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Legal Case-notes September 2020

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

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

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

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

- An unsuccessful application to the High Court for an injunction to prevent Palmerston City Council designating land for a road across land of a company that planned to subdivide it in a different manner;
- An appeal against conviction of a developer of a large residential subdivision at Wanaka for allowing sediment discharge into the Clutha River;
- Consideration by the Environment Court of an application by Upper Hutt City Council to stop an unformed road at Silverstream;
- An appeal against refusal of consent by commissioners for Auckland Council, for works to provide a public footpath and sea-wall in the coastal marine area at Orewa;
- A successful appeal to the High Court and a cost decision following refusal of consent for works on esplanade reserve and coastal marine area for redevelopment of an existing approved boat-repair operation at Opua in the Bay of Islands.
- A further Environment Court decision relating to remedial works following a landslip on a residential property at Nelson;
- The re-hearing by the Environment Court of an appeal following the Court of Appeal decision about retrospective consent for an over-height earth bund against the boundary of a property at Speargrass Flat, near Queenstown.

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CASE NOTES SEPTEMBER 2020:

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Aokautere Land Holdings Ltd v Palmerston North City Council _ [2020] NZHC 873

Keywords: High Court; injunction interim; requirement; designation; road; compulsory acquisition; public notification; service of documents

Aokautere Land Holdings Ltd ("Aokautere") applied for interim injunctive relief, restraining Palmerston North City Council ("the council") from taking any further steps regarding the notice of requirement ("NOR") for a new designation. Aokautere was a property developer with a registered office in Palmerston North and had applied for resource consent to subdivide certain land it owned into six residential lots. The designation related to the council's proposal to develop a road between Abby Rd and Johnston Drive ("the road") which would run through Aokautere's land, the subject of the subdivision application. The council, as the requiring authority, under s 168 and 168A of the RMA, requested public notification of the decision to grant requirement of the site for the road ("the notice"). The notice was sent to Aokautere at its

rating address. Aokautere challenged the validity of the service of the notice and claimed that its contents contained errors in the description of land titles. Since filing the interim injunction, Aokautere's subdivision consent had been declined by the council.

The High Court considered the principles relevant to the threshold test for the grant of an interim injunction. First there must be a serious question to be tried. Second, was where the balance of convenience lay. The third was the overall justice of the position. Regarding the first test, the Court noted that Aokautere sought a declaration that the notice was invalid and that all designation proceedings arising should stop. The grounds were: that the description of the "site" at which the road was to be placed had been wrongly described; and the council purported to serve the notice on a private residence, where rate demands were sent, and not Aokautere's registered office. The Court considered the notice and upheld the council's submission that the notice made it clear which land was in question, by description and by photographs, and there was no material risk that submitters were misled by the accepted title misdescriptions. Further, the Court did not think there had been any procedural unfairness of any substance. Regarding service of the notice, the Court did not find that service to the ratings address rather than the registered office was a substantial procedural defect. Aokautere had received the notice and had made submissions to it. The Court then considered s 296 of the RMA, which provided that where there was a right of appeal or inquiry to the Environment Court, injunctive relief was barred. In the present case, the Court said that the procedural defect challenges by Aokautere could be heard by the Commissioner appointed for the purpose of determining the NOR under s 168A of the RMA. The Court did not now uphold the submission that there was a serious question to be tried.

Secondly, the Court said it was plain that the balance of convenience favoured the council. The hearing under s 168A of the RMA should proceed before the Commissioner who should determine whether the notice was invalid. Finally, the Court was satisfied that the overall justice of the case did not require injunctive relief to be granted. The processes under the RMA should be conducted as the RMA provided before the Commissioner without further delay. The threshold tests for interim relief having not been passed, the application was dismissed. Directions were made as to costs.

Decision date 25 June 2020   Your Environment 28 June 2020

(See also decision [2020] NZHC 11110 issued 25 May 2020)

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Northlake Investments Ltd v Otago Regional Council _ [2020] NZHC 1144

Keywords: High Court; prosecution; subdivision; residential

Northlake Investments Ltd ("Northlake") appealed to the High Court against its conviction, and sentence, in the District Court's decisions of 21 June 2019 and 3 September 2019 respectively. Northlake was a property development company undertaking a residential subdivision near Wanaka when heavy rainfall on two occasions carried sediment from the earthworks into the Clutha River. Northlake appealed its conviction on the ground that the Judge erred by finding it failed to take the necessary reasonable precautions to prevent the discharge. The sentence, a fine of $42,500, was appealed on the ground of disparity with the sentence imposed on its contractor Civil Construction Ltd ("CCL").

