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

- Would the adverse effects of a proposed service station fronting SH 30 at Whakatane utilising an adjacent Māori roadway, be sufficiently minimal to justify non-notification of the application? This application for judicial review was considered by the High Court;
- Two decisions of the Environment Court involving provisions of the Auckland Unitary Plan involving the rural urban boundary, zoning, subdivision and development in rural areas both north and south of the Auckland urban area;
- Are fresh water wetlands and wetlands within the coastal marine area covered by the same legislative controls and covered by the same regulations – or not? This was considered in in the context of hearings for the Northland Regional Plan at the Bay of Islands;
- A High Court decision on appeals against Environment Court decisions about provisions in the Queenstown Lakes District Plan for protection of outstanding natural landscapes in the Queenstown area;
- The prosecution of a company by Auckland Council for illegally converting a warehouse in Manurewa for use as a boarding house;

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CASE NOTES APRIL 2021:

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Lysaght v Whakatane District Council _ [2021] NZHC 68

***Keywords**: judicial review; service station; resource consent; consultation; Māori land*

This decision concerned applications for judicial review in respect of the non-notified grant of a consent by Whakatāne District Council ("the council") for a 24-hour, seven day a week unmanned service station at 46A State Highway 30 ("service station") located on a Māori roadway ("the Roadway"). The resource consent applicant, Gulati Enterprises Ltd ("GEL"), was one of the owners of the Roadway. Other occupiers of land adjacent to the Roadway, I and A Lysaght ("L") and two whānau of Ngāti Awa, complained that they were directly affected by the proposed activity which required physical modification to the Roadway. They also complained that these modifications and the proposed service station adversely affected their use and enjoyment of the Roadway.

Te Rūnanga o Ngāti Awa ("TRONA") claimed that it was an affected person because it was the mandated iwi authority and kaitiaki in respect of tāonga tuku iho, including whenua Māori. TRONA complained it was told its written approval would be sought and that the council would seek its input before making any notification or consent decisions. It claimed that this gave rise to a legitimate expectation of ongoing engagement prior to any final decision being made.

However, in breach of that expectation, TRONA argued the council granted the consent without engaging with them as promised. The Court stated it had to resolve whether the council erred in law or procedurally when granting the consent for the service station without notifying L or otherwise engaging with TRONA.

After considering the background to the matter, the Court considered the review application by L. L argued: the council failed to have regard to the effects of the median strip to be located on the State Highway; the decision was unreasonable insofar as the owners of the Roadway were not considered to be affected persons; and the council erred as a matter of law in determining that there would be no adversely affected parties on the basis of the mitigation proposed, which was reliant on both third party land and approval in order to proceed. As regards the median strip, the Court noted the median strip was a permitted activity and could be built at any time with the approval of NZTA. It was therefore available to the council, pursuant to s 95E(2) of the RMA, to disregard the effects of the median barrier on the owners of the Roadway. Nothing in evidence suggested that the council's decision to disregard those effects was otherwise unreasonable. This claim was dismissed. Regarding unreasonableness, the Court stated the central evaluative issue for the council was whether the owners of the Roadway and the occupiers of the lots adjacent to the Roadway (including L) would be "adversely affected" by the proposed activity, in terms of safe and efficient use of the Roadway, to a minor or more than minor degree. The Court found the conclusion as to the low level of the effects on L in terms of safe and efficient vehicular use of the Roadway was plainly available to the council. Accordingly, the Court could not identify any basis on grounds of unreasonableness to disturb the council's findings in terms of the effects pleaded by L.

Regarding reliance on third party land, L claimed the council was wrong to impose conditions (for roadworks) that relied on third party approvals, and the council acted ultra vires by approving a resource consent application on the basis of road modification work that would involve and or infringe a third party's property rights. The council argued its consideration was limited to environmental effects and that effects on property rights *per se* was not a relevant consideration for the purpose of s 95E. Further, the courts had accepted that conditions outside an applicant's control can be imposed provided they are worded as a "condition precedent". The Court found the required roadworks were expressly framed as a condition precedent to the operation of the station, which carried no implication that L must agree to or otherwise implement the proposed mitigation works. Rather, it placed the entire burden on GEL to either obtain L's agreement or otherwise obtain lawful authority to undertake the requisite roadworks. The condition was a "paradigm example" of a valid condition precedent. In the result, L's property rights, including the use and enjoyment of the Roadway, remained unaffected until that agreement or the requisite court order had been obtained. L's claim was dismissed.

TRONA challenged the council's decision not to notify on two primary grounds: breach of a legitimate expectation of engagement with TRONA prior to any final decision being made; and unreasonableness. The Court stated two main issues arose out of argument relating to legitimate expectation: whether TRONA had a legitimate expectation of ongoing consultation or engagement prior to the decision not to notify being made; and whether TRONA was an affected person. The Court found that the council made unambiguous commitments: in October 2019, that the application would be placed on hold for written approvals, including from TRONA; in January 2020, that TRONA would be kept in the loop; and in March 2020, that the council would meet with TRONA again to discuss the application. The Court stated TRONA's reliance on each of these commitments was legitimate. The Court found further engagement with TRONA may have materially affected the council's approach to pedestrian effects, which was a key issue for the whānau. TRONA's legitimate expectation claim was successful to that extent. As to whether TRONA was an affected person, the Court stated TRONA had to show a potentially relevant adverse effect on the iwi which was minor or more than minor. The Court was unable to find that TRONA was an "affected person" in this case for the purpose of s 95E. Regarding unreasonableness, that Court found only sparse consideration was given to the potential effects of the increased traffic usage on local resident pedestrians, and no expert consideration was given to the potential for conflict between vehicular traffic and the use of the Roadway by the resident or visiting children. This was a major oversight given the proximity of the access to the service station to the two local residences. The Court was satisfied that, on the information available to the council, it was unreasonable to conclude that the effects (including potential effects) on pedestrians were less than minor.

