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Legal Case-notes May 2021

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

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

- A further decision relating to an appeal against refusal of consent to a proposed residential land use and subdivision of land adjacent to vineyards at Gibbston in the Kawerau Gorge;
- The decision of the High Court on an application for recall of a previous High Court decision and decisions of the Environment Court which granted consent to realignment of part of the Taranaki/Waikato State Highway 3;
- A related decision of the Environment Court on other appeals against aspects of the proposed realignment of part of the Taranaki/Waikato State Highway 3;
- The dismissal of an application for judicial review of grant of consent by Wellington City Council for mixed-use residential and commercial development at Shelly Bay on the Miramar Peninsula in Wellington;
- A decision from the Court of Appeal on 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 land for residential purposes at the site of St Mary's Cathedral;
- A curious case of jurisdiction to grant consent for provision of telecommunication and other services to a marina in the coastal marine area at Kerikeri in the Bay of Islands;
- The final decision of the Environment Court approving 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.

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CASE NOTES MAY 2021:

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Gibbston Vines Ltd v Queenstown Lakes District Council _ [2021] NZEnvC 23

Keywords: subdivision; land use consent; noise; reverse sensitivity

This was a second interim decision on an appeal by Gibbston Vines Ltd ("GVL") against the declining of subdivision and land use consent by Queenstown Lakes District Council ("the council"). The decision was primarily concerned with a matter raised in the first interim decision in the appeal, *Gibbston Vines Ltd v Queenstown Lakes District Council* [2019] NZEnvC 115 ("the 2019 decision"), namely: "the Proposal falls materially short in its management of the risk of conflict between residential development of the Site and existing and potentially intensifying viticulture". The 2019 Decision found the proposal failed to satisfy RMA requirements for consent, including in not satisfactorily avoiding conflict between its proposed residential land use and established viticultural activities. That was primarily in the sense of exposing incoming

residents to noisy viticultural activities nearby. The 2019 Decision also found the proposal deficient in its landscape design.

GVL had offered a modified proposal in response to the Court's findings. GVL proposed a revised subdivisional layout under its modified proposal. However, this was only in order to address the Court's concerns about the landscape design. GVL continued to seek six residential lots and did not materially reposition building platforms. Rather, to address reverse sensitivity and land use conflict issues, GVL's only substantive response to the Court's findings was to propose additional consent conditions on dwelling noise insulation such as to protect internal living amenity.

The Court found that the revised design was effective for landscape design purposes. The Court stated that the determinative issues were now narrowed to whether the modified proposal's approach to the management of conflict with neighbouring viticulture was sufficient and appropriate. The Court found that the modified proposal would give rise to a consequential significant risk of conflict between new residents and established viticultural production. That was contrary to the Proposed District Plan's objectives and policies and the design intentions of the Gibbston Character Zone and was a direct consequence of GVL's choice of locations of its residential building platforms. The Court found that proposed covenant and consent notice mechanisms were not adequate instruments for effectively managing the conflicts that might arise.

The Court stated GVL's election not to revisit the separation distance between its intended dwellings and adjacent vineyards meant it was not in a position to assess or approve of such a reconfigured development. Rather, it found that the decision that best promoted the RMA's sustainable management purpose was one that declined consent to the modified proposal. The Court stated that these findings were not necessarily an impediment to the development of Lot 1 as proposed, including its identified commercial building platform. There might be an issue as to how consenting that, in advance of any new application for residential subdivision and development of the balance land, could affect landscape treatment. The Court allowed opportunity for GVL to inform the Court whether, and on what basis, it would seek to have any such interim subdivision or development considered at this stage. If GVL did not seek that concession, a final decision would issue declining the appeal in toto. Within 15 working days of issuance of this decision GVL was to file and serve a memorandum advising for the purposes of the Court's final decision, whether or not it wished to pursue consent for Lot 1 (and, if so, attach an amended landscape plan and related conditions). Costs were reserved.

Decision Date 7 April 2021 Your Environment 8 April 2021:

(See Newslink September 2019 for the previous report on *Gibbston Vines Ltd v Queenstown Lakes District Council* [2019] NZEnvC 115 – RHL)

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Poutama Kaitiaki Charitable Trust v Taranaki Regional Council _ [2021] NZHC 326

Keywords: procedural; appeal procedure; Waitangi tribunal; kaitiakitanga

Poutama Kaitiaki Charitable Trust ("Poutama") filed an application for recall of a judgment, *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159 ("the High Court decision"), which dismissed an appeal from the Environment Court ("EC") in *Director-General of Conservation v Taranaki Regional Council* [2018] NZEnvC 203. The appeal related to the EC's interim decision, in general terms, allowing construction by New Zealand Transport Agency ("Waka Kotahi") of a six kilometre part of the Taranaki/Waikato State Highway 3.

