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Legal Case-notes February 2021

Feedback Please! Any Feedback? Drop us a note!

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

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

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

- A decision on an appeal to conditions of consent by Hamilton City Council to a large scale subdivision on the southern side of Hamilton relating to protection of habitat for a threatened native bat.
- The decision of the Court of Appeal on an appeal against the decision of the Environment Court to refuse to rehear an appeal against the granting of consent for development of a marina at Kennedy Point on Waiheke Island. The background to the appeals included the recognition by Auckland Council of one iwi representative group rather than another, in its consideration;
- An unsuccessful application for judicial review of a decision by New Plymouth District Council to grant resource consent on a non-notified basis to redevelop the St Mary's Cathedral;
- An application to the High Court for judicial review of a decision of the Central Otago District Council to grant consent to a subdivision at Tarras. Unusually, the High Court resolved to amend two conditions rather than to refer the application back to the decision-maker for amendment;
- A decision on costs relating to an enforcement order issued by Auckland Council against an owner for breach of consent conditions that required protection of an oak tree in Remuera;
- Is it lawful for a planning authority to withdraw a plan change? This application sought to clarify whether such an action was lawful. The Bay of Plenty Regional Council had notified a plan change, which resulted in several appeals. Because of the nature and extent of issues raised by the appeals, the Council withdrew the change. The court analysed the situation and concluded that the decision was lawful.
- A decision on costs following prosecution of a developer under the Building Act 2004 and also under the RMA 1991 for undertaking works to create nine apartments at Eden Terrace without the required consents;
- The outcome of an appeal against issue of an abatement notice for construction works at a property at Balmoral, Auckland. The appeal resulted in the withdrawal of the abatement notice and clarification of the future status of the works.

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Weston Lea Ltd v Hamilton City Council _ [2020] NZEnvC 189

Keywords: resource consent; conditions; subdivision; residential; wildlife values

This decision concerned measures to be taken to protect the habitat of the New Zealand Long Tail Bat on land on the southern side of Hamilton adjacent to the Waikato River. Weston Lea Ltd ("WLL") wished to undertake a large development on the land, which had been identified for future residential growth, recognised in structure plans. The hearing Commissioners decided that consent for the development could be granted, subject to conditions, and adopted an adaptive management regime for the bat protection provisions. The present appeal, by the Department of Conservation and WLL, was limited only to the aspects of the Commissioners' decision relating to the terms and conditions of the consent relating to the habitat and protection of the bats. Otherwise, all parties recognised that consent for the development could be granted.

The Court emphasised that all parties recognised the fundamental importance of protection of the values of the bat habitat. The development site formed an important part of the home range of the bats and the Waikato River could be seen as the main corridor, with gullies and crossings, used to access other parts of the habitat. The Court stated that a unified catchment approach to the bat's habitat and protection should be adopted, of which this decision would form a part. Recent calculations showed an alarming decline in the population of what was a threatened nationally-critical species.

The Court reviewed the scope of the development over around 105 hectares. The River margins and an ecological east-west corridor were set aside as a Bat Priority Area ("BPA"). The issues arising included: sequencing and deferral of development in certain lots; buffer areas being established; covenants attaching to the properties and roading and setbacks. The Court addressed management plans and monitoring, lighting standards, and predator controls. Regarding the latter, the Royal Forest and Bird Protection Soc of New Zealand Inc sought a ban on cats within the subdivision.

The statutory approach was that under s 6(c) of the RMA, the regional policy statement and the regional and district plans. The Court addressed the relevant provisions of the Tainui Raupatu Claims (Waikato River) Settlement Act 2010, the Waikato Regional Policy Statement 2016, the Waikato Regional Plan 2007, and the 2017 district plan. It was intended that the BPA be set aside as part of the development and eventually vested as ecological local purpose reserves. After consideration of the submissions and evidence on the issues raised in the appeal, the Court made decisions relating to: light, noise and temperature levels within the BPA; deferral of certain areas of the development; the establishment of buffers from the housing boundaries; and the construction of roads within the BPA. The Court concluded that cats, especially feral cats, had a significant predatory impact on bat populations. Accordingly, the imposition of a cat ban was considered appropriate.

After considering the other conditions of consent, the Court was satisfied that a positive way forward had been achieved to improve the habitat and prospects for the New Zealand Long Tail Bat in Hamilton, and to limit the adverse effects of the ongoing encroachment of residential activities along the banks of the Waikato River. WLL was directed to prepare and circulate a final set of conditions in accordance with the present decision. Resource consent was to be granted subject to agreement about the final set of conditions. Costs were reserved.

Decision Date 2 December 2020 Your Environment 4 December 2020

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SKP Inc v Auckland Council _ [2020] NZCA 610

Keywords: appeal procedure; rehearing

SKP Inc ("SKP") sought to appeal against *SKP Inc v Auckland Council* [2020] NZHC 1390, where the High Court affirmed a decision of the Environment Court refusing SKP's application for a rehearing of its appeal against a resource consent granted by the first respondent, Auckland Council ("the council") to the second respondent, Kennedy Point Boatharbour Ltd ("KPBL"), for the construction of a marina at Kennedy Point, Waiheke Island. The application was opposed by the council and KPBL.

