautiful, together with Stats NZ, the Department of Conservation and the Ministry for the Environment, has published the results of a national litter audit which show that over 10 billion cigarette butts, 3.6 billion bits of plastic and 394 million litres of nappies are littering the

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NZTA will fail to make Transmission Gully completion date. *Radio New Zealand* reports that New Zealand Transport Agency's project delivery senior manager Andrew Thackwray says there will be further delays to the $850m Transmission Gully motorway construction and the completion date for the works of May 2020 will not be met. Read the full story here .

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Proposed Queenstown subdivision will regenerate forest says proposer. The *Otago Daily Times* reports that developer Treespace Queenstown Ltd has submitted to independent commissioners for Queenstown Lakes District Council that a proposed residential subdivision at the former Mt Dewar Station will also comprise a native reforestation project. Read the full story here

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Nelson's couple's application for SHA subdivision out of time, says Housing Minister. The *Nelson Mail* reports that Jason and Ange Mudgway are upset that their application to build 47 affordable homes on their land in Hope, near Nelson, has been refused by the decision of
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Housing Minister Megan Woods. The Minister said that due to a backlog of applications, the proposal would not be considered under the Special Housing Areas Act despite the fact that the application was presented prior to the September 16 deadline under the legislation. Read the full story here.

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Wainui residents told by Gisborne DC that retreat from coast may be necessary

Radio New Zealand reports that the community of Wainui Beach may face a long-term solution of a retreat from the coastal area, says Gisborne District Council's David Wilson. Recent storms damaged a sea wall and resulted in the erosion of up to eight metres of land from waterfront properties, and the council wants to consult with residents about a long-term solution. Read the full story here.

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Continuing delays with $150m Johnsonville Mall redevelopment. The *Dominion Post* reports that the resource consent which was granted two years ago for the upgrade of Johnsonville Mall has not resulted in the promised $150 million redevelopment in the area. Stride Property, the company behind the redevelopment plans, says there are still several hurdles to be overcome before the revamp can proceed. Read the full story here.

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Northlake residents take case. The *Otago Daily Times* reports that Northlake Investments Ltd is being taken to the High Court in Invercargill over its covenant which prevents residents objecting to development in the company's Northlake subdivision. Read the full story here.

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