The Court was satisfied that the breach of the commitment to engage with TRONA prior to the final decision and the failure to reasonably assess the potential for conflict between the increased vehicular usage and the local resident pedestrians, including young children who

resided at or travelled to the whānau blocks, meant that the decision to grant consent without notification had to be set aside. However, the Court was not satisfied that the application had to be notified or that there were affected persons for the purpose of s 95E. That was a matter properly to be reconsidered in light of the Court's judgment.

The Court stated TRONA's legitimate expectation and unreasonableness claims were successful in part, but only in one key respect: the consenting officers did not adequately or reasonably assess the potential for conflict between the increased traffic use and local resident pedestrian use of or near to the Roadway; including, in particular, use by children who resided immediately adjacent, or in close proximity, to the service station. The Court set aside the decision to grant the consent on a non-notified basis and directed that the council reconsider the decision to proceed on a non-notified basis in light of the Court's judgment. If costs could not be agreed, the parties could file memoranda.

Decision Date4/3/2021 Your Environment 5 March 2021:

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Cabra Rural Developments Ltd v Auckland Council _ [2021] NZEnvC 10

Keywords: regional plan; district plan; subdivision

This decision followed *Cabra Rural Developments Ltd v Auckland Council* [2020] NZEnvC 153 ("EC decision") regarding the provisions to be included in the Auckland Unitary Plan ("AUP") applying to subdivision in the rural areas of Auckland. Following that decision there had been further attempts at resolution between the parties, in accordance with directions made by the Court. There were continuing disputes between the parties as to the wording of several provisions. The Court now made a determination on the papers.

The Court stated Annexure A to the decision set out the matters covered by the appeal. Overall, there were few provisions that remained in dispute. Largely the parties agreed with the wording of the rural subdivision provisions in Chapters B9, E15 and H19 of the AUP, and there was a broad agreement between the parties relating to the proposed objectives, policies, rule tables, matters of discretion and assessment criteria under Chapter E39 of the AUP. However, the parties were not agreed on specific aspects of the wording of the standards for subdivision in Chapter E39 and in relation to a minor drafting issue in Appendix 15. The Court stated the matter had to be finalised and the provisions needed to be certain, and reach finality of the proceedings.

The Court made directions that the wording of Annexure A was adopted with the following amendments: Table E39.6.4.4.1 was to read as proposed by Auckland Council ("the council") at [12] of the joint memorandum of counsel (regarding revised rural subdivision provisions in light of EC decision) dated 7 December 2020 ("joint memorandum"); an explanatory note under Table E39.6.4.4.1 was to be added; an additional rule E39.6.4.4(2B) was to be added; new Rule E39.6.4.5(2B) was to be added; the council's wording was to be adopted for Rule E39.6.4.5(1); and Table E39.6.4.5.1 was to be read as set out in [35] of the joint memorandum. There was to be no change to the wording of Appendix 15: Table 15.3.1.1.

There was no order as to costs. The council was to file a final copy of the provisions as amended by the Court for approval and was to alter its plan accordingly as soon as possible thereafter.

Decision Date 12 March 2021 - Your Environment 16 March 2021

(For notes on the previous decision NZEnvC 153 see Newslink November 2020 – RHL.)

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Self Family Trust v Auckland Council _ [2020] NZEnvC 214

Keywords: zone boundary; interpretation; district plan; regional policy statement; soil; rural; landscape protection; Māori values

This matter concerned the location of the Rural Urban Boundary ("RUB") at Puhinui in the Auckland Unitary Plan ("AUP"). The Independent Hearings Panel ("IHP") appointed under the Local Government (Auckland Transitional Provisions) Act 2010 ("the LGATPA") recommended that the RUB should extend over land on the Pūkaki Peninsula and that a Future Urban Zone ("FUZ") be applied to it. However, Auckland Council ("the council") declined to accept the IHP's recommendation. *Self Family Trust v Auckland Council* [2018] NZEnvC 49, [2018] NZRMA 323 ("the EC decision") upheld the council's decision. An appeal to the High Court ("HC") in *Gock v*

Auckland Council [2019] NZHC 276, (2019) 21 ELRNZ 1 was successful, but only in part. Of the seven grounds of appeal advanced to the HC, only one succeeded. This related to the EC's findings about elite and prime soils, which had required it to interpret Policy 82.2.2(2)(j) ("the policy") of the Regional Policy Statement ("RPS") in the AUP.

