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Legal Case-notes March 2020

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

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

- An application to clarify whether a consent authority has jurisdiction to determine mana whenua for areas affected by proposed development resource consents in the Waitemata Harbour at Auckland port;
- An appeal to the High Court for judicial review of a decision of the EPA to allow dumping of dredged material near Great Barrier Island;
- The successful prosecution of developers of a residential property on a steep hillside property at Khandallah, Wellington, who had undertaken excavation works to install services on a neighbouring property without resource consent;
- An appeal to the High Court for judicial review of a decision of Queenstown Lakes District Council to approve on a non-notified basis, a building height and density when an appeal had been lodged against retaining the existing high density zoning in the proposed district plan;
- An appeal against refusal of consent to establishment of a retirement village in an existing residential area at Meadowbank, Auckland, which was settled by mediation;
- The prosecution of a logging company for allowing waste material from a forest near Gisborne to be discharged on to nearby land and rivers following a large rainstorm;
- Prosecution of two people at New Plymouth who engaged a contractor to trim a "listed" Moreton Bay fig tree overhanging their property without relevant resource consent;
- A costs decision following prosecution of a developer which had breached conditions of consent under the Housing Accords and Special Housing Areas Act 2013;
- An amended enforcement order against a developer who had undertaken unauthorised earthworks and other activities in close proximity to a stream and esplanade reserve land adjacent to his property;

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CASE NOTES MARCH 2020:

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Ngāti Whātua Ōrākei Whai Maia Ltd v Auckland Council _[2019] NZEnvC 184

Keywords: jurisdiction; tangata whenua; Māori culture; resource consent; conditions

The Environment Court considered a preliminary question of jurisdiction relating to certain conditions attaching to the resource consents granted by Auckland Council ("the council") concerning: the extension of the North Western breakwater and Causeway at Westhaven Marina ("the Westhaven decision"); and the construction of two ship mooring dolphins and associated works from the end of Queens Wharf ("the Queens Wharf decision") (together "the

consents"). There had been no appeal and the parties had agreed to the early commencement of the consents under s 116 of the RMA, granted by the Court on 27 March 2019.

Ngāti Whātua Ōrākei Whai Maia Ltd ("the appellant") now challenged the conditions relating to mana whenua engagement, including the placement of pou whenua (cultural markers) as part of each proposal, and sought declarations as to the following question: Does the Environment Court have jurisdiction to determine whether any tribe holds primary mana whenua over the area the subject of the consents: (a) generally; or (b) where relevant to claimed cultural effects of the application and the wording of the consents conditions. Ngāti Whātua Ōrākei claimed primacy regarding the consents; this claim was contested by seven of the nine tribes of Tāmaki Makaurau, who were parties under s 274 of the RMA and listed in Appendix A to the decision. The relevant conditions of the consents provided for the engagement of the consent holder with isthmus iwi and the preparation of a Katiaki Engagement Plan whose purpose was to assist mana whenua to express tikanga, fulfil their role as kaitiaki and establish the engagement and involvement of the iwi with the implementation of many aspects of the consents.

The Court considered the term "mana whenua", as defined in s 2 of the RMA and as a component of "tangata whenua" and of "kaitiakitanga". The Court also considered the provisions of ss 5-8 of the RMA in addition to ss 104, 108 and 108AA of that Act. The Court said the central matter in dispute concerned the relative strength of the different iwi and hapū interests in the subject area of the consents. The council submitted that s 108AA of the RMA contained a new test by which consent conditions must be imposed for resource management purposes and must fairly and reasonably relate to the permitted development or to an adverse effect. The council submitted that cultural effects and customary authority arising from the consented activity would not be directly connected to an adverse effect but related to an external or ulterior concern.

However, after reviewing relevant case authority, the Court did not agree with the council that "complex issues of competing customary authority were not matters to be resolved through resource consent conditions". Rather, the decisions cited by the council established that the Court was required to address competing issues of whakapapa, rohe and dealings in land. Further, under pt 2 of the RMA, the Court was required to do so in a way which recognised the separate and distinct entities of iwi and hapū, rather than treating all Māori as one entity. The Court noted that s 30 of the Te Ture Whenua Māori Act 1993 enabled the Māori Land Court to advise other courts as to who were the most appropriate representatives of a class of Māori. The Māori Land Court had held that there was not reason why there could not be more than one tangata whenua in any given area in a particular fact situation. In a report cited by the Environment Court, the Māori Land Court warned against the use of "mana whenua" to imply that only one group could speak for all in a given area or to assume that one group had a priority interest over others. In this regard, the Court now noted that the Auckland Unitary Plan and the New Zealand Coastal Policy Statement 2010 were neutral and non-determinative as to primacy or overlapping Māori interests. The Court now found that there was no clear directive or encouragement in the RMA to identify "primacy" in the sense of a general pre-eminence or dominance as was now argued by the appellant. The Court concluded that there was clearly jurisdiction to hear and determine competing claims as to relative status between Māori groups. However, it was not correct to describe such jurisdiction as a power to determine that a particular tribe held primary mana whenua over an area. The Court remarked that consent authorities must face up to the complexity of issues in all facets of resource consenting, whether of a Māori cultural nature or otherwise.