The background to the application was a dispute between the Ngāti Paoa Iwi Trust ("the Iwi Trust") and the Ngāti Paoa Trust Board ("Trust Board"), concerning the entitlement to represent the Ngāti Paoa iwi. The High Court had concluded that the council's recognition of the Trust Board's representative status in December 2018 was not a change in circumstances for the purposes of the RMA. The High Court Judge further stated that, if it had been concluded that there was a change of circumstances on account of the council's recognition of the Trust Board, he would have concluded it did not affect the decision because: the council's recognition was prospective and interim; representative status was not an end in itself; and there was no new important evidence as to adverse cultural effects which contradicted the evidence at the original hearing upon which the Environment Court had relied.

SKP proposed four questions of law for consideration by the Court: (1) can a council's recognition of an entity as representative of an iwi amount to a change of circumstances under s 294 of the RMA; (2) does a council's recognition of an entity as representative of an iwi have the effect of determining a mandate dispute as between competing iwi representative entities; (3) in considering whether a change in circumstances under s 294 "might have affected the decision", is the question of whether there is "new and important evidence" an irrelevant consideration (as that relates to a different test under s 294); (4) in considering whether a change of circumstance "might have affected the decision": (i) is the Court required to consider whether the change "might, if it had (counterfactually) occurred at or prior to the time of the hearing (or decision), have affected the decision"; (ii) if so, does this require consideration of all the consequences of that counterfactual position, rather than simply considering whether there is (now) "new and important evidence" adduced as part of an application under s 294. SKP also contended that a miscarriage of justice might have occurred or might occur unless the appeal was heard.

SKP contended there was no doubt that the council's replacement of the Trust Board with the Iwi Trust on its mana whenua register in late 2013 was a change in circumstances under s 294 of the RMA, as was recognition of the Trust Board as an additional representative of the iwi in December 2018. It argued that if KPBL had consulted the Trust Board and found that it opposed the marina, KPBL may not have proceeded with the application. However, if the application had proceeded, it was said that the Trust Board would have actively involved itself in the opposition to the resource consent application which might have resulted in a different decision. On the issue of the materiality of a change in circumstances, SKP contended that the High Court erred in failing to undertake the correct counterfactual analysis as to what the consequences would have been or would have likely been had the council recognised the Trust Board at the relevant time. SKP took issue with the High Court's reasoning arguing that it was irrelevant that the recognition of the Trust Board was forward-looking. It also challenged the reasoning that a finding that the council's recognition of the Trust Board was a change in circumstances would effectively determine the mandate dispute, emphasising that such a dispute could be resolved only by the iwi or the Māori Land Court.

The Court did not accept the criticisms of the High Court judgment by SKP. The Court found the conclusion that the council's interim recognition of the Trust Board as having representative status in December 2018 did not constitute a change in circumstances was well reasoned and cogent. The flaw in SKP's argument lay in its failure to acknowledge that, as the High Court Judge found, the council's recognition of the Trust Board was expressly interim and prospective. Regarding the materiality requirement, the Judge did not, as SKP contended, conflate the tests of "new and important evidence" with whether there had been a change in circumstances. SKP did not produce evidence in the Environment Court or in the High Court on behalf of the Trust Board detailing the harmful cultural effects that would ensue if the marina development proceeded. That consideration was relevant to the determination of whether the council's recognition of the Trust Board might have affected the Environment Court's decision. The Judge was entitled to take into account the fact that no such evidence had been produced. Consequently, the present Court considered the prospects of success on the proposed appeal to be low.

The Court stated that the grounds of appeal turned on the council recognising, for an interim period of time, the Trust Board as a representative of a specific iwi in response to a specific ruling by the Māori Land Court. It was not apparent that the proposed appeal had any wider importance for the recognition of iwi generally or for their involvement in resource consent applications. It followed that the questions which the Court was invited to consider did not have implications beyond the particular factual matrix. They did not involve matters of general or public importance.

The Court stated that the essential difficulty with SKP's argument was that from the point in time that the application was publicly notified the Trust Board had the opportunity to make submissions in opposition to the marina. Similarly, SKP had always had the opportunity to call evidence as to any claimed harmful cultural effects of the proposal. They did not do so. The Court did not consider that this was one of the rare cases where there had been an error of such substantial character that it would be repugnant to justice to allow it to go uncorrected. Consequently, there was no basis for the grant of leave for a second appeal on the grounds of a miscarriage of justice. The application for leave to appeal was declined.