The grounds for recall that Poutama raised fell into three general categories: matters which were presently before the EC (the EC had not yet made its final decision in relation to the Waka Kotahi applications); cultural issues; and the publication of new authority since the High Court decision was delivered. Regarding issues raised by Poutama regarding issues presently before the EC, the Court stated that the issues raised were presently before the EC and/or were not matters argued before the High Court on appeal. They were not grounds for recall.

Regarding cultural issues Poutama argued the EC was in error in not accepting as a matter of law that Poutama was already recognised as tāngata whenua in legal proceedings in the Waitangi Tribunal, Māori Land Court, the Native Land Court and High Court. The Court stated the decisions and reports to which Poutama referred to in its grounds for recall were considered by the EC and the High Court on appeal. These grounds for recall failed. Poutama referred to the decision in *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd* [2020] NZHC 2768,
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(2020) 22 ELRNZ 110 which was delivered after the hearing of the appeal, arguing that the decision showed that the EC took the wrong approach and that the High Court should have allowed the appeal on that basis. The Court stated this case was before the Court and it had received submissions from the parties in relation to the case following the hearing. The Court concluded that the approach of the EC in this case was not inconsistent with the approach set out in *Ngāti Maru*. This ground also failed.

The third category of grounds for recall related to the recent release of a report of the Waitangi Tribunal. Poutama argued the report confirmed its tino rangatiratanga and kaitiakitanga as tāngata whenua in relation to the project land. The Court found for the purposes of this recall application the recent Waitangi Tribunal report did not amount to a judicial decision of relevance and higher authority. This ground also failed. Finally, the Court rejected an argument that there were "special reasons that justice required the judgment be recalled". The Court found that Poutama was seeking to relitigate the findings of the EC as to cultural matters.

The Court did not consider any of the grounds advanced by Poutama had been made out as grounds for taking the "serious step" of a recall. The application for recall was dismissed. The Court noted Waka Kotahi indicated that it would seek costs. The appellants were given five days from the date of the judgment to file memoranda on costs.

Decision Date 19 March 2021 Your Environment 22 March 2021:

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Director-General of Conservation v Taranaki Regional Council _ [2021] NZEnvC 27

Keywords: requirement; resource consent; cultural values; conditions

This decision followed *Director-General of Conservation v Taranaki Regional Council* [2019] NZEnvC 203 ("the interim decision") which concerned a programme of improvements ("the project") on State Highway 3 which connects the Taranaki and Waikato regions. Since the interim decision, the Court had been advised that Te Rūnanga O Ngāti Tama Trust had resolved to support the project. New Zealand Transport Agency ("the Agency") sought a minor amendment to the Notice of Requirement ("NOR") to alter the designation and the resource consents to accommodate an additional construction yard at the southern end of the project area. The Court stated it needed to make a final assessment of the matters it did not determine in its interim decision, address the request to amend the NOR, and finalise conditions.

The Court first recorded that no issue was raised by Ngāti Tama as to ownership of the subsoil of the highway. Regarding the Agency's fourth project objective in relation to cultural effects, as there was now agreement for the Agency to acquire the Ngāti Tama land (and related agreements), the Court found that the Agency's final objective could be fulfilled. As to cultural effects, due to Ngāti Tama's acceptance of the project and the acquisition of its land and the related agreements, together with its assessment of the wider cultural effects of the project, the Court considered that the effects of the NOR and the project would be appropriately addressed.

Regarding the Agency's proposal to alter the NOR to accommodate an additional yard at the southern end of the project area, the Court considered that the proposal to amend the designation and related resource consent boundaries was appropriate. Further, there was a jurisdictional basis to both modify the NOR and amend the plan to which reference was made in the resource consent conditions because it was clear that the amendment enabled the efficient construction of the project, comprised land already included in the NOR documents, and did not prejudice or affect any person, except one person, who had provided written approval to the proposed construction yard.

Regarding the National Policy Statement for Freshwater Management 2020 ("NPSFM 2020") and Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ("NES Freshwater"), the Court stated it was obliged to have particular regard to the NPSFM 2020 in considering the NOR and the application for regional resource consents under the relevant provisions of ss 104 and 171 of the RMA. Further, it was obliged to consider the provisions of the NES Freshwater as its provisions had to be complied with pursuant to pt 3 of the Act. The Court found that, for the purposes of s 171(1)(a)(i) and s 104(1)(b)(iii) of the RMA, there was no aspect of the project that would be inconsistent with any objective and policies of the NPSFM 2020 itself nor with any objective and policies which had to be incorporated into the Regional Plan pursuant to s 55(2) of the Act.