The Court considered that the question posed by the appellant was misdirected. The enquiry of the Court should not be into primacy of mana whenua. The general part of the question before the Court was too broad and was not strongly argued by the appellant. Jurisdiction was declined concerning it. The second part of the question needed to be reframed, with reference to "primary mana whenua" being deleted as too narrow. The Court reframed the question to be considered as follows: "When addressing the s 6(e) RMA requirement to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu and other taonga, does a consent authority including the Environment Court have jurisdiction to determine the relative strengths of the hapū/iwi relationships in an area affected by a proposal, where relevant to claimed cultural effects of the application and the wording of the resource consent documents". The Court stated that, thus reframed, the answer to the question was "yes". Costs were reserved.

Decision date 16 December 2019 _ Your Environment 17 December 2019.

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Klink v Environmental Protection Authority _ [2019] NZHC 3161

Keywords: High Court; judicial review; coastal marine area; resource consent; Māori culture; effect adverse

The High Court considered an appeal and an application for judicial review relating to the decision by the Environmental Protection Authority ("the Authority") to grant a marine dumping consent to Coastal Resources Ltd ("CRL") to permit the dumping of significantly increased volumes of dredged material into the exclusive economic zone east of Aotea Great Barrier Island ("Great Barrier"). The Authority's decision was challenged by K Klink ("K") who represented Ngāti Rehua Ngatiwai ki Aotea ("Ngāti Rehua"), the local iwi of Great Barrier, and by the Society for the Protection of Aotea Community and Ecology Inc ("the Society"). CRL held an existing marine consent, granted by the Authority under s 20G of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 ("the EEZ Act") to dump 50,000 cubic metres of dredged material in the area annually. The present application was to increase this to up to 250,000 cubic metres annually for 35 years.

The Court reviewed the relevant provisions of the EEZ Act and the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Discharge and Dumping) Regulations 2015 and considered the process by which the Authority made the decision in the present case. The Court summarised the relevant issues arising in both the appeal and the judicial review proceedings. The first was whether the Authority failed to take into account relevant considerations by: failing to give effect to the principles of the Treaty of Waitangi, as required by s 12 of the EEZ Act; overlooking the existing interests of K, Ngāti Rehua and the Society under the Marine and Coastal Area (Takutai Moana) Act 2011; failing to consider the United Nations Declaration on the Rights of Indigenous Peoples; and taking into consideration adaptive management type conditions, contrary to s 60 of the EEZ Act. The second issue was whether the process adopted by the Authority was procedurally unfair in giving inadequate notification of the application; failing to give consistent access and treatment of different tangata whenua entities; and holding hearings in Auckland which limited the participation for K, Ngāti Rehua and the Society. Regarding the Treaty of Waitangi, the Court noted that under s 12 of the EEZ Act the Authority must consider advice provided by the Māori Advisory Committee ("the MAC") to inform its decision making with a Māori perspective. In the present case, the MAC provided a report to the Authority which concluded that the consent application, the impact assessment and other documents provided by CRL provided insufficient information to enable the Authority to make an adequate and appropriate decision. In particular, the MAC report advised that the application document revealed a lack of engagement with iwi and hapū and failed to acknowledge the effects of the proposal on cultural values of Māori existing interests. The Court noted that under the provisions of the EEZ Act, the Authority must "have regard to" the advice of the MAC. Established under the Environmental Protection Authority Act 2011, the MAC's function was to advise and assist the Authority from a Māori perspective. With reference to case authority as to the meaning of "have regard to", the Court found that the Authority misconstrued the MAC's advice and focused on "existing interests" and so overlooked its powers to consider those iwi who might be affected by the application. Furthermore, 60 per cent of the submitters to the application were based in Great Barrier and the Authority was mistaken as to the numbers who were based in Auckland. In the event Ngāti Rehua was represented at the Auckland hearing by a person who was an unmandated part of the iwi. The Authority had before it no identification of how Ngāti Rehua collectively on Great Barrier would be affected. In addition, the Court expressed reservations about the condition imposed by the Authority on CRL to establish an Iwi Liaison Group. In effect CRL was able to choose the membership of this group. The Court found that the Authority failed to take into account the MAC's advice to engage with relevant local iwi groups and to observe tikanga Māori. As the result of such failure, the Authority's decision was not appropriately informed from a Māori perspective, contrary to s 12(a) of the EEZ Act. The Court then considered the other claimed errors but stated they did not require determination.

The appeal and application for judicial review succeeded and the Authority's decision was quashed. The matter was to be referred back to the Authority for reconsideration, for meaningful engagement with local iwi authorities which might be affected by the application, especially those on the Great Barrier. Directions were given as to costs.