Decision Date 18 December 2020 Your Environment 7 January 2021

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O'Keeffe v New Plymouth District Council _ [2020] NZHC 3099

Keywords: judicial review; resource consent; public notification; traffic generation; amenity values; parking; information required; activity non complying

W O'Keeffe ("O") applied for judicial review of the New Plymouth District Council's ("the council") decision to grant resource consent on a non-notified basis to Taranaki Anglican Trust Board ("the Trust Board"), to redevelop the St Mary's Cathedral complex ("the Cathedral complex"). O's house was on the opposite side of the street to the Cathedral complex. O argued the council's decision to grant resource consent on a non-notified basis was unlawful, and as a result, the council made an error in granting resource consent when persons who should have been notified were not notified. O argued the council's decision to grant resource consent on a non-notified basis was unlawful primarily because: it was made without adequate information; and in assessing who was an affected persons for the purposes of the notification decision, the council failed to address relevant considerations, in particular in respect of traffic generation and parking, big events, viewshafts and visual amenity. O argued these effects on neighbouring properties were more than minor. He also said the council failed to assess the proposal as having non-complying status. O sought that the Court quash the council's decision to grant resource consent to the Trust Board, and direct that the Trust Board's application for resource consent be notified on a limited basis to O and other affected residents of neighbouring properties. The respondents argued the council had adequate information to make reasonable findings that the particular effects complained of were less than minor on neighbouring properties, and the assessment that there were no affected persons for the purposes of the notification decision was correct. The Court considered the background to the dispute, the Court's approach to judicial review, and the relevant sections of the RMA, being ss 95A, 95B, 95E, 104 and 104D.

In relation to whether the council had adequate information to make its decision, the Court approached this issue as a question of the appropriate standard the council was required to meet in relation to the adequacy of the information it relied on in making its decision. The Court stated that it did not have the benefit of time or detailed argument from counsel to address whether the standard in *Discount Brands* still applied, or what the alternative standard should be. However, the Court found the standard in *Discount Brands* was clearly met in this case, and it was not necessary to decide the point. The Court found the decision report which formed the basis of the resource consent approval generally to have been supported by adequate information.

Regarding traffic generation and parking needs, the Court stated the original and revised traffic impact assessments enabled the council to make a reasonably informed decision regarding traffic generation and associated parking requirements. The decision was not made on an assumed reduction in weekly vehicle movements. The operative district plan ("ODP") was not overlooked, and nor was the effect on parking for visitors to O and his neighbours' properties. The council did not rely on existing use status to determine the issue. There was no logical inconsistency between the council considering the matter in its planning function, and in its road control function. The extent of the parking provision on the site was a specific focus of the council's assessment from a heritage perspective, with the council making a deliberate and conscious decision to minimise the extent of onsite parking in that context, and relative to its wider intentions for management of on-street parking in the vicinity. Further, the council requested further information to enable it to make its decision on the basis of sufficient information.

Regarding big events to be held at the redeveloped Cathedral complex, such as weddings and private parties, the Court stated that there was no restriction within the ODP on events of the kind raised by O; such activities could proceed on the site as of right and effects fell within the
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existing/permitted consenting environment. As to viewshafts and visual amenity, the Court found that regardless of which specific rule triggered the assessment of visual amenity and outlook, the assessment required under s 95E was made and was based on adequate information. The Court was satisfied the council considered the impact of the redevelopment on the Pūkākā/Marsland Hill viewshaft, as well as the overall effects on the visual amenity of the neighbouring properties. There was no failure to consider a relevant factor in this regard.

Regarding non-complying status, the Court disagreed with O's argument that the council lost sight of the fact that the project required consent as a non-complying activity. The Court found that the assessment under s 95B did not ignore any relevant consideration in terms of the redevelopment's status as a non-complying activity. The non-complying status remained through the application of the proposed district plan rules, and there was no attempt by either the council or the Trust Board to avoid that status.

The Court concluded that the first ground of review failed, as the council's conclusions that the scale of the relevant effects complained of by O were less than minor were reasonably reached, having regard to all relevant considerations and based on adequate information. There was no failure on the council's part in assessing effects that were minor or more than minor, but not less than minor. The council's consultant planner had the requisite knowledge and experience to apply that test appropriately, and he did so. It followed s 104(3)(d) of the RMA was not engaged, and the second ground of review also failed.

The Court declined: to make a declaration that the non-notification decision was unlawful and invalid; to make an order quashing the resource consent approval; and to order that the application for resource consent be limited notified to O and other neighbouring properties. The issue of costs was reserved.

Decision Date 18 December 2020 Your Environment 8 January 2021

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Jolly v Central Otago District Council _ [2020] NZHC 2808

Keywords: High Court; judicial review; consent order; subdivision; resource consent; conditions; jurisdiction

This was an application by the trustees for the Jolly Family Trust ("the Trust") for judicial review of the decision ("the Commissioner decision") of a Hearings Commissioner for Central Otago District Council ("the council"). By the Commissioner decision, Greenlight Land Ltd was granted resource consent for a subdivision to create 10 allotments on farm land near Tarras. The Trust had made submissions opposing the consent because of adverse effects including dust and noise from traffic. By conditions 4A and 4B of the consent, it was required that the carriageway on an identified stretch of Jolly Rd be upgraded. The Trust now sought judicial review of conditions 4A and 4B on the grounds that there had been a breach of natural justice in the exercise of statutory powers or that the exercise of the statutory powers had been so unreasonable as to be invalid.