The Court reviewed the case and the relevant statutory provisions. Northlake was charged under s 15(1)(b) of the RMA. In the sentencing decision, Northlake contended it should have been charged as a principal under s 340 of the Act. However, the Judge decided Northlake should be charged in its own right, under s 338, on the basis that it was the developer and had ultimate responsibility. Northlake now submitted that its liability was vicarious and it had not contributed to the physical events. The High Court said the formulation of the charge had little bearing on the appeal's outcome because at trial Northlake ran the defence that it took all reasonable care. Further, the provisions of ss 340 and 341 of the RMA meant that no miscarriage of justice arose from the fact that Northlake was treated as though it "personally committed" the offence of the discharge into the Clutha. The appeal turned rather on the Judge's evaluation of the evidence regarding the steps Northlake took to prevent a discharge and the sufficiency of such steps. The Judge placed considerable focus on the requirement to minimise open areas on the earthworks and to revegetate the site. The Court conceded that on a strict construction of the resource consent and the site management plan ("SMP") regarding "open land" it was arguable that land covered in topsoil was "open". However, irrespective of this issue, the Judge said that Northlake had been put on notice of the inadequacy of the SMP
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by the successive heavy rainfall events. Section 15 of the RMA was an independent obligation on a developer, over and above and rules provided by a resource consent, not to discharge sediment into water. It was open to the Judge to conclude the SMP was inadequate and that Northlake failed to take all reasonable steps to prevent the discharge. It was Northlake's failure to insist on a stronger sediment control system that prevented it now from proving that a miscarriage of justice had occurred.

Regarding the sentence appeal, Northlake submitted that its starting point should not have been higher than that of CCL. However, the Court said this was premised on the assumption that Northlake was only vicariously liable for the discharge. It was appropriate for the Judge to proceed on the basis that Northlake was a primary offender. The fine was not manifestly excessive. Accordingly, the appeals against conviction and sentence were dismissed.

Decision date 24 June 2020   Your Environment 25 June 2020

(The previous decision was reported in Newslink August 2019 and February 2020.)

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Re Upper Hutt City Council _ [2020] NZEnvC 60

Keywords: road stopping; procedural

The Court considered a proposal by Upper Hutt City Council ("the council") to stop an unformed road known as No 1 Line Silverstream ("No 1 Line") shown on SO Plan 518795 ("the road"). The council sought to sell sections 2 and 3 on SO 518795 to adjoining owners and retain sections 1 and 4 as recreation reserve. The council submitted that the road had never been formed and was never likely to be because of the steep topography.

The Court reviewed the council process. Public notices were published in a local newspaper, on 18 and 25 April 2018, and public signs were put up at either end of, and entrances to, No 1 Line. Two objections were received in May 2018. In December 2018, the council realised it had failed to serve notices relating to the proposal on the occupiers or owners of all land adjoining No 1 Line. On 14 December 2018, such notices were hand delivered. As a result, there was third objection received. The Court considered the provisions of sch 10, cl 6 to the RMA, noting that the Court had to have regard to the district plan, the plan of the road to be stopped and the council's explanation, in addition to any objection made. The Court stated that the notices sent to ratepayers and occupiers in December 2018 incorrectly referred to the wrong SO Plan and the same error had been made in the newspaper advertisements. In addition, the council's explanation had incorrectly referred to the wrong plan, as well as the correct one. The Court stated that the "central issue" in considering road stopping applications derived from Re Ruapehu District Council (2002) 8 ELRNZ 144 and was whether the road was needed for public use. The Court considered the objections and the council's response to them. The Court was satisfied that the road to be stopped was not presently in use for vehicular access and such foot access as there was would continue to be protected by the reserve status of Lots 1 and 4. None of the objections related to the council's errors.

The Court was tentatively satisfied that it might be appropriate to approve the road stoppage, notwithstanding the unsatisfactory council performance of its administrative duties in this case. The Court specified particular matters which were to be addressed before a final determination would be issued and made directions to the council accordingly.