Regarding the NES Freshwater, the Court stated for there to have been a valid application for the consents required in the NES Freshwater (being other regulations), the application documents must have assessed the proposal against the relevant provisions of those
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regulations. It had not been done in this case as the NES Freshwater was not in existence at the time the application was filed. For these reasons the Court did not consider that it had jurisdiction to grant any further consent required under the NES Freshwater. Further, it did not consider that it was appropriate to amend the conditions to address NES Regulations. The Agency was directed to delete amendments to conditions made to address the NES Freshwater.

The Court identified some minor additional issues and the Agency was directed to address those issues, set out in the schedule attached to the decision. The Agency was to lodge an amended complete set of NOR conditions, regional resource consent conditions and a full set of the latest plans within 15 working days of the date of the decision. Upon receipt of those, the Court would formally issue approval to the resource consents and confirm the application in respect of the NOR. The appeals by the Director-General of Conservation and Te Rūnanga O Ngāti Tama were allowed. The appeals from Poutama Kaitiaki Charitable Trust and D & T Pascoe were dismissed. Costs were reserved against Poutama Kaitiaki Charitable Trust.

Decision Date 6 April 2021 Your Environment 7 April 2021

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Enterprise Miramar Peninsula Inc v Wellington City Council _ [2021] NZHC 549

Keywords: judicial review; resource consent; conditions; road; effect adverse

This application for judicial review concerned the grant by Wellington City Council ("the council") of resource consents enabling a mixed-use residential and commercial development by The Wellington Co Ltd, at Shelly Bay on the Miramar Peninsula in Wellington ("the site"). Following the Court of Appeal's decision in *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541, [2019] 2 NZLR 501 ("the Court of Appeal decision"), the council appointed a panel ("the Panel"), to reconsider the resource consent application and make a decision on it. The Panel Decision granted resource consents to develop the site, subject to a number of stated conditions. Enterprise Miramar ("EM") challenged the Panel's granting of the resource consents on the basis of errors of law and/or fact, and on the basis that the Panel Decision was unreasonable.

EM's challenge in this proceeding was to two findings in the Panel Decision: the Panel's conclusion under s 34(1) of the Housing Accords and Special Housing Areas Act 2013 ("HASHAA") that the adverse transportation effects of the development would be "no more than minor" ("the transportation effects finding"); and the Panel's conclusion that the requirements of s 34(2) of HASHAA, including for sufficient and appropriate roading infrastructure, were satisfied ("the roading infrastructure finding"). EM argued both findings were erroneous in law and/or fact, and were unreasonable.

Regarding the transportation effects finding, the Court was satisfied that the Panel had regard to all the matters required by s 34(1). It was also satisfied that the Panel had sufficient probative evidence before it, including material which was critical of the consent application, on the basis of which it could have reached the view that the adverse transportation effects were no more than minor. The Court was also satisfied that the Panel carried out the overall weighing of the s 34(1) factors in the manner prescribed by the Court of Appeal and reached its assessment of the effects uninfluenced by the purpose of HASHAA, as the Court of Appeal required it to do. It then stood back to conduct an overall balancing, as the Act required. The Court concluded there was no error of law in relation to the application of s 34(1) of HASHAA, and the Panel's transportation effects finding was a decision which, upon the basis of the material available to it, a reasonable decision-maker could have made.

Regarding the roading infrastructure finding, the Court was satisfied that the Panel took the correct approach to s 34(2), and had before it, sufficient information from which it could reasonably conclude that there would be sufficient and appropriate roading infrastructure to support the development. The Court found the Panel's roading infrastructure finding was a decision which, on the material available, a reasonable decision-maker could have made. Further, having regard to the Court of Appeal decision, it was proper for the council to impose conditions on the consent to ensure that the appropriate infrastructure would be provided.

The application for judicial review was dismissed. The Court invited the parties to agree on costs.

Decision Date 29 March 2021 Your Environment 30 March 2021

(See previous reports in Newslink June and August 2018 -RHL)
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O'Keeffe v New Plymouth District Council _ [2021] NZCA 55

Keywords: resource consent; public notification; traffic generation; amenity values; parking; information required; visual impact

This decision concerned an appeal by W O'Keeffe ("O") against the High Court's ("HC") decision in *O'Keeffe v New Plymouth District Council* [2020] NZHC 3099 where the HC dismissed O's application for judicial review. The matter concerned 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.

O's arguments focused on special events including weddings, baptisms, funerals and memorial services, associated receptions, and concerts in the cathedral. He argued the council did not have adequate information before it in respect of the effects of special events to satisfy itself that the effects on neighbours would be less than minor, and that notification could be dispensed with. Alternatively, he argued the council failed to have regard to the effects of special events in making its decision to proceed without notification. Further, O argued the council erred in its assessment of the effects of the proposal on the Pūkākā/Marsland Hill viewshaft. O sought relief: quashing of the resource consent as it related to special events; declarations as to unlawfulness in respect of "visual/viewshaft" errors, even if other aspects of the resource consent were not quashed; and costs.