The parties, following a judicial settlement conference, had resolved the issue, subject to the High Court making an order on terms agreed. These were that conditions 4A and 4B be changed so that the stretch of Jolly Rd required to be sealed be extended, to mitigate the adverse dust effects on neighbouring landowners.

The Court observed that the case was unusual in that it was being asked on a judicial review to substitute its decision for that of the original decision-maker, rather than remit the matter back to the Commissioner. Although the High Court had power in relation to appeals on resource management issues to make any decision it thought the decision-maker should have made, as a general rule judicial review was not a procedure which allowed the Court to substitute its own judgment. With reference to case authority, the Court noted that there were exceptional cases where there was only one lawful decision available and the decision-maker had failed to make it. In the present case, the parties submitted that the Court had jurisdiction not only to quash the existing conditions 4A and 4B, but also to substitute conditions which would amend the extent of sealing of Jolly Rd.

The Court stated the issue was whether the present circumstances qualified as being one of those rare cases where the High Court could substitute its own decision, rather than remit the matter back to the decision-maker. After a further close consideration of case authority, the Court concluded that it could. The Court stated it would proceed to substitute its decision, by consent of the parties, because the Commissioner decision followed a process which had been
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fully completed, and a fresh process would be necessary if the conditions were quashed and remitted back to the council. In addition, the Court stated that the evidence, relating to mitigation of dust nuisance, came close to the category where there was no other decision which could appropriately have been made. Accordingly, the Court made the specified orders by consent. There was no order as to costs.

Decision Date 25 November 2020 Your Environment 26 November 2021

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Russell v Leng _ [2020] NZEnvC 184

Keywords: costs; enforcement order; tree protection

This was the decision of the Court regarding costs, following the application by J Russell ("R") for enforcement orders against the respondents S Leng, U& N Global Ltd and N Ni. The proceedings were commenced to protect an oak tree ("the tree") on a property at 136 Mainston Rd, Remuera, owned by the respondents, which adjoined the property owned by R. The tree was protected by conditions of consent, which prohibited works within the tree's drip line and required the area beneath the tree to be landscaped in accordance with a covenant between the land owner and Auckland Council ("the council"). However, in March 2019 a concrete parking pad with an overhead pergola and a shed were built directly under the tree, in breach of the conditions of consent and the covenant. The council issued an abatement notice requiring the removal of the structures by September 2019; however, enforcement was halted while an application by Mr Ni for retrospective consent was processed. By March 2020 the situation was not resolved and R applied for enforcement orders.

The Court was satisfied that the actions of R were justified in the circumstances and questioned the fact that the council had not prosecuted the respondents for breach of the abatement notice. Further, R's actions had been successful as they resulted in the illegal structures being, belatedly, removed. The Court concluded that costs should be awarded. R sought reimbursement of $5,000, being about 60 per cent of his costs incurred. The Court said that, having regard to the significant delay in complying with the abatement notice and the clear breach of conditions of consent, a higher than normal payment was justified. Accordingly, the first, second and third respondents were jointly and severally ordered to pay R $5,000 in costs.

Decision Date 23 November 2020 Your Environment 24 November 2021

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Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council _ [2020] NZEnvC 180

Keywords: jurisdiction; declaration; regional plan; council procedures

This was an interim decision on jurisdiction. Chief Environment Court Judge Kirkpatrick, sitting alone, considered a preliminary question of law which was whether the Court could make a declaration under s 310 of the RMA regarding a decision by a planning authority to withdraw a plan change under cl 8D of sch 1 to the RMA.

The matter concerned Plan Change 9 (Region-wide Water Quantity Plan Change) to the Bay of Plenty Regional Plan ("PC9"). The plan change would insert provisions to give effect to the National Policy Statement on Freshwater Management ("NPS-FM"). Inter alia, PC9 proposed a policy framework for working with tangata whenua and the community on local water quantity planning. Bay of Plenty Regional Council ("the council") notified PC9 in October 2016; 14 appeals were filed, but no hearings of these had yet occurred. By late 2019, council officers became concerned about the utility of proceeding with PC9 because: the nature and extent of issues raised by the appeals; and the uncertainty associated with proposed Government changes to the NPS-FM. In February 2020, the council resolved to withdraw PC9 in full, and publicly notified that decision. The Trustees of the Motiti Rohe Moana Trust ("MRMT") then applied for a declaration to the effect the withdrawal of PC9 was unlawful because it did not comply with the RMA, in particular with s 8.

The Court noted that there was no right of appeal under the RMA against a council's decision to withdraw a plan change. The Court considered the relevant statutory provisions, including ss 8, 8D, 65-66, 79 and 310 of the RMA, together with case authority in which the courts had addressed the scope of sch 1, cl 8D of the RMA, and the limits of the Environment Court's jurisdiction to make declarations. The ways in which the power and jurisdiction of the High Court arose to make declarations was contrasted with that of the Environment Court. The latter Court,

being established by statute, did not have inherent jurisdiction, and its power under ss 310-313 of the RMA to make declarations was not a general power but one defined and limited by that Act. Further, the Court noted that the ability of the Environment Court to make a declaration about the extent of the duty under s 8 of the RMA presented difficulties, given that the meaning of the phrase "the principles of the Treaty of Waitangi" was the subject of extensive argument in senior courts. What was being challenged in the present application was whether of not doing what sch 1, cl 8D authorised was, or was not, in accordance with the principles of the Treaty.