Decision date 4 June 2020   Your Environment 5 June 2020

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Auckland Council v Auckland Council _ [2020] NZEnvC 70

Keywords: resource consent; conditions; esplanade reserve; coastal marine area; New Zealand Coastal Policy Statement

The Environment Court considered the appeal against the refusal of consent by Auckland Council (by its hearing commissioners), ("the Respondent") for works relating to a walkway on, and the protection of, part of the esplanade reserve at Orewa Beach ("the site"). The applicant for consent was Auckland Council through its Community Facilities department ("the Applicant"). Most of the site was vested in the Respondent as local purpose esplanade reserve and zoned under the Auckland Unitary Plan ("AUP") as Open Space. The boundary between the district and the coastal marine area was the line of mean high water springs ("MHWS") and the regional coastal plan applied to the area below MHWS. The Orewa Beach Esplanade Enhancement Project was a management strategy developed by the Respondent and its

predecessor to counter erosion of the existing esplanade reserve. The proposed works the subject of the present proposal included construction of a footpath, an undulating sea wall along about 600 m of coastline, a ramp and stairs, replacement of the existing footbridge and naturalisation of a dune, and works on existing stormwater outfalls.

The Court considered the decision of the Respondent to decline the application and the Applicant's present appeal. Grounds for appeal included: failure to recognise and provide for matters of national importance under s 6 of the RMA, including public access to coastline; failure to have regard to s 7 matters; and inconsistency with s 5. The Court considered the amended proposal and determined that it did not significantly differ from the proposal publicly notified and was within scope. The proposal was assessed under s 104 of the RMA and the relevant planning provisions to which the Court had regard included: the New Zealand Coastal Policy Statement, in particular Objectives 2, 4, 5 and 6 and Policy 4, 6, 7, 13, 18, 19, 25 and 26; and the district and regional plan provisions of the AUP . Expert evidence about coastal processes, together with relevant case authority, were considered by the Court, which noted that four expert conferences were held. The remaining issues among expert witnesses were: whether a package of responses, including a hard structure, was needed now or in 10-12 years; whether a different combination of hard and soft responses would be a better alternative; and whether the proposed sea wall should be located further landward. In addition, the Court addressed expert evidence concerning landscape, natural character and visual amenity and from recreation planners concerning recreation effects of the proposal. The Court stated that evidence as to the effects on the ecology of the site was that adverse effects would be low and able to be managed by appropriate conditions of consent.

The Court stated that two matters of national importance arose: the preservation of the natural character of the coastal environment and the protection of that environment from inappropriate development. The Court accepted expert evidence that doing nothing, or managing a retreat, would not be adequate to protect the esplanade reserve and provide for suitable public access along it. The issue was whether the need or desire for a more formalised pathway on the esplanade reserve justified the use now of a hard seawall. The Court concluded that the appeal should be allowed and the Applicant granted consents in respect of the amended proposal. The Court was satisfied that the amended proposal appropriately responded to both the risks associated with coastal hazards and the desirability of public access and recreation, while appropriately mitigating the adverse effects on natural character and amenity. The appeal was allowed and consents granted. The Applicant and the Respondent were directed to confer and file a set of draft conditions. Costs were reserved.

Decision date 30 June 2020   Your Environment 1July 2020

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Schmuck v Northland Regional Council _ [2020] NZHC 590

Keywords: High Court; resource consent; coastal marine area; esplanade reserve

D Schmuck ("S") appealed against the Environment Court ("EC") decision of 26 July, 2019 by which the EC refused to renew certain discharge consents relating to S's boat yard in Walls Bay, Opua ("the site"). S's family bought the boat yard in 1996, at which time its activities extended onto an unformed road, which had been closed and vested in the Far North District Council ("the DC") as a local purpose (esplanade) reserve. Easements over the reserve were registered. Opua Coastal Preservation Inc challenged the registration of the easements. In *Schmuck v Opua Coastal Preservation Inc* [2019] NZSC 118, [2019] 1 NZLR 750, the Supreme Court reinstated the DC's decision consenting to the easement providing for wash down, repair and maintenance of boats on specified parts of the reserve and into the coastal marine area ("CMA"). Subsequently, by consent order of the EC in 2002, S held land use consents, coastal permits and discharge consents authorising the boat yard activities on the boat yard land, on specified parts of the reserve and into the CMA. The land use consent had no expiry date and specified the permitted activities on the reserve. Otherwise, the land consent specified that any repair or maintenance work was to be done within the boat yard and not on the reserve. The coastal permits issued by Northland Regional Council ("NRC") were to expire in 2036. The discharge consents issued by NRC under the 2002 EC consent order, were replaced in 2008 and given a 10-year expiry date, being March 2018. The discharge consents were to discharge treated wastewater into the CMA and to discharge contaminants to air from boat construction and associated activities on the boat yard land and to discharge contaminants to the ground including on the reserve land. S sought renewal of the discharge consents for a term of 18 years, to coincide with the expiry of the coastal permits. In its decision of 26 July 2019, the EC
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concluded that it had no jurisdiction to consider renewal of the discharge consents as they related to the reserve land, as this was not included in the original consent.