Decision date 7 January 2020 _ Your Environment 8 January 2020.

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Wellington City Council v Zhou _ [2019] NZDC 18314
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Keywords: prosecution; excavation; resource consent; condition

Z Zhou ("Z") and L James ("J") were sentenced on one charge laid by Wellington City Council ("the council"), having been found guilty of that charge after a defended hearing. The charge related to contravention of s 9(3) of the RMA by unlawfully undertaking earthworks at 120A and 120B Nicholson Rd, Wellington. The defendants owned 120A, which shared a common boundary with 120B. There was an easement running immediately inside 120B's side of the common boundary, allowing 120A to run drainage, water, electricity, gas and telephone services over the easement and undertake work on 120B for those purposes. The purpose of the earthworks was to excavate the substantial hill slope on 120A to create a building platform. As part of that process works were undertaken in the easement area of 120B. The defendants were granted resource consent, a condition of which specified that the works approved must be undertaken accordingly to identified plan E02.

The Court stated that the defendants were found guilty because of two failures: first failure to obtain resource consent allowing earthworks on the easement area; and second, failure to adhere expressly to the embankment plans contained in the approved plan E02. After considering the sentencing principles, the Court addressed the issue of the appropriate starting point for penalty. The range of penalties in relevant cases were considered, and the seriousness of the offending assessed in the light of any environmental effects. While the Court accepted that plan E02, which provided that a rock bench be cut in the western face of the earthworks, had not been adhered to, failure to construct such a bench had no safety consequences on the stability of the bank. However, the earthworks in the easement area without resource consent were to be regarded in a more serious light. The occupiers of s 120B had filed an impact statement as to the effects on them and their concerns were understandable. However, the Court said that they knew about the easement and that works might be expected to be undertaken, and further the council might have been put on inquiry as to whether the application should be notified to the occupiers of 120B.

The Court set a starting point of $10,000 for each defendant, noting that had there been any real risk to safety or stability the starting points would have been substantially higher. Z was allowed a deduction of five per cent for lack of previous conviction (at the date of this offending), and was fined $9,500. J, who had a previous conviction, was given no reduction and was fined $10,000. Each was ordered to pay solicitor costs and court costs. Ninety per cent of the fines was to be paid to the council.

Decision date 20 November 2019 _ Your Environment 21 November 2019.

(The previous decision was reported in Newslink October 2019 – RHL)

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Knowles v Queenstown Lakes District Council _ [2019] NZHC 3227

Keywords: High Court; judicial review; declaration; residential; public notification; building height; density; zoning

This was an application for judicial review of the decision by Queenstown Lakes District Council ("the council") to grant non-notified consent to CSF Trustees Ltd ("CSF") to construct a multi-unit development at 1 York St, Queenstown ("the site"). The applicants were owners of residential properties in York St, above the site, on Queenstown Hill. Under the operative district plan ("ODP") the applicants' properties were zoned high density residential ("HDR") under which rules the maximum permitted building height was seven metres. Under the proposed district plan ("PDP") the site and the applicants' properties remained HDR zoned. However, the applicants, and others, lodged submissions against the PDP seeking low density suburban residential zoning ("LDSR"), and no submissions were lodged within the required period by any parties seeking to retain HDR. The council commissioners recommended that the site and the applicants' properties be rezoned to LDSR, and the council notified this ("the rezoning decision"). However, CSF, which had not submitted on the rezoning, lodged a notice of appeal against the rezoning decision ("CSF's appeal"). The council decided, under ss 95A-95F of the RMA, to process CSF's development application on a non-notified basis and, under s 104, granted consent subject to conditions.

The applicants claimed that the council erred by: placing improper weight on CSF's appeal and on the LDSR zone in the PDP; failing to apply the PDP correctly; erring in regard to the permitted baseline; failing to identify the affected persons; failing to correctly identify the extent of adverse effects of the proposed activities; and failing to identify that compliance with a certain consent condition affected the applicants' interests. The High Court considered the relevant
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RMA provisions and legal principles derived from case authority relating to a notification decision, before addressing the alleged council errors in the present case. Regarding whether the council failed to place proper weight on LDSR zoning, the applicants submitted there was an injustice in the council's notification and substantive decisions in that they effectively denied the applicants the benefit obtained through the rezoning decision. Further, they argued that the council was aware that CSF's appeal was probably invalid because it had no right to lodge an appeal. After reviewing the council's decision-making process in the case, the Court stated that the justice of the situation and the particular facts required the council to give considerable weight to the LDSR zoning of the site in the PDP. Although the council had no jurisdiction itself to determine CSF's appeal to be invalid, it could make an assessment and determine the prospects of the appeal succeeding were low. It did not do this and so proceeded to make its notification and substantive decisions without taking into account a relevant consideration. This was a reviewable error. On that basis, the Court found the applicants were entitled to a declaration that the council's decision not to notify affected persons was invalid. None of the other grounds succeeded. The Court noted that CSF's appeal had now been struck out. The Court made declarations and ordered that the notification and substantive decisions of the council were set aside. The matter was remitted back to the council for reconsideration. The applicants were entitled to costs.