On examining the provisions and statutory context of s 310 of the RMA, the Court said that s 310(h) should not be read to include a judicial review of administrative action under the RMA. It was the High Court which held such supervisory jurisdiction. The Court addressed the making and changing of plans under the RMA, as set out in sch 1, and noted that the role of the Court in such processes was not to make a plan in place of the council but to resolve disputes about a plan between the council and submitters. Further, it was appropriate that a council should have the ability to withdraw its proposed plan or plan change where it came to the view that the proposal would not assist in achieving the purposes of the RMA. In this context, the Court observed that it was important that the Environment Court's power to make declarations should not stray into the High Court's supervisory jurisdiction.

Turning to address the application of the principles of the Treaty of Waitangi, the Court noted that these principles were not defined. The Court referred to relevant observations made in case authority, in particular to those by Cooke P in *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, relating to the correct judicial approach to identifying such principles. In the present case, the main Treaty principle relied on by MRMT was the customary right of Māori to fresh water, which was also within the ambit of s 6(e) of the RMA. After considering all the arguments, the Court's judgment was that the circumstances of the case did not require any more expansive interpretation of s 310 of the RMA to enable the Court to review the council's decision, under sch 1, cl 8D, to take account of or give effect to the principles of the Treaty.

The Court held that the Environment Court did not have jurisdiction to make a declaration where that would amount to a review of an administrative action of a council acting within a power expressly given to it by the RMA. Accordingly, the application for declarations was refused. There was no order for costs.

Decision Date 12 November 2020 Your Environment 16 November 2021

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Auckland Council v Wong _ [2020] NZDC 23613

Keywords: building, building consent; district plan rules

John Liong Kiat Wong ("W") was sentenced having pleaded guilty to four charges brought by Auckland Council ("the council"), three under the Building Act 2004 and one under the RMA. All charges related to a site at 9-13 Exmouth Street, Eden Terrace, Auckland City ("the site"). W and his wife were the owners of the site at the time unlawful work was undertaken. There were no consents issued by the council under either the Building Act or the RMA.

The council submitted that the defendant's offending against the Building Act was very serious, due to: the scale of unauthorised work involving structural building work and installation of specified systems over three levels, including nine apartments; the offending was calculated and deliberate, following meetings which made it clear that consents were required; commercial expediency was prioritised over public safety; serious and unacceptable risk was posed to neighbours in the course of external work; little tangible progress had been made to regularise the situation; and notwithstanding the presence of tenants in the units for many months, the building did not meet fire safety standards. The council regarded the offending under the RMA as being less serious in this case as the external environmental effects were likely to have been limited and a retrospective resource consent was obtained in a reasonable timeframe.

The Court stated that the circumstances of this offending called for a substantial penalty. The deliberate behaviour of W in failing to obtain the necessary consents and in failing to have the specified systems checked and approved required a deterrent sentence. While in the particular circumstances of this case the offence under the RMA could be regarded as a lesser charge and had now been rectified, the deliberate failure to obtain a necessary consent was still a serious matter on its own and was not to be subsumed into the offending against the Building Act when assessing a sentence.
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The Court concluded $100,000 was an appropriate global starting point. After taking into account mitigating factors W was ordered to pay a fine totalling $80,000. In respect of each of the four charges W was ordered to pay a solicitor's fee of $113 and court costs of $130. Ninety per cent of the total fine was to be paid to the council.

Decision Date 17 December 2020 Your Environment 18 December 2020.

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Ragunathan v Auckland Council _ [2020] NZEnvC 197

Keywords: abatement notice

This matter concerned an appeal against an abatement notice. V Ragunathan ("R") was a Chartered Engineer and was retained to give consultancy advice and also provide some producer statements in respect of a property being constructed at 227 Balmoral Road, Auckland. R had been issued an abatement notice by Auckland Council ("the council").

After the appeal was received the Court held a judicial telephone conference and set the matter down for an early hearing. The council had then filed a cancellation of the abatement notice under s 325(a)(ii) of the RMA. R was concerned that: the withdrawal stated the abatement notice was no longer required and in R's view thus suggested it was at some previous time required; and the withdrawal was cancelled without prejudice to the council's ability to take further enforcement action.

The Court stated that due to R's concerns it was clearer to issue a notice of decision cancelling the notice of abatement in full, from the date of inception. That being the case there was no need for an appeal and accordingly the Court authorised the Registrar to repay the filing fee in respect of the proceedings. The parties had reached separate agreement as to how to resolve other costs issues. The Court stated this ended the matter and the file could be closed.