S now alleged the EC made the following errors of law: declining jurisdiction to consider the discharges from the reserve, without hearing from the parties, due to what was obviously a typographical error; reaching a conclusion to which it could not have reasonably have come; purporting without jurisdiction to amend a valid land use consent providing for activities on the reserve without hearing from the DC; focusing on irrelevant matters; and erring in interpreting s 105(1)(c) of the RMA.

Addressing the first alleged error, breach of natural justice, the Court noted that the EC acknowledged that the description of the reserve land was incorrect and found it could not consider a consent for the wrongly named land. The issue of the error in the description of the land was identified by the EC only after the hearing. The parties were therefore not given the opportunity to address the issue. The Court now found this was more than a technical issue; it was a fundamental jurisdictional point, as the result of which the EC did not consider the application for renewal regarding the reserve land. After discussing relevant case authority, the Court found that the EC's decision to decline jurisdiction deprived S of his statutory right to have his appeal fully considered. It was not simply a process issue and the error had material effect. On this ground alone the Court would allow the appeal.

Regarding whether or not the EC was correct to hold it had no jurisdiction to consider the discharge consent application regarding the reserve land, the Court now found the EC took a wrong approach in proceeding on the basis that, because the description of the land was wrong, the reserve land was not the land identified in the original discharge consents. Instead, the EC first should have determined what the discharge consents meant, and interpreted them objectively. Had it done so, it would have taken into account that the misdescription was a typographical error, that the discharge consents were first issued as part of the EC consent order of 2002 and that the DC and the NRC in 2019 had approved the review of the Operational Management Plan for the boat yard, which included both the discharge and land use consents. The Court now concluded that the discharge consents applied to the reserve and the EC erred in determining otherwise. The error was material. In addition, the Court found that EC committed a breach of natural justice in failing to refer its solution of the issue to the parties after it viewed the site. The appeal was allowed. The EC decision was set aside and the matter was remitted to the EC for further consideration with directions. Costs were reserved.

Decision date 9 July 2020

Schmuck v Northland Regional Council _ [2020] NZHC 1270

Keywords: High Court; costs

D Schmuck (S") applied for costs following his successful appeal to the High Court against a decision of the Environment Court relating to renewal of a discharge consent regarding his boatyard activities at Opua. S now sought costs against Northland Regional Council ("NRC") and Opua Coastal Preservation Inc ("OCP"). NRC opposed costs and OCP submitted it was acting in the public interest and costs should lie where they fell or be reduced.

After reviewing the principles and the relevant High Court Rules relating to the award of costs in the High Court, the Court noted that in *Schmuck v Opua Coastal Preservation Inc* [2019] NZSC 155, the Supreme Court found that any public interest aspect relating to OCP was limited and did not justify making an order that costs should lie where they fell. The Court now saw no reason to depart from that conclusion. After considering relevant case authority, the Court further found that the public interest aspect justified a small reduction, of five per cent, in costs to be borne by OCP. The Court stated that NRC and OCP both defended the EC's decisions and were therefore liable in costs. The quantum of costs allowed was $16,132, plus disbursements of $2,676. Accordingly, NRC was ordered to pay S the sum of $9,404 and OCP was ordered to pay S the sum of $8,934.

Decision date 9 July 2020   Your Environment 10 July 2020

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Smith v Young _ [2020] NZEnvC 83

Keywords: enforcement order

By its decision of 13 May 2020, the Environment Court made an interim enforcement order against K and G Young ("the Youngs") relating to a landslip on residential properties in a suburb
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of Nelson. The applicants for the order were M and E Smith ("the Smiths"). The order required compliance with conditions of a resource consent and required the Youngs to remedy or mitigate effects caused as a result of the earthworks.

The Youngs now applied under s 321 of the RMA for an amendment to the order of 13 May 2020. The Youngs submitted that the requirement to have fortnightly inspections was costly and their engineer advised that monthly inspections would suffice. That position was supported by the engineer for Nelson City Council ("the council"). However, the council's engineer did not support the suggestion by the Youngs that a contractor could undertake the inspections, rather than a geotechnical engineer, to reduce costs further.