The Court found the challenge to the council's decision on the basis that the council lacked adequate information about special events, or failed to give proper consideration to the effects of traffic movements and parking generated by special events (including any effects on residential amenity), could not succeed. The Court was not persuaded that the information available to the council in relation to traffic and parking generated by special events was inadequate. Nor was it persuaded that there was any defect in the council's consideration of traffic and parking effects, or any reason to think that the effects on O and other nearby residents of traffic and parking attributable to special events were other than insignificant. It was open to the council to conclude that any traffic or parking effects from special events, including any effects on residential amenity, were less than minor and did not require limited notification of the Trust Board's application.

The Court did not accept the arguments advanced in relation to visual effects and viewshafts. The Court did not consider that any relevant plan required the council to consider viewshafts towards Pūkākā/Marsland Hill. The council did not err in assessing the effects of the redevelopment on visual amenity or viewshafts. Even if there had been an error, the Court found it would not have been appropriate to award any relief to O in circumstances where he was not prejudiced in any way by this aspect of the redevelopment, and there was no evidence of any adverse effects on any other person.

The appeal was dismissed. O was ordered to pay one set of costs to the Trust Board for a standard appeal on a band A basis, with usual disbursements.

Decision Date 25 March 2021 Your Environment 29 March 2021

(See earlier report in Newslink February 2021 – RHL)

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Claydon v Far North District Council _ [2021] NZEnvC 24

Keywords: jurisdiction; abatement notice; stay

C Claydon ("C") filed an appeal pursuant to s 325(2) of the RMA against an abatement notice issued to him by Far North District Council ("the council") on 2 February 2021; and an application pursuant to s 325(3B) for stay of the abatement notice. C had applied to a broadband provider to have his marina on the Kerikeri River connected to broadband. C had requested that the council allow "the horizontal drilling contractor [to] pull through a water pipe together with the Chorus fibre broadband conduit", and confirmation that the electricity conduit could be pulled through at the same time. The council had declined the request. A council officer subsequently issued an inspection notice dated 2 February 2021 to workers installing a broadband fibre connection to C's property.

The council argued that the inspection notice issued by the council's monitoring officer was not an abatement notice. It was simply a notice to cease works on council land issued by the council as a landowner. The council referred to s 232 of the Local Government Act 2002

("LGA") which made it an offence for any person to damage or interfere with any property owned by or vested in a local authority. The council confirmed that it had not issued any abatement notices to C or any contractors or utility providers with respect to the council land or pontoon facility. The council considered the Environment Court had no jurisdiction to deal with this proceeding.

The Court stated that the notice in question in this case failed to meet the form requirements of an abatement notice as set out in s 324 of the RMA. The Court found that an abatement notice had not been issued. Where there was no abatement notice that had been issued, there could be no right of appeal or application for stay under s 325. The Court found there was no right of appeal to the Environment Court against an inspection notice under s 332 of the RMA. The Court had no jurisdiction to consider an appeal from an inspection notice direction. There was no appeal provision available to the Environment Court in respect of an offence under s 232 of the LGA. Offences could be disputed in accordance with s 240 of the LGA, but this came within the jurisdiction of the District Court and not the Environment Court.

The Court stated the form in question should never have been used by the council officer. It was clearly intended to give apparent legality to the officer with the intent the person receiving it believed it to be a legitimate notice. Whether that constituted an actionable step or offence by the officer or council was not for the Court to determine. There were other legal avenues such as the Local Government Auditor or Ombudsman or otherwise. The purported appeal was struck out.

Decision Date 1 April 2021 Your Environment 6 April 2021

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Cabra Rural Developments v Auckland Council _

Keywords: regional plan, subdivision

This decision followed *Cabra Rural Developments Ltd v Auckland Council* [2021] NZEnvC 10 ("the previous decision"), where the Environment Court issued a final decision as to the provisions to be included within the Auckland Unitary Plan in relation to rural subdivision. Auckland Council ("the council") was directed to file a final copy of the provisions as amended by the Court for approval. The council did so. The Court was satisfied that the rural subdivision provisions addressed the matters in the previous decision and otherwise met the purpose of the RMA. The final rural subdivision provisions were attached to this decision. The council was ordered to alter its plan accordingly as soon as possible. There was no order as to costs.

Decision Date 9 April 2021 Your Environment 14 April 2021

(For notes on the previous decisions [2020] NZEnvC 153 and [2021] NZEnvC 10 see Newslink November 2020 and April 2021– RHL.)

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

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Government housing package backs first home buyers

Prime Minister Jacinda Ardern, Housing Minister Megan Woods, Finance Minister Grant Robertson, and Revenue Minister David Parker have announced a housing package that will increase the supply of houses and remove incentives for speculators, to deliver a more sustainable housing market.