The HC remitted the proceeding back to the EC to: revisit the evidence and its conclusion about elite and prime soils using the interpretation of the policy as the HC determined it to be; consider whether to allow additional evidence in relation to the policy dealing with the structure plan guidelines; and reconsider its overall findings taking into account the evidence called before it in 2018, any new evidence permitted to be called against the statutory considerations set out in ss 32 and 75(3) of the RMA (both in relation to giving effect to the New Zealand Coastal Policy Statement ("NZCPS") and the RPS), and having placed its conclusion about elite and prime soils in light of the HC's interpretation of the policy in the mix.

Amended relief was sought which, if granted, 83.43 ha comprising the Pūkaki Peninsula would be within the RUB, with 78.96 ha subject to the FUZ, and 4.47 ha subject to a Special Purpose - Māori Purpose Zone. The Court stated the questions for it to consider were: could the amended relief sought be granted (was the land potentially suitable for urban development); and was it appropriate that the relief should be granted.

After considering the matters remitted to it, the Court concluded that the Pūkaki Peninsula was not suitable for urbanisation, and that maintaining it outside the RUB would give effect to the higher order planning instruments. In particular: it would give effect to the NZCPS by avoiding significant effects on the natural character of the coastal environment and protecting an area of special significance to Māori; and it would give effect to the RPS by protecting elite soils, mana whenua values, natural character to the extent required, and the cultural and visual integrity of the Pūkaki Crater ONF, and by achieving a quality, compact urban form. The Court also concluded that, in terms of s 32 of the RMA, maintaining the Pūkaki Peninsula outside the RUB was the most appropriate way to achieve the objectives of the AUP. The appeals were dismissed. The decision of the Auckland Council as to the location of the RUB on the Pūkaki Peninsula was confirmed as shown in Map C of the EC decision.

Decision Date 15 February 2021 Your Environment 16 February 2021

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Bay of Islands Maritime Park Inc v Northland Regional Council _ [2021] NZEnvC 6

Keywords: interpretation; wetland; regional plan; coastal marine area

The Court noted that in the course of a hearing on Topic 15 of the proposed Northland Regional Plan ("the regional plan") relating to mangroves, the potential for the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ("NESF") to cover areas of the coastal marine area ("CMA") was raised by Bay of Islands Maritime Park Inc. It was clear to the Court and to all counsel before it that the potential for this to occur had not been anticipated by the parties. The Court stated that the issues were important and might also affect Topics 9 and 7 of the regional plan in relation to set-backs from wetlands. The issues arose because "natural wetlands" were defined in the National Policy Statement for Freshwater Management 2020 ("NPS") with an accompanying definition for "natural inland wetlands". These definitions made it clear that the latter exclude areas within the CMA. The NESF adopted the NPS's definition of "natural wetlands" but made no such excision of the CMA from its jurisdiction. It referred only to "natural wetlands", such that its regulations arguably might apply to both freshwater wetlands and wetlands in the CMA.

The Court considered whether the NESF intended to cover all wetlands (excepting those removed by the definition of natural wetlands in the NPS). The Court concluded the NESF was not directed at the CMA. The boundary was the "river or connected area" upstream of the river mouth. The NESF only had regulatory effect upstream of the river mouth, even if it included coastal water. The Court reached this conclusion because: if the NESF had effect within the CMA, it would be mandatory and would have significant consequences on issues relating to marine areas and potentially also under the Fisheries Act 1996, depending on the depth of water to which the natural wetland definition was deemed to apply; freshwater planning instruments prepared under s 80A of the RMA would not integrate directly with the area covered by regional plans and as such would lead to issues as to how these would be implemented and enforced; given the number of wetlands in the CMA, particularly in the Northland Region, this would be a significant imposition for management of much of the coastline; and the Court had concluded that the NESF did not clearly indicate an intent to control such areas.
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The Court made the following declarations. The NESF applied to the CMA only to the extent that they covered the area of CMA upstream of the "river mouth" as defined in the RMA. In particular, they did not apply to the general CMA, open oceans, estuaries, bays and other areas not falling within the definition of "river or connected area". The Court was empowered to consider the regional plan provisions affecting those parts of the CMA not encompassed within that definition in terms of the New Zealand Coastal Policy Statement and other documents, without considering any constraints imposed by virtue of the NESF. For those areas of the CMA that were covered within the definition of "rivers or connected areas" where the NESF did apply, the NESF would need to be considered in forming a view as to the most appropriate provisions for those areas. The Court made directions as specified in the decision. A copy of the declarations was to be provided to the Minister of Conservation as to the inter-relationship of the CMA and the NESF. Costs applications were not encouraged.

Decision Date 9 March 2021 Your Environment 10 March 2021

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Gertrude's Saddlery Ltd v Arthurs Point Outstanding Natural Landscape Society Inc - [2021] NZHC 147

Keywords: council procedures; district plan proposed; public notification; landscape protection; zoning

This decision concerned three appeals from the Environment Court's ("EC") decision in *Arthurs Point Outstanding Natural Landscape Soc Inc v Queenstown Lakes District Council* [2019] NZEnvC 150 ("the EC decision") which concerned the mapping of lines to identify outstanding natural landscapes and their boundaries and whether or not Queenstown Lakes District Council ("the council") had followed a fair process in its treatment of the Arthurs Point area during its proposed plan change processes. The EC found there were serious problems with the planning maps because they did not show the outstanding landscape boundary. The EC's conclusion was that the proposed plan change was ambiguous. The EC also found that the council did not comply with cl 7 of sch 1 to the RMA in that the council notified a summary of decisions requested ("SDR") that was unfair and misleading. The EC ordered the council to re-notify a summary of the decisions requested by Gertrude's Saddlery Ltd ("GSL") and Larchmont Developments Ltd ("LDL"). GSL, the council and LDL appealed the EC decision.