Decision date 9 January 2020 _ Your Environment 10 January 2020.

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Summerset Villages (St Johns) Ltd v Auckland Council _ [2019] NZEnvC 173

Keywords: resource consent; amenity values; retirement housing; bulk and location; height

This decision concerned an application by Summerset Villages (St Johns) Ltd ("SVL") to establish a retirement village on a site adjacent to St Johns College in Meadowbank, Auckland. The application was refused by commissioners appointed by Auckland Council primarily due to concerns about the impact of the scale and height of the proposed development on the amenity of the area. SVL appealed that decision and had modified its proposal as a result of mediation and preparation for the hearing.

The Court noted that there was no substantive argument as to the appropriateness of the site for a retirement village, but the issue was in relation to bulk and height and whether or not this had made the proposal unacceptable in terms of the application of various provisions of the Auckland Unitary Plan ("the AUP") or under s 6 of the RMA.

The Court concluded that: viewpoint 11 was acceptable in the context of viewing the site as predominantly three storeys and in terms of its reference to and reflection of the residential character of the area; in relation to the views from St Johns Rd and viewpoint 13, these were transitory views and did not represent the predominant impression that one would obtain when either driving past or walking along St Johns Rd; and finally, taking into account the significant setbacks and the lower coverage than allowed on the site (including that which constituted open space), overall the site was predominantly three storeys.

The Court reached the view that the consent as now proposed by SVL was appropriate and properly balanced the interests of intensification with the need for compatibility with the residential environment and the impacts on visual amenity. Overall, the Court was satisfied that the activity constituted an urban built character of predominantly three-storeys and therefore met the policy of the AUP and other policies and objectives of the AUP generally. The Court stated that the application before the commissioners was more intense and was one which it would generally have had significant concerns with. However, as that was no longer the proposal, it considered that it could properly reach another decision. The Court held that consent could be granted on the conditions annexed to the decision. Applications for costs were not encouraged.

Decision date 13 January 2020 _ Your Environment 14 January 2020

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Gisborne City Council v Juken New Zealand Ltd _ [2019] NZDC 24075

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

Juken New Zealand Ltd ("Juken") was sentenced in the District Court having pleaded guilty to one charge laid by Gisborne City Council ("the council") under s 15(1)(b) of the RMA. The

charge related to logging debris/slash, waste logging material and sediment which was discharged to land and subsequently entered various tributaries of the Mungapoike River. The offending occurred on the 1,096-hectare Waituna forest, south-west of Gisborne. Juken carried out forestry activities under Crown licence and held resource consents allowing roading formation and skid sites in addition to the harvesting and extraction of logs. None of the conditions of consent permitted the discharge of slash or logging debris or sediment to water. Following rainfall events in June 2018, major landslides occurred in the Waituna forests, along with a number of discharges of harvesting slash and silt onto neighbouring property and into water bodies. After an inspection, the council issued abatement notices requiring compliance with the consents held by Juken.

The Court considered the sentencing principles. The environment affected was the forest watercourses. The adverse effects of the offending included: landing and slope failures resulting in large amount of sediment and debris migrating into freshwater systems; increased deposits of sediments in stream ecosystems with resulting loss and degradation of instream habitat; scouring of the stream bed and damage to streambanks; and debris dams blocking water flow. The Court was satisfied that the adverse effects of the discharges were substantial and widespread. In fixing a starting point for a fine, the Court had regard to the following issues; the vulnerability of the affected environment and the extent of damage; the breach of conditions of consent; the business activity aspect of the offending; the need for deterrence; Juken's culpability, which the Court found to be at the higher end of the moderate category; and comparable cases. The Court stated that the number of skid site failures in the present case greatly exceeded that in any other cases; this was a significant factor, as was the consequential damage caused. Juken was a significant corporate entity and the penalty should be commensurate with its financial capacity. Having regard to all these matters, the Court set the starting point at $200,000.

No reduction was made for past good character, given Juken's two previous convictions for RMA offending. While the Court accepted that Juken had undertaken an extensive clean up, no allowance was given for this, although its cooperation and improvements made in its management processes merited a five per cent reduction. Twenty per cent discount was made for less than prompt plea. Accordingly, Juken was fined $152,000 and ordered to pay solicitor costs and court costs. Ninety per cent of the fine was to be paid to the council.

Decision date 16 January 2020 _ Your Environment 17 January 2020

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New Plymouth District Council v Cowley _ [2019] NZDC 21662

Keywords: prosecution; tree protection; district plan

P Cowley ("PC") and A Cowley ("AC"), who was PC's daughter, were sentenced having each pleaded guilty to a charge, laid by New Plymouth District Council ("the council") of breaching s 9(3) of the RMA by trimming a Category 2 notable Tree ("the Tree") at a property at 14E Clinton St, Fitzroy, New Plymouth ("the site") where the defendants lived. A rule in the New Plymouth District Plan ("the rule") specified that trimming of a Category 2 tree was permitted only in specified circumstances without resource consent.