Decision Date 14 January 2021 Your Environment 15 January 2021

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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 February 2021

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Building supply shortage affecting construction

Radio New Zealand reports that plumbing, electrical and glass suppliers are reporting difficulties getting basic materials because supply lines have been stretched by the pandemic. This has prevented the construction sector from delivering projects on time and within budget. Read the full story here.

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Tenant selection will be tougher

Stuff reports that landlords won't leave their rentals empty indefinitely when new tenancy laws come into force in February, but they will become extra vigilant when they are selecting tenants, experts say. Under the new Residential Tenancies Act 2020, landlords can no longer issue 90-day "no cause" termination notices and fixed term tenancies will automatically rollover to periodic tenancies on expiry unless otherwise agreed. Rent bidding has been outlawed, rent

increases have been limited to once a year, and landlords have to allow tenants to make minor alterations (like baby-proofing, hanging pictures, and earthquake proofing) to their rental. One prominent landlord has suggested that such major reforms are likely to have landlords just choosing to leave their properties vacant, rather than navigate the shady shoals of tenancy. Read the full story here.

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$25 m upgrade and safety improvement work for Homer Tunnel

Radio New Zealand reports that work has begun on a $25 m Homer Tunnel upgrade aimed in part at resolving safety issues. The upgrade is expected to take several years to complete. Read the full story here.

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Housing market causing 'feeding frenzy' atmosphere

Stuff reports that the number of homes for sale in Blenheim has halved in the last year, figures from Realestate.co.nz show. The shortage of housing has been felt across the country, with 29.1 fewer listings nationally in December compared to 12 months earlier. Renters are lining up down driveways, in the rain at times, for the chance to view the homes listed on the open home circuit. “The cost of actually building has not gone up that much in the last five or 10 years. But the land value has soared,” says one property owner in the town. Read the full story here.

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Potentially troublesome tenants evicted in advance of onset of new rules

Stuff reports that landlords are evicting tenants they perceive as being “troublesome” before new rules banning no-cause evictions come into force on February 11, according to Christchurch Property Investor Association president Shirley Berryman. Others told her they would leave the market as they feared the changes would make it too difficult to be a landlord. Under the new rules, a landlord can increase the rent only once every 12 months, and the practice of rental bidding, where landlords or property managers invite prospective tenants to offer more to secure a competitive spot, is banned. No-cause terminations, where landlords can remove their tenants without giving a reason, will also be abolished. Read the full story here.

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Tech magnate gathers an impressive property portfolio

NZ Herald reports that Microsoft founder Bill Gates now owns the most farmland of anyone in the United States, according to The Land Report. The tech mogul has built up a massive agriculture portfolio across 19 states of the US. Despite this, Gates still doesn't rank in the Top 100 of private landowners overall in the US - when considering owners of land of all types, not just agricultural, the Daily Mail reported. Gates' NPO also supports and promotes sustainable agriculture in South Asia and sub-Saharan Africa. Read the full story here.

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Otago legal academics argue for "tort to the environment"

The *Otago Daily Times* reports that a group of University of Otago legal academics, in a newly published article in the *Oxford Journal of Environmental Law*, argue that a recent court case taken against Fonterra and several other companies concerning their carbon emissions could open the way for a new "tort to the environment". Read the full story here.

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Fox River landfill to be removed

Radio New Zealand reports that 14,000 cubic metres of rubbish from the old Fox River landfill will be put onto trucks and moved to a landfill in Hokitika. In 2019 heavy rainfall and flooding opened up the legacy landfill, sending thousands of kilograms of waste along the river through Westland Tai Poutini National Park, and out to beaches and the Tasman Sea. Read the full story here.

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New supermarket in Alexandra granted resource consent

The *Otago Daily Times* reports that a new Countdown supermarket in Alexandra has been granted resource consent by an independent commissioner. Read the full story here.
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Zoning changes could enable 2500 more homes to be built in Dunedin

The *Otago Daily Times* reports that zoning changes could enable about 2500 more homes to be built in Dunedin. The changes are expected to include new greenfield sites for development in areas that were zoned rural or rural residential and allow more areas of medium-density zoning, where the density of housing can be increased. Read the full story here.

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$34 m announced to employ conservation workers on private land

Stuff reports that Conservation Minister Kiritapu Allan has announced a $34 million funding boost to allow conservation groups and private landowners to employ people to carry out environmental work. The Minister said the funding would create more than 400 jobs in the areas of ecology, restoration, trapping, pest control, fencing, and project management. Read the full story here.

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Plant-based milk factory to be built in Southland

Stuff reports that NZ Functional Foods plans to build a carbon-neutral plant-based food processing factory at Makarewa. The first product made will be oat milk. Read the full story here.

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Court bid to stop 1080 drop in Hawke's Bay fails

Radio New Zealand reports that a Māori Land Court legal challenge to stop a 1080 drop on Tataraakina, a 14,000 hectare block in inland Hawke's Bay, has failed. Read the full story here.

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Tiny home builders report increased demand

Stuff reports that demand for tiny homes has increased as a result of surging house prices. Tiny House Builders and Build Tiny, both based in Katikati, are already almost fully booked for projects with a 2021 completion date. Read the full story here.