The council identified the following as errors of law in the EC decision: the EC applied the wrong legal test in its interpretation of and approach to cl 7 of sch 1; the EC misconstrued the role and purpose of the cl 7 requirement to publicly notify a summary of decisions requested by regarding the summary as the end point rather than an alert to refer to the actual submissions and relief sought; the EC erred in determining that the council's summary of decisions was "unfair and misleading"; the EC erred by taking into account a range of matters and considerations that were not material to Arthurs Point Outstanding Natural Landscape Society Inc's ("the Society") application and irrelevant to whether the council met its obligations under cl 7.

GSL and LDL argued: the EC applied a wrong legal test when determining whether the council complied with the requirements of cl 7 of sch 1 of the RMA; the EC's decision was based on material errors; the EC incorrectly considered irrelevant matters as informing its determination of whether the summary of decisions requested was "fair, accurate, and not misleading"; and the EC wrongly concluded that the online rezoning map was not reasonably accessible on the council's website during the further submission period in December 2015 and that in this regard the EC reached a conclusion not reasonably available to it on the evidence.

The Court first considered the council's appeal. As to whether the EC applied the wrong legal test in its interpretation of and approach to cl 7 of sch 1, the Court found the EC Judge's ultimate determination was reached as a result of his proper understanding and application of the correct legal test. As to whether the EC erred in law by misconstruing the role and purpose of the cl 7 requirement to publicly notify a SDR, the Court found the EC Judge understood perfectly well the role of cl 7 and the crucial role summaries play in alerting affected persons in a timely way to submissions potentially affecting their interests so that they might have the opportunity afforded under sch 1 to lodge submissions of their own. Further, the EC Judge understood equally well the legal test to be applied in assessing whether the SDR in a sense discharges that crucial role. As to whether, in determining that the SDR was "unfair and misleading", the EC reached a conclusion that no reasonable decisionmaker could have reached, the Court found the council had not shown that the EC's conclusion was "so insupportable - so clearly untenable - as to amount to an error of law". As to whether the EC
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erred by taking into account a range of matters and considerations said to be either immaterial or irrelevant to the Society's s 314 application, the Court did not agree that the EC's consideration of the matters the council identified as irrelevant or immaterial, was erroneous or that its consideration of those matters amounted to an error materially affecting the balance of its decision.

The Court then addressed the questions of law from GSL and LDL. As to whether the EC applied a wrong legal test when determining whether the council complied with the requirements under cl 7 of sch 1 of the RMA, the Court stated the EC did not apply the wrong legal test or otherwise err in finding the council's SDR to be unfair and misleading. As to whether, in relation to six conclusions set out in the notice of appeal, the EC erred in reaching conclusions that no reasonable decision-maker could have reached, the Court found that this was not the case. As to the argument that the EC erred in finding that the council did not comply with the requirements of cl 7 and whether, on the evidence, the Court's decision was one that no reasonable decision-maker could have reached, the Court again rejected this. As to the question as to whether, in assessing whether the SDR was fair, accurate and not misleading, the EC erred in law by considering six matters identified in GSL's notice of appeal, the Court again found the EC had not erred. Lastly, as to whether the EC erred in concluding that the online rezoning map was not reasonably accessible on the council's website during the further submission period in December 2015, the Court stated it had heard evidence on behalf of the council and on behalf of the Society. The Court found the council had not overcome the high hurdle it faced in seeking to overturn a factual finding for which there was a proper (and preferred) evidential foundation.

The Court concluded that the EC did not misinterpret or misapply the law. Irrelevant matters were not taken into account, nor was there any failure to consider relevant matters. To the extent the appellants challenged factual findings, they had not met the high threshold of demonstrating that the findings were so clearly untenable as to amount to an error of law. The three appeals were dismissed. The Court stated the Society was entitled to costs.

Decision Date 26 February 2021 Your Environment 1 March 2021

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Auckland Council v Radius Contracting Ltd _ [2021] NZDC 938

Keywords: prosecution; building

This was the sentencing of Radius Contracting Ltd ("RCL") and W Farmer ("F") ("the defendants") who had pleaded guilty to two charges, under s 9(3) of the RMA and s 40 of the Building Act 2004, relating to the use of a warehouse or industrial building as a boarding house. F was the logistics manager of RCL. The matter concerned a property at 22 Maich Rd, Manurewa ("the property"). There was a resource consent for a second residential unit on the property, but there was no resource consent for further dwellings or for the use of the property as a boarding house. Works were undertaken by RCL and F without a resource consent or a building consent including: installation of 21 container type buildings for sleeping; installation of additional sanitary fixtures; installation of an additional kitchen, including a kitchen sink; plumbing in of one container-type building with shower cubicles; penetration to the fire rated floor and walls of the mezzanine floor; construction of an additional room at the top of the container-type building; and an extension to the mezzanine floor. F made an application for a discharge without conviction for both charges.