The Court was satisfied that the inspections required by the enforcement order could occur monthly, rather than fortnightly. The Court agreed with the council engineer that it would be unwise to allow for the leniency of a contractor's inspection, rather than a geotechnical engineer's inspection. In addition, the Court agreed with other specified recommendations by the council engineer. Accordingly, the order was amended as specified in the present decision.

Decision date 20 July 2020   Your Environment 21 July 2020

(The previous decision [2020] NZEnvC 61 was reported in Newslink August 2020.)

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Flax Trust v Queenstown Lakes District Council _ [2020] NZEnvC 84

Keywords: resource consent; conditions; condition reviewed; variation; earthworks; effect adverse; amenity values

This was the rehearing by the Environment Court Judge Jackson, sitting alone, of an appeal by Flax Trust ("Flax") against the decision by Queenstown Lakes District Council ("the council") relating to a large earth mound built by Flax Trust on its property in the Wakatipu Basin. By the Environment Court's decision of 17 October, 2016 ("the first EC decision"), Judge Jackson found that the constructed mound, although higher than that consented to, was a justified response to an unauthorised set of non-compliant buildings on the adjacent property, owned by Speargrass Holdings Ltd ("Speargrass"). On appeal, the High Court in its decision of 9 May 2018 ("the HC decision"), held that the first EC decision contained errors of law which were material and allowed the appeal, returning the matter to the EC for reconsideration. The errors included: finding that Speargrass's subdivision development was unlawful because the consent had not been registered under the Land Transfer Act; findings concerning the "environment" for the purposes of s 104 of the RMA; and finding that the adverse effects of the mound were the same as the effects of trees planted on the Speargrass property.

The Environment Court now reviewed the history of the litigation, and stated that in preparation for the rehearing there had been a considerable amount of new evidence submitted. The relevant resource consent applications in respect of the Flax site were considered, including RM130766 ("the earthworks consent") and RM150158 ("the new mound application"). Regarding the latter, the Court stated that the status of the application was discretionary and was to be considered under s 104(1) of the RMA. The Court stated that, following the HC decision, it must consider the buildings as erected on the Speargrass property and their location as part of the environment under s 104(1)(a) of the RMA. The Court also considered whether a change in circumstances was relevant to the consideration and grant of a variation of consent.

After a consideration of the Flax site and the Speargrass site, and the respective resource consents and conditions applying to each, the Court asked, with reference to case authority, what were the screening obligations of Speargrass under its consents, in particular, what tree planting was proposed, across Speargrass's boundary with the Flax site. The Court stated that a purpose of the planting was to screen the Speargrass house from being viewed from the Flax Site. If, after a reasonable time, the trees did not achieve this purpose that would constitute a breach of the Speargrass consent. The Court held that: planting deodars to attain a height of 30 metres and alders to a height of 25 metres; and planting and maintaining trees to attain their natural shape, was the purpose and intent of the planting provision in the Speargrass consent. The Court found it was an implied limitation that any actions, apart from minor trimming, which would hinder the trees on Speargrass's site from attaining the heights specified was a breach of the consent.

The Court addressed the as-built mound on the Flax site, finding that it maintained the privacy of both the Speargrass and Flax sites. The Court assessed the actual adverse effects of the mound as-built at four dates. In August 2016, the mound was obvious and intrusive from the Speargrass site, as the High Court had found. However, the Court stated that the actual effects
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of the mound as at December 2019 and January 2020, after the trees planted on the Speargrass site had grown to screen it, were that the mound was barely visible. The Court found there were no adverse effects at those times. By February 2020, the effects of the mound had changed again, due to the topping, by 2-3 metres in height, of the alders and deodars by Speargrass. The consequence of the cutting of the trees was that the mound was once again visible, and the adverse effects of this on visual amenity at the time of the rehearing were adverse. However, the Court found that such effects were entirely self-inflicted by the owners of the Speargrass property. The purpose of the planting condition was to provide privacy for the Flax site and to screen the views of the Speargrass house. There was only very limited scope for Speargrass to top and trim their trees. The Court also found that the effect alleged by Speargrass that people might stand on the mound and look into the Speargrass property would be minimal, if the alders and deodars were allowed to grow as they were designed. The Court now found that the facts and adverse effects found by the High Court were relevant to situation when the trees were topped and immature. Such effects, when the trees were allowed to grow to the specified heights, would be minimal.