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Environment Court rejects plan to rezone farmland for development near Auckland Airport

Stuff reports that Environment Court has rejected a proposal by a group of farmers and landowners to expand the Rural Urban Boundary and the Future Urban Zone across more than 83 hectares of land near Auckland Airport. The Environment Court cited the loss of “some of the most versatile soil in the country” as well as the impact development would have on the mana whenua. Read the full story here.

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Risk to six Napier properties from illegal earthworks

Stuff reports that illegal earthwork has led to an “imminent risk” to six homes and properties on Napier Hill. The earthwork occurred on a steep hillside surrounding several industrial buildings. Read the full story here.

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Environment Court rejects plan to rezone farmland for development near Auckland Airport

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Fencing project to improve water quality and biodiversity

Star News reports that two forested stream gullies on a sheep and beef farm on Banks Peninsula will be fenced off to protect water quality and biodiversity. The project will receive more than $15,000 of Immediate Steps biodiversity funding over the next two years to exclude
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stock, improve water quality and instream habitat, and allow native forest to regenerate. Christchurch City Council's Biodiversity Fund has also contributed more than $17,000 towards this project. Landowner Marie Haley is looking to regenerate the farming operation and find natural systems to "take some of the hard work out of farming." The project will complete the fencing of all streams on the property. Read the full story here.

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Defence Force pays $1 for paper road to prevent public access

Timaru Herald reports that a 78.3 hectare unformed paper road that runs alongside the Tekapo Military Camp has been sold to the New Zealand Defence Force for $1 over concerns about public access to a live ammunition training site. Mackenzie District Council voted unanimously to close the road and transfer ownership to the NZDF, saying "the section of closed road has historically been used by NZDF, with a temporary closure process undertaken each year. The location of the road means that NZDF must manage a number of health and safety risks when carrying out training activities". Read the full story here.

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Waste of space - large retail space sitting empty after more than a decade

Manawatu Standard reports that a landmark Palmerston North property has become a realtor's white whale, stubbornly remaining empty after 12 years. Fisherman's Table, a purpose-built double-storey designed for the family restaurant, sat for 27 years looking over The Square, before changing dining trends and a global financial crisis swept it away. The business sunk into voluntary liquidation in 2009 and a 'for lease' sign has been up at the site ever since. The upfront costs of renovating the site seem to be the biggest hurdle in securing an appropriate tenant. Read the full story here.

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Maori academics investigating the potential for a Lex Aotearoa

Stuff reports that numerous prominent Māori figures including former chair of the Waitangi Tribunal, Justice Joe Williams, and academics Jacinta Ruru and Adrienne Paul, are calling for and looking into the possibility of a Lex Aoteroa - a bicultural justive system and way of teaching law in NZ, incorporating both the traditional private-property and written statutes British common law style and the more flexible, social and interwoven te ao Māori (Māori world view). Read the full story here.

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Auckland's 'unforeseeable' sprawl eroding protective covenants

Newsroom reports that the Supreme Court has ruled in favour of industrial expansion on farmland, saying nobody could have prophesised the industrial and residential expansion of Auckland as far south as Pokeno when zoning was undertaken for the area. The Court has found in favour of massive dairy factory, Synlait, settling a long-running neighbours-at-war land dispute. The milk company must however pay a "reasonable" settlement, as well as picking up significant court and legal costs that would ordinarily have fallen to Synlait's neighbour to pay. The judgment marks years of pushing for the removal of restrictive covenants on the land Synlait had purchased for the factory. Read the full story here.

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Massive increase in property values leads to housing stock outstripping GDP

Interest.co.nz reports that the value of New Zealand's housing stock is up by 11 per cent over the past 12 months, now totalling four times that of the GDP, according to data from the Reserve Bank. New Zealand's 'housing stock' includes all private sector residential dwellings (detached houses, flats and apartments), lifestyle blocks (with a dwelling), detached houses converted to flats and 'home and income' properties. Read the full story here.

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Rent hike for mouldy house

Stuff reports that a cheap rental relationship has soured after the owner mooted a $200 rent increase for a home with holes, mould and a rotting window frame. That set the tenant researching tenancy laws; he discovered the house doesn't meet Healthy Homes requirements, and took a list of complaints to the Tenancy Tribunal. The house didn't have working smoke

alarms or ceiling and underfloor insulation, in addition to the holes and mould. Read the full story here.

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'Imminent risk' caused to half a dozen properties

Stuff reports that illegal earthwork has led to an “imminent risk” to six homes and properties on Napier Hill. Stuart and Elizabeth McMillan have been given until February 2 to carry out remedial work on the hill surrounding a large commercial property they own on Northe Street, at the western foot of Napier Hill. The Napier City Council was granted an application for the enforcement order late last month after experts became concerned about the imminent threat posed by the removal of hundreds of cubic metres of earth. Read the full story here.

