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**Legal Case-notes August 2021**

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

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

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

- An unsuccessful appeal against refusal of consent by QLDC for a 14-lot subdivision for residential purposes near Arrowtown;
- An appeal seeking a declaration that some trees planted near the boundary of a walking trail near Queenstown was a non-complying activity. The declaration was granted:
- A decision involving the challenging situation of restricting land development near inanga spawning sites in the proposed Northland Regional Plan;
- A draft decision involving the proposal of the Thames-Coromandel District Council which proposed to introduce rules in its district plan to control spread of "kauri die-back" disease;
- Appeals related to authorities for works affecting a significant pā and village site on the Mokoia headland at Panmure, Auckland;
- A decision on costs following settlement of an appeal relating to a landslip resulting from unconsented works at Nelson;
- An interim enforcement order restraining the owner of a pohutukawa tree in Mount Eden, Auckland pending action by Auckland Council to reinstate its entry in the schedule of protected trees;
- Another decision on an appeal restraining Mr A Mawhinney from further appeals relating to land activities at Muriwai valley, Auckland.

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**CASE NOTES AUGUST 2021**:

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**Guthrie v Queenstown Lakes District Council** _ [2021] NZEnvC 79

***Keywords: subdivision; effect adverse; amenity values; visual; district plan proposed; landscape protection; plan weighting; precedent***

This appeal concerned a proposed 14-lot subdivision located in the rural area adjacent to the southern part of Arrowtown in the Wakatipu Basin, east of Queenstown. The site was located at 112 McDonnell Rd, Arrowtown, comprising 6.55 ha. E Guthrie, R and L Newman, Banco Trustees Ltd, McCulloch Trustees 2004 Ltd appealed against a decision to decline consent by commissioners appointed by Queenstown Lakes District Council.

The Court stated that the primary issue between the parties required the Court to assess the extent of any adverse effects of the proposal on landscape character and visual amenity in the Wakatipu Basin. The Court also needed to determine the extent to which the Proposed Plan and Schedule 24.8 of that plan should inform that assessment.

Regarding weighting of plans, the Court stated it would give significant weight to the shift in policy reflected in Chapter 24 of the Proposed Plan (which contained provisions relating only to the Wakatipu Basin Rural Amenity Zone) in the sense that it provided a more prescriptive regime to subdivision and development than did the Operative Plan in the Wakatipu Basin.

The Court found that the proposal would have adverse effects on the landscape character and visual amenity of the area. In reaching those conclusions the Court was assisted by the agreement of all the landscape witnesses on: the extent of the receiving landscape; the nature of the environment in which the site sat; the attributes of the landscape; and the anticipated changes to the landscape that would occur as a result of the proposed development. It found that the proposal would have moderate adverse effects on visual amenity. Further, it found the landscape had very limited ability to absorb further development without tipping it from rural to a more rural-residential landscape.

In exercising its discretion, the Court stated the effects of the proposal on visual amenity and landscape character were to the forefront of its consideration, as were the objectives and policies contained in each plan. The Court stated that the scale and nature of the proposal would adversely impact and compromise the visual amenity values and landscape character of the area. It considered that development of this scale would be a discordant element in the landscape in this location and would blur what was presently a clear urban edge to Arrowtown provided by McDonnell Rd. It found that the proposal was, therefore, contrary to those objectives and policies in both plans that addressed landscape character and visual amenity values.

Having found that the proposal would adversely affect landscape character values and visual amenity, it further found that granting consent would impact the integrity of the Proposed Plan and have the potential to create expectations that similarly framed proposals would gain consent. Further, it found that the proposal did not accord with pt 2 of the RMA.

Having considered the effects of the proposal and the relevant provisions of the Operative and Proposed Plans, the Court found that consent should be refused. The appeal was therefore declined. Costs were reserved.