The Court then addressed the relevant provisions of the operative district plan ("ODP") relating to earthworks, naturalness, landscape, amenity values and mitigation of adverse effects, finding that the as-built mound was moderately sympathetic with existing topography and that to lower it would be less sympathetic to rural qualities because it would open up views of the buildings on each site. Turning to consider the proposed district plan ("PDP") provisions relevant to the mound, and expert evidence regarding them, the Court concluded that, to assist integration and ensure privacy, a mound to the as-built height on the Flax site was prima facie reasonable under specified policies. The Court concluded that the earthworks consent would be better achieved by granting consent to the variation sought. Furthermore, the adverse effects of the mound on the Flax site or its neighbours were minor at most. While the Speargrass site owners were entitled to carry out some maintenance of the trees, that must be with the purpose of screening. The Court did not consider that the mound should be reduced in size, as to lower it would do little to improve the views from the Speargrass house. The Court found that the mound, with two minor changes as outlined, implemented the relevant policies and achieved the relevant objectives of the ODP and of the PDP.

The Court concluded that, applying the HC decision in the light of the "new evidence": the effects of the mound were likely to be very minor; the continued antipathy to the mound by Speargrass was unreasonable in the context of the locality and the district plans; with two limited exceptions, the mound was generally appropriate in scale and a reasonable response to the needs to provide privacy under the PDP and the desire for rural amenity under the ODP. Taking into consideration all the competing factors and policies, the Court judged that the correct outcome under the ODP and the PDP was to grant approval to the variation of the earthworks consent, on conditions as amended in [473] of the decision. The parties were directed to confer on the amended conditions. Costs were reserved.

Decision date 24 July 2020   Your Environment 27 July 2020

(See previous references in Newslink: February 2017 and February 2020. The properties involved are in a formerly treeless area identified as "Outstanding Natural Landscapes". This area was subject to several appeals which were reported in Newslink in September 2004 and July 2005. As Google Earth shows, the area is no longer treeless! – 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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New direction for resource management system

Minister for the Environment David Parker has announced that the Government has welcomed the most comprehensive review of New Zealand's resource management system since the Resource Management Act (RMA) was passed in 1991.

The report, *New Directions for Resource Management in New Zealand*, was commissioned by David Parker and prepared by an independent review panel led by retired Court of Appeal Judge Tony Randerson QC after extensive consultation.

Among its recommendations is the replacement of the existing RMA by two separate pieces of legislation; a Natural and Built Environments Act and a Strategic Planning Act.

Minister for the Environment, David Parker said a review of the resource management system was long overdue.

"The RMA has doubled in size from its original length. It has become too costly, takes too long, and has not adequately protected the environment," he said.

"There are significant pressures on both the natural and built environments that need to be addressed urgently. Urban areas are struggling to keep pace with population growth and the need for affordable housing. Water quality is deteriorating, biodiversity is diminishing and there is an urgent need to reduce carbon emissions and adapt to climate change.

"The Panel has designed tomorrow's resource management system to deliver better outcomes for the environment, people and the economy," he said.

The Government had already made changes to the resource management system in the current three-year term to address issues that could not wait for the comprehensive review, released on Wednesday 29 July.

"It is for the next Government to consider the report, and decide which aspects to adopt and decide whether to implement it in whole or in part."

However, David Parker said he expected political parties would develop their policies for the upcoming general election campaign in light of the report's findings.

The review panel said the proposed new Natural and Built Environments Act (NBEA), taking a substantially different approach from the RMA, would focus on enhancing the quality of the environment, housing and achieving positive outcomes to support the wellbeing of present and future generations.

The proposed Strategic Planning Act would embed integrated spatial planning across all regions of New Zealand. It would set long term strategic goals and help integrate legislative functions across the resource management system including the proposed NBEA, the Local Government Act, the Land Transport Management Act and the Climate Change Response Act. This will allow a broad range of matters to be reconciled to ensure better future planning, including for infrastructure and housing.

It recommends greater use of national direction by the Environment Minister and a more streamlined process for council plan-making and a more efficient resource consent process.

It also proposes a new separate law to address issues related to climate change adaptation and the managed retreat from areas threatened with inundation.

The Panel's view was that any future resource management system should give effect to the principles of Te Tiriti and provide a clearer role for Maori in decision-making.

The critical sections of the proposed new Act have been drafted by the panel and are included in the report.

The full report is available on the Ministry for the Environment's website.

Please click on the link below for full statement Media release

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New strategy to ensure nature thrives

Minister of Conservation Eugenie Sage has on Monday 10 August launched Te Mana o te Taiao, the Aotearoa New Zealand Biodiversity Strategy - a way forward that envisions Aotearoa

New Zealand as a place where ecosystems are healthy and resilient, and people embrace the natural world.