- $3.8 billion fund to accelerate housing supply in the short to medium term
- More Kiwis able to access First Home Grants and Loans with increased income caps and higher house price caps in targeted areas
- Bright-line test doubled to 10 years with an exemption to incentivise new builds
- Interest deductibility loophole removed for future investors and phased out on existing residential investments
- Govt to support Kāinga Ora to borrow $2 billion extra to scale up at pace land acquisition to boost housing supply
- Apprenticeship Boost initiative extended to further support trades and trades training

$3.8 billion housing acceleration fund

Megan Woods said the Government is speeding up the pace and scale of house building with a $3.8 billion Housing Acceleration Fund.

"We estimate the Housing Acceleration Fund will help green light tens of thousands of house builds in the short to medium term," said Megan Woods.

"The Government will also assist Kāinga Ora to borrow an additional $2 billion that will assist in bringing a range of development forward through strategic land purchases," Megan Woods said.

Extra support for first home buyers

First home buyers will also get more help to get into the housing market with increases to First Home Products' income caps and changes to regional price caps.

In 2019 the Government changed the rules so people only need a 5% home deposit before they can apply for the help. Today that is being expanded to ensure more people are included. This expansion comes alongside the recent Reserve Bank of New Zealand Loan-to-Value Ratio changes announced that will see investors require a 40 percent deposit from May 1 2021.

"Income caps to get financial assistance will be lifted from $85,000 to $95,000 for single buyers, and from $130,000 to $150,000 for two or more buyers. The changes to the house price and income caps will take effect on 1 April 2021," Megan Woods said.

Changes to regional price caps on new build and existing properties will also reflect the increased price of housing.

Extension of bright-line test to 10 years

Grant Robertson said property investors now make up the biggest share of buyers in the market so it's essential the Government takes steps to curb rampant speculation.

"Our plan also encourages investment in new builds. To support our goal of increasing supply, we will keep the bright-line test for new build investment properties at the current five years," said Grant Robertson.

"I want to stress that the bright-line test does not and will not apply to the family home," Grant Robertson said.

Removal of interest deductibility loophole

"Cabinet has agreed to remove the ability for property investors to offset their interest expenses against their rental income when they are calculating their tax," David Parker said.

Ministers are also considering closing a loophole on interest-only loans to speculators. The Reserve Bank will report back to Ministers in May on this and any proposals around Debt to Income Ratios, particularly for investors.

Extension of apprenticeships boost

To ensure we have the people power required in the construction sector, the Government is extending the Apprenticeship Boost initiative by four months to further support trades and trades training.

It means employers who have apprentices starting over those extra four months can get some Apprenticeship Boost support as well, which could see more than 5,000 new apprentices able to benefit.

Since launching in August 2020, more than 10,000 employers have signed up and received almost $97 million in subsidies for more than 21,000 apprentices.

- Please click on the link below for full statement

https://www.beehive.govt.nz/release/govt-housing-package-backs-first-home-buyers

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Housing provider maintains Government's housing policies 'not working for Māori'

Radio NZ reports that frustration is building with Māori housing providers who feel that government measures to cool the housing market do nothing to directly fix the issues facing tangata whenua. The Waitangi Tribunal Kaupapa Māori Housing Inquiry has called out the government for failing to put in place policies that ensure tangata whenua have a roof over their head. Kahungunu Whānau Services is a Māori social housing provider in Wellington, and its executive Ali Hamlin-Paenga said what was happening now was a crisis and she did not want to wait any longer for government action. Read the full story here.

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New housing policies a "token gesture"

Radio NZ reports that the government's new housing policy has been slammed by Bay of Plenty first-home buyers, rental agents and property investors alike. The sweeping changes designed to tip in favour of first-home buyers were unveiled on Tuesday and include increasing the caps for financial support and extending the bright-line test to 10 years, but it is being seen as a "token gesture". Tauranga Property Investors Association president Juli Anne Tolley called the policy changes "ludicrous". "[The changes] seem like knee-jerk reactions," she said. Read the full story here.

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Council allows for 'bare' land sales at development

Wanaka Sun reports that the Queenstown Lakes District Council has signed off on a change allowing for up to 40 per cent of the Longview special housing area (SHA), at Lake Hāwea, to be sold "bare". The site was classified as a SHA in December last year, allowing for affordable housing conditions, including a limit of 30 per cent on bare section sales to prevent land banking (that being the practice of buying a piece of land based on its potential for future sale, development or subdivision). With land banking the investor keeps hold of the land until market conditions are favourable, then divides it into smaller titles or house and land packages to sell for a profit. Read the full story here.

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The ins and outs of "the bright-line test"

Radio NZ provides analysis on the ins and outs of the "bright-line test". The innocuously labelled test has been a hot topic over the past few days, getting politicians, the real estate industry and first-home buyers all in a lather. So, what is this test and what does it mean? In essence what it does is treat any financial gain made on the sale of a property as income - which can be taxed. Read the full story here.