The Court considered the sentencing principles under case authority and the Sentencing Act 2002. As to F's discharge application, the Court concluded F's offending went well beyond mere inadvertence and that he should have known that his actions were contrary to the statutory requirements to obtain consents prior to undertaking such work. The Court concluded that F's case was not one where the consequences of a conviction would be out of all proportion to the gravity of the offending and dismissed his application.
The Court found it appropriate to proceed on the basis of concurrent sentences for both defendants. While the offences were under different statutes, the facts of offending were closely related and there was a clear relationship between the RMA and the Building Act, such that many cases involve charges under both Acts. The Court found both defendants proceeded in a way that was more than merely careless and did not consider that either of them could seek to reduce their penalties by suggesting that they were unaware of compliance issues and reliant on previous uses of the site. Given the scale of the additional works which they undertook and the extent to which any person in their position should be aware that multi-unit residential accommodation was likely to require building and resource consents, it could not treat the
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offending as being at the lower end of the scale of culpability. The Court found the appropriate total starting points for RCL should be $90,000 and $60,000 for F. Both defendants were granted a discount of 25 per cent for early guilty pleas. On the Building Act charge RCL was fined $33,750, and F $22,500. On the RMA charge RCL was fined $33,750 and F $22,500. The defendants were to pay solicitor and court costs on each charge. Ninety per cent of the fines were to be paid to Auckland Council.

Decision Date 19 February 2021 Your Environment 22 February 2021

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The above brief summaries are extracted from "Alert 24 - Your Environment" published by Thomson Reuters and are reprinted with permission. They are intended to draw attention to decisions that may be of interest to members. Please consult the complete decisions for a full understanding of the subject matter.

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

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LEGISLATION

Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Bill (2020 306-1)

New Status: 1R and referred to Finance and Expenditure Committee 10/03/2021.

This bill is a response to a recent examination of the *Unit Titles Act 2010* and includes amendments to improve the information disclosure regime to prospective buyers of units, to strengthen the governance arrangements in relation to the body corporate, to increase the professionalism and standards of body corporate managers, and to ensure that planning and funding of long-term maintenance projects is adequate.

- Bill Copy
- Bill Progress
- Explanatory Memorandum
- First Reading Speech

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Other News Items for April 2021

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What rights do neighbours have when a developer moves in next door?

Stuff reports that townhouse developments in exclusive suburbs such as Wellington's Seatoun are sparking the ire of neighbours, but what say do neighbours get, if any, when a developer moves in next door? The answer, according to numerous councillors and urban design planners is 'not a lot'. "If residents have an issue with a decision that's been made, their only real legal avenue is to go to the High Court for a judicial review, or to the Environment Court," said Wellington City councillor Iona Pannett. Read the full story here.

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Land and property rights the opposite of indefinite and secure

Newshub reports that despite living in dynamic environments and facing an uncertain future due to climate change, New Zealanders generally expect their land and property rights will endure indefinitely. But little stays the same and as last week's earthquakes and tsunami alerts

reminded us, our coasts and the people who live near them are vulnerable to a range of environmental hazards. However, the Government has written the writing on the wall for change, and planners and communities need to be prepared. The current Resource Management Act will be replaced by three new laws, including a Managed Retreat and Climate Change Adaptation Act. Read the full story here.

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Extensive public disapproval for proposed Crown Pastoral Land Reform Bill

Wanaka Sun reports that submissions on the Crown Pastoral Land Reform Bill closed in late February with an extensive response from the public backing the high-country farmer's disapproval of the proposed legislation. The bill proposes to end to tenure review and alter regulations on crown pastoral land. High-country farmers see the proposals as creating a regime where our they would require numerous consents for day to day activity on farms, such as fencing. Read the full story here.

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Redevelopment of Arrowtown's Millbrook Resort

The Otago Daily Times reports that part of the village centre at Arrowtown's Millbrook Resort is about to undergo a $4 million-plus redevelopment. The upgrade is the first stage of what is expected to be a full redevelopment of the village centre to cope with more members and visitors. Read the full story here.

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$452 million 21-level office/apartment/retail project to rise above new Aotea train station

The New Zealand Herald reports that a deal struck by Auckland Council will see a $452 million 21-level office/apartment/retail project built above the new Aotea train station. Construction of the new Aotea Central by Malaysian Resources Corporation Berhad is to start after the City Rail Link is completed in 2024. Read the full story here.

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Wellington City Council votes to remove $76 million loan for Wellington Airport's new seawall and proposed runway extension

Stuff reports that Wellington City Council has voted to remove a $76 million loan for Wellington Airport's new seawall and proposed runway extension. Wellington Airport chair Tim Brown has urged councillors to retain the funding. Read the full story here.

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Housing boom 'past its peak'

NZ Herald reports that whilst house prices are still rising Westpac chief economist, Dominick Stephens, says the market is "past its peak" and mortgage interest rates will rise. "...the market will slow in time. That's because mortgage rates will rise and the shortage of housing is being rapidly reduced," Stephens maintained. Read the full story here.

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Retirement village development one step closer with fast-track

The Otago Daily Times reports that plans for a Wanaka retirement village, expected to create 700 jobs for the construction sector, are being fast-tracked under special Covid-19 legislation. The Northbrook Wanaka Retirement Village project is being developed by Winton Property Ltd and would be developed on a vacant residential section at the northern end of the Northlake subdivision. The complex is projected to have a 100-unit retirement village, a private 36-bed hospital care home (including memory care), a clubhouse incorporating a cafe and community centre, and a recreation building featuring a gym and swimming pool. Read the full story here.