"The Strategy sets out five core outcomes to ensure nature is thriving by 2050. There are three key themes; getting the system right, empowering action, and protecting and restoring; with specific objectives and goals for 2025, 2030, and 2050" said Eugenie Sage.

The next steps are to develop an action plan working closely with Treaty partners and local government and landholders as key agents for biodiversity work on the ground.

This strategy links to projects such as Predator Free New Zealand by 2050. It endorses community action like backyard trapping, restoration and revegetation projects.

DOC has developed a companion technical document that describes the status and trend of biodiversity to help set priorities for the recovery of our most threatened species and ecosystems.   Please click on the link below for full statement - Media Release

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Corteva may close agrichemical plant in New Plymouth

Radio New Zealand reports that some local residents are welcoming the news that the production of agrichemicals at the Paritutu factory will end if Corteva closes the plant, which is under consideration. From the 1960s until the 1980s, the toxin 2-4-5-T was manufactured at the site and the Ministry of Health found in 2005 that toxin levels in residents' blood was higher than normal. Read the full story here.

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National Policy Statement on Urban Development released

Stuff reports that Urban Development Minister Phil Twyford has released the National Policy Statement on Urban Development which comes into effect on 20 August. In “tier 1” cities, councils will not be able to set building height limits of less than six storeys in city centres. In all urban areas with more than 10,000 people, district plans will not be allowed to include minimum car parking requirements, other than for accessible carparks. Read the full story here.

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Townhouses being built on site of Mosgiel's old RSA bowling green

The *Otago Daily Times* reports that developer and builder Brodie Anderson is building eight new town houses on the site of the Mosgiel RSA bowling green, following resource consent being granted last year by Dunedin City Council. Read the full story here.

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High Court rules water bottling plant approval valid

Stuff reports that the challenge in the High Court by Aotearoa Water Action, to the resource consents granted by Canterbury Regional Council for the extraction of water for bottling, has failed. The Court has held that there was no reviewable error made by the council in dealing with the resource consent applications. Read the full story here.

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City theatres proposed for Whangarei

The Northern Advocate reports that there are bids from two different groups each wanting to build a 850-seat theatre in Whangarei in partnership with Whangarei District Council. Gavin Benney, the council's community development committee chairman, said there was room for both developments. Read the full story here.

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Rio Tinto to close Tiwai Point smelter

Radio New Zealand reports that Rio Tinto has announced it will close the aluminium smelter at Tiwai Point and it has given notice to Meridian Energy that its power contract is terminated. About one thousand people work at the smelter, and the economic viability of the operation has been in question for some time. Read the full story here.

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$16m more from council for Invercargill CBD development
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The *Otago Daily Times* reports that Invercargill City Council has voted to provide a further $16 million towards the Invercargill City Block development, following the withdrawal of an investor in the project. Read the full story here.

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Tomato spider mite pest found in NZ for first time

Radio New Zealand reports that Biosecurity New Zealand has found two infestations of the tomato red spider mite (Tetranychus evansi) near Auckland Airport and in Pakuranga. The pest attacks not only tomatoes but also beans, egg-plants, kumara and some flowers. Tomatoes New Zealand is working with authorities to respond to the incursion. Read the full story here.

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Two abandoned Kilbirnie apartment buildings to be demolished _

The Dominion Post reports that New Zealand Transport Agency says that two empty apartment blocks in Wellington Rd, Kilbirnie have to be demolished because they pose a seismic risk. They were originally purchased by NZTA for road widening purposes, but that roading work has been delayed. Read the full story here.

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"Plan change by stealth" proposal criticised _

The *Otago Daily Times* reports that a planning officer for Central Otago District Council has described the application to subdivide a rural 4.7 ha Cromwell property into two lots, for the purposes of building an additional house, "a plan change by stealth". Read the full story here.

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Property plans kyboshed following architectural blunder

Stuff reports that Christchurch's Redcliffs School, built too high along one edge due to errors made by the architech, will will not have to be modified despite complaints from a neighbouring property owner. Buildings are not allowed to extend above the recession plane without special permission because they could shade and visually dominate neighbouring properties - Redcliffs School is up to 2.25 metres above the recession plane, but independent commissioner David Mountfort has signed the property off, finding that the effects of the mistake on the neighbouring property were “no more than minor”. Read the full story here.

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Farming versus forestry: mutually exclusive or not?