The summary of facts disclosed that the Tree was a large (20 metres tall and 30 metres wide) Moreton Bay Fig, over 100 years old, growing on land adjacent to the site. The Tree canopy overhung the site and AC was concerned about large branches that had fallen onto the site. There were discussions between AC and the council about the Tree and its protected status. In March 2017, AC engaged a contractor to trim a limited number of dead or dangerous parts of the Tree and it was explained by the council to AC that resource consent was required before any further branches overhanging her property could be removed. In February 2018, AC, with the help of two unidentified men, cut multiple branches off the Tree without consent and without informing the owners of the Tree. The work did not comply with the Rule. A large section of the canopy was removed. A council officer visiting the site after the offending was told by PC that a fine for the offending would be welcome as the trimming of the Tree had added considerably more to the value of the site.

The Court considered the sentencing principles as established by the Sentencing Act 2002 ("SA") and case authority. The offending had left the Tree mis-shapen and the long leafless laterals had undermined its former aesthetic appearance. The large hole created in the canopy increased the Tree's vulnerability. The Court considered that the effects of the offending were moderately serious and included effects on the area's amenity and the stress on the Tree. It
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was clear that the defendants were aware of the district plan requirements. The Court determined that in the circumstances both defendants were highly culpable and wilfully had acted without obtaining the consents which they knew were required. The offending had a moderately serious effect on the environment. The Court set the starting point at $25,000, to be apportioned between PC and AC in the amounts of $15,000 and $10,000 respectively. The Court declined an application by AC for discharge without conviction under ss 106-107 of the SA, finding that the gravity of the offending far outweighed any possible consequences to her of conviction.

Regarding aggravating factors, the Court was not convinced that arrogance on the part of the defendants was an aggravating factor, but did agree that the premeditation displayed by PC warranted an uplift of five per cent against him. There had been no expressions of remorse but a discount of three per cent was given for previous good character, in addition to 25 per cent for early pleas. Accordingly, PC was fined $9,166 and AC $7,275. This judgment was interim pending further advice being made to the Court as to financial capacity to pay the fines.

Decision date 16 January 2020 _ Your Environment 17 January 2020

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Auckland Council v Imperial Homes Norwest Ltd _ [2019] NZEnvC 194

Keywords: costs; enforcement order

The Court considered applications for costs by Auckland Council ("the council") against Imperial Homes Norwest Ltd ("IHN"), and by IHN against the council, following enforcement order proceedings. The council applied ex parte for enforcement orders against IHN that it cease activities associated with the sale of certain future lots at a site in Whenuapai. The lots had been designated as affordable lots within a Special Housing Area, but the council contended they were being or were likely to be offered for sale at a price exceeding that specified in the conditions of consent. The Court proceeded by way of a Pickwick notice and required the council to serve IHN with its enforcement application. Ultimately the matter was resolved without the need for a hearing and the council then withdrew its application for enforcement orders.

The Court considered the history of the proceedings and the principles applying to its discretion to award costs under s 285, noting the relevant provisions of the Environment Court of New Zealand Practice Note 2014. The Court acknowledged case authority that costs were more likely to be awarded and follow the event in enforcement proceedings; however, "the event" usually referred to was a hearing, which had not occurred in the present case. Addressing first the council's costs application, the Court was satisfied that there were grounds for the council to think there had been a breach of the condition of the resource consent, particularly as IHN had not responded to the council's requests for information. Further, the Court accepted that the council was enforcing the consent condition in its role as regulator under the Housing Accords and Special Housing Areas Act 2013, and the cost of this should not be borne by ratepayers. However, the Court stated that the council had not, as it alleged, been successful, in the sense that the matter was heard and determined by the Court, in the enforcement order applications. Rather, it had achieved the outcome it sought, which was compliance. The Court determined that the council was justified in concluding there was a breach by IHN. Accordingly, it was not willing to find the application was unnecessary or unwarranted, although the Court accepted IHN's submission that to apply ex parte was not necessary. The council's application for costs was granted,

Regarding IHN's application, the Court did not consider that costs against the council were warranted. IHN's application was dismissed. Accordingly, IHN was ordered to pay $6,900 to the council.

Decision date 21 January 2020 _ Your Environment 22 January 2020

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Banora v Auckland Council _ [2019] NZEnvC 198

Keywords: enforcement order

This was the Court's decision on the application by A and E Banora ("Mr Banora") to further amend the enforcement order made against him on 16 December 2016, and amended on 12 June 2019. The order required Mr Banora to complete works on or adjacent to a property in Avondale. The works were described to be done in accordance with an Engineering Plan

Approval ("EPA"), issued by Auckland Council ("the council"). Mr Banora now applied to amend the enforcement order in respects of 12 matters, mainly relating to the EPA engineering plans. The council opposed the application.