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Drains improperly installed with lack of easement

Stuff reports that a Canterbury man trying to sell his mother's home has discovered that the property's sewer pipes were never installed properly. The problem, a lack of easement covering the drain, only came to light when the house was put on the market when his mother moved into a rest home. A lawyer for a prospective buyer noted the drains never had an easement to cover them entering the right of way, despite the fact that the property had been signed off
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years ago by the Waimakariri District Council, when the subdivision was completed. Read the full story here.

(Several of the lots in this development were not served with individual connections to a public wastewater drainage system and a common private drain was installed within the private way to serve them. The property does not need an easement for rights of way over the adjacent private way as it has its own road frontage.

There are several possible explanations for the situation complained about by the owner's son, among which could be:

- *The lawyer for the present owner may not have undertaken due diligence when advising on the purchase;*
- *The lawyer for the present owner may have undertaken due diligence, identified that there was no easement and presumed that the provisions of S461 LGA1974 adequately protected the owner's rights for continued drainage;*
- *The lawyer for the prospective purchaser may have been trying to be awkward with a view to cancelling the S & P agreement or negotiating a price reduction;*

Whichever of these possibilities is correct it is clear that any uncertainty about rights for drainage from the owner's property would have been clarified and secured by either - provision of public drainage at the boundary of each lot or easements for drainage over the private way should have been registered as a condition of consent to the subdivision. Any failure of a drainage system involving a private wastewater drain in common serving several residential properties creates an immediate public health problem which the Council would have to remedy on an urgent basis. – RHL.)

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2000 houses to be built next to protected wetland

Radio New Zealand reports that Environment Minister David Parker has given a developer consent to build 2000 houses at Plimmerton Farm, Porirua, next to a protected wetland. The development has been widely opposed amid concerns about runoff into the wetland, known as Taupo Swamp. Read the full story here.

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Home ownership post-divorce - priced out of the market

Stuff reports that in March 2018 home ownership was at its lowest in almost 70 years. Since then the median price has almost doubled and rent is up by a quarter, leading to even more being priced out of the market. Lady Deborah Chambers is a Queen's Counsel specialising in relationship property law. She said divorcees - particularly those who had taken time out to raise children - had been "absolutely hammered" by the legal system and struggle more and more to get back on the ladder. Read the full story here.

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Private road houses extensive QEII covenant

Stuff reports that a steel gate hides a tarsealed private road, branching off the Coromandel's scenic 309 Road. Behind the gate lies a native forest subdivision (Mahakirau) of 24 house sites and 580 ha of native forest protected in perpetuity by QEII covenant. "Historically, Mahakirau was both farmed and logged, so it's had a shady past," says one resident. "Criminal even. The isolation (was) used to grow marijuana plots. Then an application was made to set up a recreation lodge and helicopter in high-paying game hunters. Local council and Environment Court said 'no' to the hunting lodge concept and suggested subdivision with QEII covenant instead, the idea that multiple landowners become caretakers. Read the full story here.

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New safety regulations on dams

Radio New Zealand reports that the Ministry of Business, Innovation and Employment has announced that Cabinet has approved policy decisions for the development of new safety regulations on dams, setting limits on how high they can be and how much water they can hold. There will be a two-year implementation period. Read the full story here.

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Imminent construction of Erebus memorial raises ire of Maori leader and local residents

NZ Herald and *1 News* report that the imminent construction of a memorial to the 1979 Erebus disaster at Dove-Myer Robinson Park (Parnell Rose Gardens) has raised the ire of a local residents' group - Save Robbies Park - and prominent Māori Heritage Council member Dame Rangimārie Naida Glavish. Glavish says the land has significance for iwi and consultation with tangata whenua was inadequate and Save Robbie's Park maintain the site has significance for both European and Māori history and that history has been overlooked. Read the full story here and here.

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Acquisition begins to make way for new stadium

The Press reports that after a long stand-off, the acquisition process for the lone building in the way of Christchurch's new stadium has begun. The Government has invoked its earthquake rebuild powers to force the sale of the NG building on Madras St after unsuccessfully trying to purchase it from the building's owners. Land Information New Zealand has given notice of its intention to use the Greater Christchurch Regeneration Act to buy the land. The act notes "there is no right of objection". Read the full story here.

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Behind-closed-doors move on property sparks ire of elected official

Manawatū Standard reports that a member of the Manawatū District Council has spoken out about a behind-closed-doors move he says could cost ratepayers. The Council is considering offering a Council-owned Feilding property to the Crown, reportedly well below what a private purchaser would pay, therefore denying the council a much-needed cash injection. The South St property, valued well in excess of $2 million, is being offered to the Crown for its Treaty Settlements Landbank, to be used in future Treaty of Waitangi settlements. Read the full story here.

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Artwork defaced on mutually-used easement

Sunlive reports that a Welcome Bay resident, James Parker, has accused his neighbour of defacing artwork painted on an interior fence, for the second time. The neighbour accepted he painted over the artwork the first time, as he found the Maori images painted along an easement they both used intimidating. He maintains he had nothing to do with the more recent rubbing of dirt into the freshly repainted images. Parker says he painted the art as a form of protection for him and his land, not as intimidation. Read the full story here.