Newshub reports that Hawkes Bay Regional Council have insisted they are not pursuing a "farming versus forestry" strategy with their commissioning of a report ("Community perceptions and values: Land-use change in the Wairoa district") on potential tree planting in the area. As part of the report local Wairoa farmers were surveyed, to get their thoughts. The report aims to help the council to better understand the perceptions of farmers around planting trees in the landscape in order to inform policy design and to assess how it can improve erodible land in the region. Read the full story here.

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$2 million for Kapiti Coast Gateway building

Radio New Zealand reports that the Government will provide $2 million towards the cost of constructing the Kāpiti Gateway building, to be built at the northern end of Paraparaumu Beach. Read the full story here.

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Auckland harbour shipping channel deepening to go ahead

Radio New Zealand reports that Ports of Auckland will go ahead with the deepening of Auckland Harbour's shipping channel by about two metres after being granted resource consent for the proposal from Auckland Council. Read the full story here.

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Otago University seeks consent for academics' retreat building in Queenstown

The *Otago Daily Times* reports that the University of Otago has applied for consent to construct a $12 million retreat on a four-hectare site donated by owners of Remarkables Station. In

addition to the communal building, the complex will comprise a lecture theatre, seminar rooms and kitchen, along with a five-block accommodation area. Read the full story here.

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Taranaki couple in land wrangle with local council

Taranaki Daily News reports that a retired Taranaki couple are faced with spending the rest of their lives on a property they can no longer maintain or risking losing the land altogether by trying to buy it freehold. The Hills have leased the property from the New Plymouth District Council (formerly Taranaki County Council) since 1982 and now would like to purchase the property so they could sell it, pay off their mortgage and downsize. A letter from the Taranaki County Council from 1982 has had them believing this was their right. Unfortunately they now discover that due to the property officially being designated as a gravel reserve, operated by the council but owned on trust, buying the property is not as straightforward, or as possible, as they had thought. Read the full story here.

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Updating outmoded 80s icon

Radio NZ reports that reforms of the Residential Tenancies Act 1986 have been in the works since before the 2017 election, and have now been rushed through. The changes have been broadly characterised as strengthening renters' rights in legislation which was first passed in the mid-1980s and hasn't been dramatically updated since, despite the fact that there are now 600,000 households renting in NZ - families, elderly, young professionals - a real cross-section, not just students as was more typical in 1986. Read the full story here.

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Planning begins for Levin's largest subdivision

Manawatu Standard reports that planning has commenced for a new Levin subdivision of 2500 homes, the most significant residential development in the district. The Horowhenua District Council has just opened the pathway for feedback on the 420-ha development's master plan. Planning can commence now that a proposed expressway has been confirmed. Read the full story here.

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Court of Appeal says no over Queenstown subdivision

Otago Daily Times reports that Long Capital Holdings, which appealed aginst the forfeiture of its $2.61 million deposit paid to secure the purchase of land in Queenstown for the purposes of a residential subdivision, has been refused leave to appeal to the Supreme Court by the Court of Appeal. The Chinese investment company failed to submit a development plan for the subdivision and the vendor was found to be entitled to retain the deposit. Read the full story here.

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Death of Judge Hingston, one of our greatest legal minds

NZ Herald reports that former Maori Land Court judge, Judge Heta Hingston, has died aged 82 years. Hingston was the backbone behind the establishment of the Maori Party , with erstwhile Maori Party co-leader Te Ururoa Flavell stating "it was basically Heta's pen that wrote the party's constitution". He was a judge of the Maori Land Court for 15 years and prior to that was legal adviser for the New Zealand Maori Council, among other boards. Read the full story here.

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Southern walking tracks given funds for flood damage repair works

The *Otago Daily Times* reports that Department of Conservation has confirmed that damage and flood repair works on the southern walking tracks will be funded by "millions of dollars" from the $13.7 million allocated in the Budget. Read the full story here.

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Problems identified with two new bridges being built on the Auckland Northern Corridor

Radio New Zealand reports that the Transport Agency has identified problems with two new bridges being built on the Auckland Northern Corridor highway project, the Rosedale Busway bridge and the Albany Busway Bridge. Read the full story here.
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Billion-dollar Auckland rail upgrade

Stuff reports that the Government has launched a major new rail initiative in Auckland, the third main rail line project. The project, which will act as supporting infrastructure for increasingly frequent train services expected on Auckland's City Rail Link, is part of a $1.1 billion package. Read the full story here.

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