The Court reviewed the litigation history of the matter, noting that the council's application for the enforcement order was heard over three days and was the subject of a very thorough decision, in which the Court was satisfied that Mr Banora's actions had resulted in dangerous circumstances to the public and significant levels of adverse environmental effects. The Court was quite satisfied that the orders were justified. Furthermore, the High Court had rejected Mr Banora's appeal. The time limit to undertake the work would expire on 12 December 2019 but the works had not been started. In addition, Mr Banora was prosecuted under the Building Act 2004 regarding the unconsented construction of a retaining wall and was fined, after an appeal to the High Court, $44,550. The Court now observed that the matter had a convoluted and difficult history. The Court stated that in the affidavit by Mr Banora supporting the present application he submitted he had been misled by the council as to the extent and expense of the works required under the enforcement order. In response, the council submitted that there had been no change in circumstances and no relevant new material had come to light which might support a further amendment. The Court concluded that it was unlikely that Mr Banora, a qualified but retired engineer, would have misunderstood the plans and specifications to which he agreed relating to the required works. The Court stated that nothing in the voluminous material submitted by Mr Banora suggested he was in any way lured by the council into consenting and that it was regrettable that he could not accept that the position of the other parties and the need to bring to an end the proceedings must be given priority over his inability to accept the absence of merit in his case.

The Court noted that the council had been granted an order under s 315 of the RMA authorising it to enter the site and do the works in question at Mr Banora's expense. In the interests of pragmatism, the Court was prepared to extend the time limit within the works were to be done by Mr Banora before the council might take steps to undertake it, to 29 February 2020. The application to vary the enforcement orders was declined. Costs were reserved.

Decision date 24 January 2020 _ Your Environment 27 January 2020

(Note – The previous decision was reported in Newslink December 2019 and there were two earlier decisions in 2016 and 2017 but were not reported in Newslink. If interested - see *Auckland Council v Banora [2016] NZEnvC 246* and *Banora v Auckland Council [2017]NZHC1705.* – RHL.)

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

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Other News Items for March 2020

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New Sudima hotel for Queenstown

Stuff reports that Sudima Hotels has announced that the construction has begun of a new 120-room hotel at Five Mile, in Frankton, Queenstown. The development will comprise on the ground floor a lobby and retail space, with guestrooms, a restaurant and conference centre above. Read the full story here.

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QLDC prosecutes construction company

The *Otago Daily Times* reports that Queenstown Lakes District Council is prosecuting Dominion Constructors Ltd for work in the new Kmart building in Frankton. The council alleges that the works were not covered by the building consent. Read the full story here.

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Tiny home proponents to petition Parliament for legislation

The Press reports that manufacturers and owners of tiny homes will ask the Government to legislate to protect them from "over-zealous" councils whose "bureaucratic red tape" prevents people living in such structures. Read the full story here.

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QLDC to stop sewage discharge into water

The *Otago Daily Times* reports that Fish & Game New Zealand has welcomed the decision by Queenstown Lakes District Council (QLDC) not to appeal the refusal by Otago Regional Council of consent for QLDC to discharge untreated sewage into water bodies. Read the full story here.

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Residents oppose Marlborough quarry proposal

The Marlborough Express reports that Marlborough District Council is struggling to cope with the large number of submissions made by people opposed to the plans by Simcox Quarry Ltd to quarry and transport increased volumes of rubble. Local residents are objecting to the project on the grounds of noise, dust and safety. Read the full story here.

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Gulls lured by 3D-printed decoys to new home for America's Cup construction

Radio New Zealand reports that the America's Cup developments have led to the displacement of a colony of threatened red-billed gulls from their breeding ground in a boatyard to a ledge at Wynyard Point's waterfront. The boatyard will be used for construction of buildings to facilitate the boat race. Environmental consultant Paul Kennedy used 3D-printed gull decoys, set in concrete, to attract 1,000 birds to nest on the ledge. Read the full story here.

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West Coast wetlands being erased on private land - Forest and Bird

Radio New Zealand reports that in a statement to recognise World Wetlands Day, Forest and Bird has claimed that aerial images supplied by Landcare Research demonstrate that 10,700 ha of wetlands on private land in the West Coast have been partially destroyed since 2001. Most of the lost wetland areas are believed to have been converted into grasslands for dairy farming. Read the full story here.

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Greymouth hospital building to open soon

Radio New Zealand reports that the overdue completion by Fletcher Building of the Te Nikau Grey Hospital and Health Centre in Greymouth has been brought closer by an agreement that the transition process towards handover and commissioning is now underway. Construction of the $77.8 million hospital began in 2016. Read the full story here.

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Raglan's latest subdivision brings new bridge

Stuff reports that a $12 million bridge has been constructed for Raglan's new Rangitahi housing development. The Rangitahi project is a 550-section development across 117-hectares. Read the full story here.