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Canterbury's proposed rates hike - a move in the right direction, or anti-farmer?

Stuff reports that Environment Canterbury's controversial rates hike, to fund three years of planning for national freshwater reforms, has attracted the support of environmentalists and the ire of farmers. Canterbury's farming community fears it will unfairly cop the public's blame and, if too many people call for the lower rates option, that farmers will miss out on vital support - Cantabrians will have the opportunity to vote on their preferred rates rise percentage in March. Read the full story here.

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Calls for residential WOFs to address some rental woes

Stuff reports that a group of Wellington students signed a $1040 per week lease for a four-bedroom flat, only to find one of the 'bedrooms' was also the living room. Third-year law and psychology student Emily Cooper and her three flatmates signed the lease and handed over a $4160 bond sight-unseen because they were working full time in Auckland over the summer. Machrus Siregar, who supervises free walk-in legal advice sessions hosted twice a week by Community Law Wellington & Hutt Valley, believes it's time for a residental warrant of fitness scheme to improve Wellington's rentals. Read the full story here.

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Moriori Treaty settlement passes first hearing
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Radio NZ reports that Moriori were filled with relief and emotion yesterday as the first reading of their Treaty settlement was passed in Parliament. The settlement will include an agreed account of their history, a Crown apology, and $18 million. "After Moriori suffered loss of life, land, liberty, language, the ultimate insult was then our history and our very existence was either buried or was taught in schools as mythology," chief negotiator for Moriori, Maui Solomon said. Read the full story here.

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Shelly Bay development continues to cause controversy

Dominion Post reports that two Wellington City Council members received threats on social media for their vote on the Shelly Bay development. Tamatha Paul and Jill Day were threatened on Facebook after voting in favour of selling and leasing council land at the Miramar peninsula to developer Ian Cassels, who plans to build a $500m development there. The Police have decided against laying charges. The occupation of the property by local iwi continues. Read the full story here.

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Need to build more urgent than ever as housing shortage worsens

Stuff reports that New Zealand's housing shortage could become much worse quickly if swift action isn't taken to improve the rate of building, a new report says. The NZ Initiative's report, The Need to Build, says demographic modelling shows that New Zealand's population will get older and larger by 2038 - and that will affect housing supply more than currently thought. Historical data showed that only 21,445 new houses have been built annually since 1992 and that was nowhere near enough to accommodate the growing population. Read the full story here.

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Social housing complex nearing completion

Times Online reports that the Salvation Army's 46-unit social housing complex at Baverstock Oaks in Auckland is nearing completion, ready for code of compliance by the end of February. The complex comprises of 35 two-bedroom units and 10 single bedroom abodes. Greg Foster, national director for Salvation Army Social Housing, says "Structural Insulated Panels have been used instead of the traditional build. It provides great insulation and will result in much lower heating costs. Tenants will hardly have to use the heater in winter and it will be very cool in summer." In terms of eligibility for tenancy, only those on the social housing register can be allocated the housing units. Read the full story here.

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Wellington City Council votes to remove $76 million loan for Wellington Airport's new seawall and proposed runway extension

Stuff reports that Wellington City Council has voted to remove a $76 million loan for Wellington Airport's new seawall and proposed runway extension. Wellington Airport chair Tim Brown has urged councillors to retain the funding. Read the full story here.

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Historic WWII Marines Hall to be demolished

Stuff reports that independent commissioners have given consent to demolish the historic Marines Hall in Tītahi Bay. The hall was built by American soldiers in 1942 and used as a recreational facility. Since the 1970s it was home to the Porirua Little Theatre. Read the full story here.

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Ban on human habitation at fanhead of Matata given final approval

Local Democracy Reporting reports that Bay of Plenty Regional Council and Whakatāne District Council have approved a plan change to end human habitation in the area of Matata devastated by a debris flow in 2005 - leaving residents wondering how long they have left. The plan changes extinguish all existing use rights and bar any future development for the affected area. Through a managed retreat process progressed in partnership with the regional council and the Government, the council bought 33 of the 34 high risk properties. Read the full story here.

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Comment on Tenure Review

Newsroom comments on University of Canterbury's Ann Brower's submission on the Crown Pastoral Land Reform Bill and gives a succient history of tenure reivew of the Crown pastoral estate from the early 1990s onwards. Between 1991 and 2017, 436,652 hectares of the South Island high country were freeholded; 371,842 hectares shifted to public conservation land. Of the over 800,000 hectares whose tenure had been reviewed by 2017, 180,000 hectares underwent tenure review before Parliament authorised the process in 1998. Read the full story here.

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Urgent need to acquire heritage building for Christchurch stadium

The Press reports that the Government may use Earthquake Powers to forcibly acquire a 115-year-old building sitting on land needed for Christchurch's new stadium. The NG Building, at 212 Madras St, was built in 1905 and is one of the last buildings to have survived the Canterbury earthquakes. The land it sits on however is wanted by the Government who have earmarked the area to replace Lancaster Park, which was irreparably damaged in the earthquakes. The NG Building's owners maintained that the Canterbury Earthquake Recovery Authority had promised in 2013 the new stadium would be built around their building - an agreement which Land Information New Zealand is not aware of. LINZ and the owners are in discussions over potential avenues for acquisition. Read the full story here.