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Property buyers ignoring threat of climate change

Stuff reports that Deep South National Science's Belinda Storey has predicted that sea levels at NZ's coastal towns will rise by at least 10 cm over the next 20 years. This is expected to increase the frequency and severity of coastal flooding in New Zealand, and could lead to more than 10,000 becoming uninsurable by 2050. Real Estate agents largely agree that coastal areas remain the most popular sites to purchase, despite the increasing risks. Read the full story here.

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Go ahead for Kaitaia water project

Voxy reports that the Far North District Council has released a decision on accessing land owned by Elbury Holdings Ltd, which is required for a water pipeline to supply Kaitaia. The bore is on privately-owned land. However, a subdivision and separate titles have been agreed and transfer to Council ownership is in its final stages. A 13.5km pipeline will be built to connect the bore to the Kaitaia treatment plant. Easements are required for the security and maintenance of that pipeline. Read the full story here.

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Detector dogs could be the way of the future for bee keepers

Rural News reports that training dogs to sniff out the bacterial disease American Foulbrood (AFB) from beehives could save the NZ industry millions of dollars per year, and drastically reduce the environmental impact of declining bee numbers. The Ministry for Primary Industries (MPI) is contributing $50,000 through Sustainable Food & Fibre Futures (SFF Futures) towards a one-year, $95,000 training project. The project aims to develop a scientific methodology for training detection dogs to reliably detect AFB, by creating a ‘scent picture’ of the disease. Read the full story here.

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Mohua Affordable Housing Project progresses

Stuff reports that the Mohua Affordable Housing Project is making progress, having received multiple offers from landowners interested in hosting homes. The project could see transportable homes put on private or council-owned land for residents to rent or rent-to-own. Read the full story here.

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Public access to popular local river blocked off

Stuff reports that large rocks, placed in a line across accessway to the popular Waitapu Bridge near Tākaka, have nearly closed access to one of Golden Bay’s top fishing rivers – upsetting locals concerned about the gradual loss of access to waterways in the area. Ownership of the popular site was recently passed from the Tasman District Council to Waka Kotahi NZ Transport Agency and the site is being jointly managed with local iwi. Waka Kotahi NZ erected the rock walls to prevent freedom camping at the spot. Read the full story here.

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Property owners have strong backing in class suit

NZ Lawyer reports that a class action law suit has been filed on behalf of property owners and lease holders who either have incurred or will incur financial losses as a result of having to strip
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and replace core cladding by Alucobond. The suit was filed with the assistance of Russell McVeagh and global litigation funder Omni Bridgeway on behalf of the owners of “residential, commercial, public, mixed-use and other non-residential buildings throughout New Zealand”. Read the full story here.

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Concerns new rules for renters could impact on domestic violence victims

NZ Herald reports that manager of Christchurch-based family violence agency Aviva has raised concerns over the impact the new rules for tenants, under the impending Residential Tenancies Act 2020, will have on victims of domestic violence. Under the act, victims will only need to give landlords two days' notice, with evidence, to withdraw from a tenancy - the concern centres around what sort of evidence landlords will demand, as evidence of violence is often unseen and/or difficult to display. Another part of the act says tenants remaining after a renter's withdrawal will be able to pay reduced rent for two weeks. Christchurch's Good Girls Property Management said she felt this rewarded the behaviour of abusers. Read the full story here.

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First home buy turns sour as weathertightness issues arise

Stuff reports that a couple's foray into home ownership turned sour, when they discovered that their home rained inside when the weather turned outside. The family paid $300,000 for the North Canterbury property and thought they had scored a bargain until the extreme leaking began. A builder says botched earthquake repairs may be the reason the floor of the home got out of level, which has led to a sagging roof that leaks every time it rains. The couple are pushing for EQC to cover the costs of replacement and repairs. Read the full story here.

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Easement issue at an impasse

Northland Age reports that Elbury Holdings was highly critical of the process followed by the Far North District Council in planning the route by which water is to be piped from the Sweetwater aquifer to Kaitaia, with concerns around the pipeline going through the centre of one of its farming properties. However, the company believes the impasse can be resolved, without the need for a legal process. The council on the other hand has said that if the company does not grant access to the land, it will use the Local Government Act 2002 to force compliance. Read the full story here.

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Rebuild begins as demolitions near end

Timaru Herald reports that the demolition of properties destroyed/damaged by the October wildfire which ripped through the South Island settlement of Lake Ōhau is close to being complete. Waitaki District Council Lake Ōhau recovery manager, Lichelle Guyan, said council have processed eight consent applications for rebuilds and are expecting more. “We’re working with property owners on getting those processed as fast as we can...I don’t think in the next year all sites will be built on, but I do think most will have decided what it is they want to build there". Read the full story here.

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Public Housing Plan revealed as waitlist reaches unprecedented heights

Stuff reports that the Government have revealed their Public Housing Plan this morning, detailing where several thousand new public and transitional houses are to be built. The majority will be in Auckland - almost half of the country's current waitlist are based there. Wellington, Hamilton and the North Island's East Coast centres see the majority of the rest. As house prices have skyrocketed and rents have steadily climbed, the waitlist for public housing has exploded, more than quadrupling over past few years. Read the full story here.

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