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Southland Council fears floods will release toxic substance from former paper mill

The *Otago Daily Times* reports that Environment Southland has expressed concerns about thousands of tonnes of a chemical stored in the former Carter Holt paper mill at Mataura, which is threatened by current flooding in the area. The chemical produces ammonia gas on contact with water. The council and emergency services are sandbagging the mill building to prevent the floodwaters reaching it. Read the full story here.

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Claim against council for resource consent difficulties

The *Otago Daily Times* reports that judicial review proceedings are being prepared against Queenstown Lakes District Council by John Cossens, who says his small rural subdivision, which the council took three years to process, cost him a huge amount of stress and money, for which he will seek compensation. The businessman alleges the council acted in error, unreasonably and inconsistently. Read the full story here.

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Submissions on proposal for pastoral lease land conversion

The *Otago Daily Times* reports that a Linz spokesperson has said that the submissions made to a proposal to convert 38,000 ha of Glenaray Station in Southland, currently on a high country pastoral lease, into conservation land will be published on the Linz website after the Commissioner of Crown Lands has reported to the Minister of Conservation on the matter. Read the full story here.

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New Queenstown hotel development not supported by public submissions

The *Otago Daily Times* reports that Queenstown Lakes District Council has received only one submission supporting the $100 million proposal by Coherent Hotel Ltd to build an eight-storey hotel at Aspen Grove in Queenstown. Read the full story here.

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High Court to determine control of development in Upper Clutha Basin

The *Otago Daily Times* reports that the Upper Clutha Environment Society will appeal against the recent Environment Court decision on Queenstown Lakes District Council's Proposed District Plan. The Society seeks a "more directive and non-discretionary regime" relating to rural subdivision to protect the special character of the Upper Clutha area.

Read the full story here.

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More problems with construction of basement of Auckland's Seascape Tower

Radio New Zealand reports that a review by engineering firm Beca has found faults with plans by China Construction New Zealand, owner of Customs Street's Seascape Tower in Auckland, to repair the concrete walls in the basement of the building. The 200 metre apartment tower was originally planned to open in 2021 but works have been stopped since 2018. Read the full story here.

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$90 million spend on Queenstown's roads

The Otago Daily Times reports that as part of the Government's $12 billion infrastructure package, the $90 million allocated for Queenstown will be spent on bus lanes on State Highway 6 between Frankton's BP roundabout and the Kawarau Falls bridge, improvements to the Frankton bus hub, new traffic signals and bus lanes in Frankton Rd, a new roundabout at the intersection of Ladies Mile and Howards Dr, and an underpass beneath Ladies Mile for pedestrians and cyclists. Read the full story here.

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Major Stratford development progressing after delay

Stuff reports that a multi-million dollar Stratford cafe-retail development is progressing after a hold up caused by delay of a demolition of a building. The building was connected to the one beside it, which the developer did not own. Read the full story here.

(Mmmmm. A party-wall. They would have known about it from the start if due diligence had included proper investigation of titles and asked a surveyor- RHL.)

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Broken wastewater pipe in Wellington expected to cost ratepayers $200,000 each week

Radio New Zealand reports that a failure has occurred in the Mt Albert sewer tunnel - part of a 9km pipeline that carries sewage from Moa Point on the city's south coast to the Southern Landfill. Trucks are hauling millions litres of sludge every day to landfill in a fix that is expected to cost ratepayers $200,000 each week. Read the full story here.

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Developer's plans for Masterton's town square

The *Wairarapa Times-Age* reports that Wairarapa developer David Borman has a $15 million plan for Masterton's town square. His plans includes demolishing the existing town hall part of the building, strengthening the other two buildings above building code, keeping the heritage listed facade, and erecting a new 900-seat civic centre at the back of the town square. Masterton District Council is seeking ratepayers' ideas on the precinct's future. Read the full story here.

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Foodstuffs building to feature New Zealand's largest solar panel roof

Stuff reports that the new North Island distribution centre, currently being built by Foodstuffs near Auckland International Airport, will feature the country's largest solar panel farm. It will include the equivalent of 14 netball courts of solar panels. Read the full story here.

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$1.5m government funding for Hawke's Bay water agency idea

Radio New Zealand reports that Local Government Minister Nanaia Mahuta has asked five Hawke's Bay local authorities to find possible new ways of cooperation and collaboration, with the aim of establishing a water agency which could administer drinking, storm and sewage waters throughout the region. The councils will receive $1.55 m in government funding. Read the full story here.

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Hamilton City Council tightens use of city's water

Stuff reports that Hamilton City Council is increasing its monitoring of sprinkler usage. Hamilton is currently on water level alert two, which requires using sprinkler systems on alternate days between 6am to 8am and 6pm to 8pm. Read the full story here.

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Apartment tower idea for Christchurch's Victoria Mansions

Stuff reports that a 14-storey apartment building could be built next to Christchurch's historic Victoria Mansions. The Victoria Mansions will be restored with retail spaces on the ground floor, twelve apartments, and an added floor with two penthouses. Read the full story here.