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Delay in bond refund unreasonable and causing hardship

Stuff reports that a Hamilton woman is frustrated she's been waiting three weeks for Tenancy Services to process her bond refund, as it meant finding the $1520 bond for her next tenancy caused extremem financial hardship. Shaina Moss, who moved out of her previous flat in February, said in the past it had taken her about 10 days to get a bond refund, which she said was reasonable, but this time it is three weeks and counting. "Excluding all their working days lingo, it's about a month until you get your bond back, and it's just too long to hold onto people's
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funds," Moss said. LJ Hooker property investment manager Keith Archer said the wait times were outrageous for tenants, who needed their money for another tenancy. He said a reasonable time to wait for a bond was seven days, but he had been told by Tenancy Services that the wait was 19 working days. Both landlords and tenants were affected. Read the full story here.

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Christchurch facade emerges after more than a decade enshrouded

Stuff reports that buildings that have remained hidden behind wrap and scaffolding are starting to reemerge, as the Christchurch rebuild continues. For the past 10 years scaffolding has shrouded the front of the former Livingspace building on Lichfield St, an ugly reminder of the damage wrought by the Christchurch earthquakes. The scaffolding was removed this week and the beauty of its stunning marble facade revealed, the building's past glory retained and restored. Read the full story here.

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Landlord ordered to pay for uninsulated rental

Stuff reports that a tenant has been awarded more than $2000 after she was forced to share a bed with her daughter as a way to keep warm in their uninsulated rental. Frances Paulo took her landlord, JC Property Holdings Limited, to the Tenancy Tribunal over the lack of insulation and heating at the property, seeking damages and compensation. Read the full story here.

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Award finalist bringing tikanga into farming

The Country reports that Chevron Horsford, a finalist for the 2021 Fonterra Dairy Woman of the Year award, is bringing a tikanga Māori perspective to dairy farming, inspired by the way her tipuna managed the land in a sustainable way and believed those principles and techniques could be applied to modern farming, especially on whenua Māori. Read the full story here.

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Southland towns at risk of becoming earthquake ghettos

Stuff reports that the Southland towns of Otautau, Riverton, Winton and Wyndham have been given 12-and-a-half years to assess and remediate earthquake prone buildings, under a resolution passed at a Southland District Council meeting on Wednesday. More than 120 main street buildings have been identified as a risk to public safety, were an earthquake to occur. Councillor John Douglas questioned what the outcome for a property owner would be if for whatever reason they did not carry out the engineer reports, querying whether towns would end up being ghettos of empty buildings. Read the full story here.

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Auckland landlord trespassed tenant, then dumped her belongings

Stuff reports that a disagreement between an Auckland landlord and the tenant of her caravan ended in thelandlord dumping the tenant's belongings on a road 11km away. The "feud" has ended with the Tenancy Tribunal ordering that both parties pay the other - Tribunal adjudicator John Greene ordered the landlord paid $1525 to the tenant, whilst the tenant paid the landlord $305. Read the full story here.

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Local iwi occupy land in protest in Northland

Te Karere reports that a land occupation is underway in Northland, protesting the way organisations have blocked access to Māori land. The traditional lands of Ngāi Tāhuhu, Te Waiariki and Ngāti Korora are now being occupied by their descendants, as concerns mount over a roadway, meant to connect a private subdivision, but which runs through Department of Conservation land. The concerns centre around how the land was acquired by the developer. Read the full story here.

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Apartment buildings owned by company shares - captured by bright-line?
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Stuff reports that there is some confusion around whether or not apartment buildings owned via company shares are captured by bright-line test, if they are a residential investment. Property law specialists say owning an apartment through a company and share structure is not exempt from the extended 10-year bright-line test, in the circumstances of it being a residential investment. However, one Wellington apartment investor questioned whether buying property on a company share basis could be a way of avoiding the extended bright-line tax, as individuals were selling shares, not a property. Read the full story here.

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Deed of Settlement signed with Ngati Paoa

Minister for Treaty of Waitangi Negotiations Andrew Little has announced that a Deed of Settlement has been signed between the Crown and Ngāti Paoa settling the historical Treaty of Waitangi claims of the iwi.

Ngāti Paoa will receive redress that includes the return of twelve sites of cultural significance and financial and commercial redress valued at $23.5 million, along with a wide range of other commercial, cultural and relationship items.

The Deed of Settlement includes an apology from the Crown to Ngāti Paoa for its failure to protect them from the rapid alienation of land in the decades following the signing of te Tiriti o Waitangi / the Treaty of Waitangi, the loss of life and the devastation caused by hostilities, and the enactment of laws and policies that have led to the loss of whenua and te reo Māori.