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Tips for tenants, landlords and boarders alike

Hawkes Bay Today reports that the Citizens Advice Bureau we get regular enquiries from people with "landlord problems" and, occasionally, landlords with "tenant problems". Given the major changes to tenancy laws now in place, with phase 2 having taken effect from February 11, it is imperative that all tenants and landlord become familiar with the changes. Napier CAB manager, Jenny Pearce, provides and run through of the current status quo. Read the full story here.

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Long-term lease sees iconic Cobb & Co return to railway station

Otago Daily Times reports that Cobb & Co reopened its Dunedin Railway Station restaurant last Thursday, almost a full year after the restaurant went into liquidation in March 2020 - they never reopened after the COVID-19 lockdown. Cobb & Co has now signed a long-term lease with the Dunedin City Council and will run the restaurant as a company-owned store. The building is a heritage one and occupancy helps preserve the building due to the temprature remaining higher inside. "If a building is not in use, it tends to deteriorate'" said Heritage New Zealand Pouhere Taonga Otago-Southland area manager Jane Macknight. Read the full story here.

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Hamilton subdivision remains divisive over compulsory acquisition

Stuff reports that Hamilton's in-progress subdivision, Peacocke, is earmarked to soak up a lot of the city's growth with an estimated 20,000-plus residents expected to call the area home by 2048. More than 9000 people are expected to be living in Peacocke within the next decade. However, Hamilton City Council remain at loggerheads with one landowner - the Shaws - who remain opposed to the compulsory acquisition of some of their land for roading. The matter is progressing through the Environment Court. Read the full story here.

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Renters suffering from eviction anxiety

Radio NZ reports that a new study shows a quarter of renters who left their homes did so because their landlord forced them to. Otago University housing researcher, Dr Elinor Chisholm, said two dozen people were interviewed for her part of the research looking at peoples' experiences of being evicted. She said people often did not know why they were kicked out and grieved for years afterwards. Otago University senior research fellow Dr Lucy Telfar-Barnard analysed data from Stats NZ's 2018 General Social Survey and said a surprising provisional finding was that those in the LGBTQI community had their tenancies ended by landlords at twice the rate of the general population. She is looking to investigate why that was the case. Read the full story here.
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Wahi tapu land at centre of resource consent stoush

Radio NZ and *Stuff* report that local iwi are formally opposing the consent granted by Whakatane District Council for a residential subdivision next to the ancient coastal urupa Opihi Whanaungakore. The ancient urupa, where bodies are ferried by waka, remains in use by local iwi Ngati Awa. Ngati Awa kaumatua, Manu Paul, said the proposed development undermined hapu mana whenua, threatened its whakapapa and would destroy its rangatiratanga. Whakatane District Council sold the land for subdivision for almost $8 million in 2017 with an agreement that 10 of the total 40 hectares would be reserved for a retirement village. Read the full story here and here.

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Misleading home-buying scheme leads to fine

Radio NZ reports that Home Funding Group Ltd has been fined $400,000 after a Commerce Commission investigation, for falsely claiming to offer a savings scheme to help low-income families buy a home. In sentencing, Judge Bouchier said it was a "carefully crafted scheme" and the conduct involved "serious offending against vulnerable people". She noted that affidavits from four victims were "extremely sad" and "heart-rending" and that all four complainants were still unable to purchase houses of their own. Read the full story here.

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National Party seek inquiry into Ihumatao purchase

The Capital Letter reports that the National Party of NZ has asked the Auditor-General to investigate a potential misuse of taxpayer funds to settle the Ihumātao land dispute. In December the Government announced it was using funds from the Land for Housing Programme to buy the land from Fletcher Building for $29.9 million. "It has now emerged that the New Zealand Treasury explicitly warned Ministers against using Land for Housing Programme funds to resolve the dispute at Ihumātao," National's housing spokesperson Nicola Willis says. Read the full story here.

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Mothballed subdivision on the cards to be sold

Stuff reports that John Gardyne, chairman of the Gore District Council's newly-formed Surplus Property Subcommittee, is in favour of selling the council's mothballed subdivision, Matai Ridge. The council voted to mothball the project in December 2018, due to a significant increase in development costs. Read the full story here.

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School farm feels 'a bit like its been stolen'

Radio NZ reports that Taihape Area School leased a local patch of farmland for educational delivery, until it was sold off to form a part of the Treaty Settlements landbank. The MInistry of Education maintain they did not realise the school still used the farm, and would not have sold the property off had they realised. The 13 hectare property was set up in 1989 for the use of students of Taihape College, but unfortunately was never put into a separate trust, an oversight which has plagued those using and maintaining the property ever since that school closed in 2004. Read the full story here.

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Housing affordability - families struggling to find a rental

Stuff reports that the Tautu family have worked hard to improve their qualifications and ability to provide, but they say their past and prejudice against renting to large Pasifika families is holding them back from finding a private rental. Daniel and Emma say the family's previous social housing home in Manurewa there were two attempted break-ins, the couple's two oldest children suffered bad asthma due to pour housing quality, and they would come home to find strangers drinking in their shed because the garden was unfenced. Severe housing deprivation rates for Pacific peoples were close to four times the rate for Europeans.

Read the full story here.

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