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Drought brings toxic algae in NZ's waterways

Radio New Zealand reports that Wellington Regional Council has warned that toxic algae is present in the region's waterways and the presence of algal blooms in rivers means that swimming is banned. Similar warnings are in place in Southland. Read the full story here.

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Housing developments planned as part of iwi/private developer partnership

The Dominion Post reports that 56 two and three-bedroom terraced homes have been built in Petone following a partnership deal between Wellington iwi and The Wellington Company, in addition to 100 further homes being built at Mt Cook near the centre of the Capital. The company is also managing the construction of the 89-dwelling Te Puna Wai papakainga housing project in Wainuiomata. Read the full story here.

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New residential/commercial building in Dunedin's heritage precinct

The *Otago Daily Times* reports that Dunedin City Council has granted consent for a new residential-commercial building at Moray Pl, in the George St heritage precinct. Although not classified as a heritage site itself, the building dates back to 1908. The developer Edit South

says there will be four one-bedroom units and two 2-bedroom units when the renovations are completed. Read the full story here.

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Auckland Transport says new $5 m Victoria St cycleway is temporary only

The New Zealand Herald reports that Auckland Transport has admitted that the $5.3 m cycleway being constructed on Victoria St in Auckland, and contributing to what MP Nikki Kaye has called "the perfect storm" of roadworks bringing the CBD to gridlock, will be partly dug up again in two years for another transport project. Read the full story here.

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Government $12 billion infrastructure spend-up announced

Radio New Zealand reports that the Government has announced it will spend up to $12 billion on new infrastructure for rail, roads, schools and health. Read the full story here.

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Delays in construction of Whanganui's $2.5m cycle lane bridge

Radio New Zealand reports that Whanganui Mayor Hamish McDouall says that completion of the construction of the Upokongara Cycle Bridge has been delayed because the initial resource consent granted by the district council for the 130 m long bridge contained an error and an amendment to the consent, to raise the abutments on the structure by 80 cm to allow for climate change, is required. In addition, the council needs to properly consult with Māori before the bridge can finally be put to use for local cyclists. Read the full story here.

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Northland farms entering meteorological drought conditions

Stuff reports that Northland has just experienced a record-breaking hot and dry year which Niwa meteorologists are calling the emergence of drought conditions. Dairy farmers are having to borrow to buy extra feed and there is little pasture growing. However, the Ministry for Primary Industries has not yet declared a drought. Read the full story here.

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DoC approves hydro scheme proposal

The *Otago Daily Times* reports that the Department of Conservation West Coast operations director, Mark Davies, has approved a small hydro-electrical power scheme at Te Taho, in a creek which flows into the Whataroa River. Read the full story here.

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High Court declines injunction to prevent demolition of Invercargill CBD block buildings

The *Otago Daily Times* reports that the High Court in Christchurch has declined to order a stop on the demolition by HWCP Management Ltd of a block in Invercargill's CBD which it proposes to redevelop. Read the full story here.

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Large new Auckland CBD hotel planned

The New Zealand Herald reports that Hotel Grand Chancellor (Auckland) has lodged plans for a new 12-level 191-room hotel near the fire-damaged International Convention Centre. Auckland Council has notified the plans to develop the land at 78-80 Wellesley St, which is an amalgamation of two lots. When completed, the hotel, with others recently constructed in the area, will serve to support accommodation needed for SkyCity conferences. Read the full story here.

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Government PGF investment in pā sites tourism project

The New Zealand Herald reports that the Provincial Growth Fund will put $2.7 million into the transformation of Waipukurau pā sites into a cultural tourism attraction. Read the full story here.

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Reports suggests seaweed can protect coral reefs from climate change effects

Radio New Zealand reports that a study by marine biologist Dr Christopher Cornwall from Victoria University of Wellington, published in the *PLOS One* journal, *says* that a seaweed called coralline algae can protect coral reefs. Read the full story here.

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Consent granted for lodge at Waitati Valley

The *Otago Daily Times* reports that Dunedin City Council has granted resource consent for the construction of a twin-level accommodation lodge for the Waitati Valley Equestrian Centre. Read the full story here.

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Concern that some submissions on open-ocean salmon farm proposal not shown on council website

Radio New Zealand reports that several submissions made concerning New Zealand King Salmon's application for resource consent for this country's first open-ocean fish farm in Cook Strait were not uploaded to Marlborough District Council's website. Read the full story here.

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Surveyed Queenstown residents say there is too much tourist pressure

The *Otago Daily Times* reports that the majority of residents in Queenstown who were included in the latest Mood of the Nation online survey think foreign tourists are placing too much pressure on this country's infrastructure and the environment. Read the full story here.

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$1.5 billion building and construction works in Christchurch

Radio New Zealand reports that several multi-million construction jobs are due to be completed in Christchurch this year, including the $975m new Christchurch Hospital Acute Services Building, the $475m Convention Centre and the Christchurch Northern Corridor and Southern Motorway projects, worth $485m. Read the full story here.

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