The Deed of Settlement acknowledges that the confiscation of land by the Crown, the impact and operation of the native land laws and Crown purchasing left Ngāti Paoa virtually landless and undermined their economic, social and cultural development. The Crown's failure to ensure that Ngāti Paoa retained sufficient land for their present and future needs was a breach of te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

Ngāti Paoa is a member iwi of the Hauraki, Marutūāhu and Tāmaki collectives and has approximately 3,500 members according to the 2013 Census.

The settlement redress will be administered the by Ngāti Paoa Iwi Trust, the post-settlement governance entity, elected by iwi members.

A copy of the Deed of Settlement is available at www.govt.nz/treaty-settlement-documents/ngati-paoa/.

Please click on the link for full statement: Media Release

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Concerns over High Court's use of tikanga to overule Waitangi Tribunal

Radio NZ reports that some in the Māori legal community have expressed concern at the High Court's use of tikanga to overule the Waitangi Tribunal, questioning whether those judges have the necessary understanding and expertise in te ao Māori. The High Court, earlier this week, overturned a Tribunal order that $800 million of Crown-owned land in the central North Island should go to Ngāti Kahungunu, arguing the iwi were not mana whenua of that area. Read the full story here.

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High Court upholds judicial review over return of Māori land

Radio NZ reports that the High Court has upheld a judicial review challenge brought by the Government, Mercury NZ and The Raukawa Settlement Trust, to do with a preliminary Waitangi Tribunal decision that some North Island lands be returned to Māori. The decision centered around the return of Ngāumu Forest in Wairarapa and Pouākani in the central North Island to Ngāti Kahungunu as a remedy for historic breaches of the Treaty of Waitangi. The Crown, Mercury NZ (which runs the Maraetai Power Station located in Mangakino), and the Raukawa Settlement Trust all said the Tribunal had misinterpreted its powers and the determination should be set aside. Read the full story here.

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Potential treaty land transfer causing concern for bach owners

Stuff reports that bach owners at Whanarua Bay on East Cape are concerned they will be locked out of their holiday homes if local iwi gain ownership of nearby land as part of its Treaty of Waitangi settlement. Ōpōtiki District Council is working through a proposal to transfer several

parcels of council-owned reserve land to Te Whanau a Apanui as part of the settlement process. One of those parcels of land provides the only way for beachfront bach owners to access their properties and those property owners are concerned their access will cease. Read the full story here.

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Large subdivision could transform rapidly growing rural Canterbury town

Stuff reports that property developer, Carter Group, are applying to Selwyn District Council to rezone 186 hectares of farmland for 2000 new sections and a small commercial area, in order to proceed with plans to build new homes for approximately 5,400 residents in Lincoln, a small rural town near Christchurch. The subdivision would be Lincoln's biggest yet. Lincoln resident Ralph Scott said such developments were "inevitable" but that the town was losing its village feel. Read the full story here.

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Council land housing solution

Wairarapa Times-Age reports that a housing solution designed to help ease the crisis in the region, with national potential, has been handed to the South Wairarapa District Council. An lease-to-buy 'Urban Village' scheme, the core would be the sale of long leasehold interests in land owned by the council and a joint-venture partner. The development could have as many as 500 sections, but no less than 250 and buyers would be able to build homes on the sections. Their only expenses would be building costs and rates, with annual lease costs managed at an affordable level. After 15 or more years, lessees would have an option to buy the land. Read the full story here.

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New Plymouth's inner-city skyline moving up

Stuff reports that an independent commissioner has approved a planned six-storey office and apartment building on a car park in central New Plymouth. The building will have a basement car park, five storeys of offices, and a three-bedroom apartment at the top. Opponents cited the building's height, its impact on viewshafts, the removal of a protected tree, the effects on heritage, the loss of parking and setting a precedent. Read the full story here.

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Two households remain, one refusing to leave

Stuff reports that time in paradise is up for Matatā residents living in a red-zoned debris flow risk area, after a Whakatāne District Council plan change has deemed their land and family home uninhabitable. 2005 - the Awatarariki fanhead was engulfed in slurry, rocks and timber in a massive debris flow following extremely heavy rainfall. Almost 100 properties were affected. 2012 - Whakatāne District Council opted to pursue a managed retreat process, having tried several failed engineering alternatives. Almost a decade of court hearing ensued. Read the full story here.

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Protesters halt work on new Waiheke Island marina

Radio New Zealand reports that construction work has stopped on Kennedy Point Marina on Waiheke Island after action by protesters. Opponents are mainly concerned about the marina's impact on the environment and the threat to the little blue penguin which nest in the bay. Read the full story here.

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'A convenient partial privatisation of the Crown' - the Wakatu case

Capital Letter editor, Graham Taylor, writes a runthrough of the 2017 Supreme Court case of *Proprietors of Wakatū* v *Attorney-General* [2017] NZSC 17, going through a brief history and subsequent action. Read the editorial here.

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Returned ownership of luxury Northland island could be just out of reach for hapū
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Stuff's Pou Tiaki reports that return of ownership of Motukawaiti - an island in the Cavalli group off Matauri Bay - is likely to remain out of reach for Far North hapū Ngāti Kura. Former MP and Ngāti Kura kaumātua Dover Samuels is advocating for the island to be bought by the Crown, and returned to Ngāti Kura and other hapū who have a connection with the land, but the island is currently on the market for sale, with a contract on the table from a confidential bidder looking to create a tourism business on the island. Read the full story here.

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Mau Whenua say 'watch this space' on legal action for Shelly Bay

Radio NZ reports that a spokesperson for Mau Whenua, the group occupying disputed land at Shelly Bay in Wellington, says "watch this space" with regards to future legal action. An attempt by others to block development at the site on the Miramar Peninsula, by contesting the resource consents and traffic and infrastructure issues, has failed, but Mau Whenua's fight over who owns the land continues. "The focus of our legal actions is to prove that the sale and transfer was illegal and invalid in both English law and Māori law" Dr Catherine Love said on the group's behalf. Read the full story here.

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Single parent served eviction notice day before law change

Stuff reports that Nikki Prier and her son, Cole, were served notice to leave their home of seven years the day before major changes to tenancy laws meant no-cause evictions were about to be outlawed. Removal of landlords' ability to end a tenancy without reason but with 90 days' notice was among several major changes to rental law in February. Other changes included limiting rent increases to once a year. Another landlord, of a house nearby, read about their situation in the media and contacted Nikki to offer them a home, which she accepted on viewing. Read the full story here.

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Legal action against compulsory acquisition of Christchurch's historic NG building

The Press reports that the architects who designed the concept for Christchurch's new stadium initially created a complex with the NG Gallery included - but when they were asked to look again at whether the building should be kept, they backtracked and recommended acquisition. The owners of the NG building are now trying to convince the government to save the historic 115-year-old building by moving it and have indicated an intention to take legal action against a compulsory acquisition. Negotiations over the building's future with Land Information New Zealand continue. Read the full story here.

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Government looking to fast-track moves to force councils to allow more housing

Stuff reports that the Government is looking to bring forward parts of its National Policy Statement on Urban Development to force councils to allow more housing to be built. The statement was not set to be fully rolled out until 2024. Read the full story here.

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National Party proposal to fast-track home building

Radio NZ reports that the National Party's leader Judith Collins is proposing a new law giving city councils powers to fast-track building more houses via their power to rezone land. Collins said the draft legislation effectively puts into place similar powers that were used following the 2010 and 2011 Canterbury earthquakes. The bill would require all urban councils to immediately zone more land for housing and the RMA appeals process would become more limited. Read the full story here.

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New report reveals loss of productive land

Radio New Zealand reports that the Ministry for the Environment and Stats NZ have released *Our Land 2021*, a report on land use and the state of the environment in recent decades. The report describes the loss of productive food growing land to urban sprawl, an eroded environment under pressure from more cows and increased intensification. Read the full story here.

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Stricter freedom camping rules proposed

Stuff reports that Tourism Minister Stuart Nash says new freedom camping rules are required to protect the environment, remove the burden on locals and lift the quality of tourism. Proposed changes include tighter rules either for camping vehicles to be certified self-contained, or stricter rules around where freedom camping can take place. Fines of up to $1000 or vehicle confiscation have been mooted. Read the full story here.

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New Zealand's smallest plot of land

Stuff reports that Dunedin boasts New Zealand's smallest plot of land - a section owned by the Crown which measures just 0.2 square metres, enough room for a small rubbish bin. Dig around in the Land Information New Zealand databases and you'll find there are hundreds of tiny parcels of land, some designated as reserves, some segregation strips between roads and other plots, some given other official-sounding titles. For the Dunedin property however, according to the property's Record of Title, it is owned by Her Majesty the Queen, but its purpose is "The University of Otago". This means that while the Crown technically owns the land, it appears to be the university's to use. Read the full story here.

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Three new buildings proposed for Parliament complex

Stuff reports that Speaker Trevor Mallard plans to upgrade the Parliamentary complex with new buildings. Buildings proposed include: a new six-storey wooden office block on top of what is currently Parliament's car-park on Museum Street; a three-storey block to replace the earthquake-prone Beehive Annex for ministerial offices; and a small two-storey building on Ballantrae Place for secure deliveries.

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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Protesters halt work on new Waiheke Island marina

Radio New Zealand reports that construction work has stopped on Kennedy Point Marina on Waiheke Island after action by protesters. Opponents are mainly concerned about the marina's impact on the environment and the threat to the little blue penguin which nest in the bay.

Read the full story here.

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