Decision Date 5/7/2021 Your Environment 06072021

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**Hadley v Waterfall Park Developments Ltd** _ [2021] NZEnvC 18

***Keywords: declaration; activity non-complying***

This matter concerned Waterfall Park Developments Ltd ("WPD") which planted some trees ("the planting") along the western boundary of some land that it owned ("the property") adjacent to the Queenstown Trail ("the Trail"). J and R Hadley ("H") lived adjacent to the Trail and sought declarations under s 311 of the RMA to the effect that: the planting carried out adjacent to the western boundary of the property was a non-complying activity pursuant to r 24.4.1 of the Queenstown Lakes District Council Proposed District Plan ("the plan"); the planting was and remained a use of land not expressly authorised by any resource consent and was in breach of s 9(3) of the RMA; and that the planting within the property was not pursuant to a farming activity or residential activity as defined in the PDP at the time the planting was carried out.

H argued the planting was a non-complying activity under r 24.4.1 of the plan. WPD argued that the planting was a Farming Activity and hence a permitted activity under r 24.4.2. The Court concluded the planting did not come within the definition of Farming Activity and that as the planting was not a permitted activity under either r 24.4.2 or 24.4.3, it defaulted to a non-complying activity under r 24.4.1.

The Court found the evidence demonstrated that the planting could adversely impact upon the quality of the Trail. The Court's site visit revealed it was already having some impact at least as a plainly visible edge to the site. There was a broader plan integrity dimension in regard to best ensuring the intentions of the Wakatipu Basin Rural Amenity Zone were fulfilled through proper application of the plan rules. As such, the Court found that it was appropriate that it make a declaration.

The application was granted insofar as it was declared: WPD's planting of trees adjacent to the western boundary of the property was and remained a non-complying activity by operation of r 24.4.1 in proposed Chapter 24 of the plan; the trees were planted in breach of s 9(3) of the RMA and remained in breach. Costs were reserved.

Decision Date 24 March 2021 Your Environment 25 March 2021
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(This case and the other case reported above both involve consideration of landscape and rural amenity and provisions of proposed and operative QLDC district plans. This appeal was allowed, though the basis for the decision may be questionable– RHL.)

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**Minister of Conservation v Northland Regional Council** _ [2021] NZEnvC 77

***Keywords: regional plan; river; interpretation; rule; wildlife values***

This decision related to topics in the proposed Northland Regional Plan ("the Plan") identified at various conferences through mediation as being Topics 7 and 9 of the Plan, relating to aspects of land use and disturbance. Many of the matters originally identified in Topics 7 and 9 had been resolved through mediation in relation to: Topic 7 discharge to land and water; Topic 9 land use and disturbance activities. By the time of the hearing, Northland Regional Council ("the council") opened on the basis there was one unresolved provision to the Plan namely Rule C.8.2.1 (Land Preparation Permitted Activity). The Minister of Conservation sought that Rule C.8.2.1 have a constraint: within 10 metres of īnanga spawning sites; and within 10 metres of lakes, rivers, streams or natural wetlands.

In August 2020, just prior to the commencement of the hearing, the Government issued: a new national policy statement for freshwater management ("NPSFM 2020"); a new national environment standard for freshwater ("NES-F"); and the Resource Management (Stock Exclusion) Regulations 2020. The council noted that this gave rise to two issues: the extent to which the Plan must give effect to the NPSFM 2020; and whether changes to the Plan more restrictive than the NES-F were justified in the circumstances of the Northland Region.

The Court concluded that it should insert provisions which were consistent with the NPSFM 2020 and which also achieved and implemented the Regional Policy Statement and settled provisions of the Plan. In this case, it saw no areas of conflict at all. The current plan provisions were consistent with the NPSFM 2020. The Court noted parties had agreed that the proposed Plan provisions were more stringent than the NES-F and there would be no conflict with the NES-F as a result.

The Court stated that at the hearing there were three matters remaining: the definition of "īnanga spawning site" for the purposes of land disturbance; Rule C.8.2.1; and whether consequential changes were required to Rule 8.3.1 (earthworks). The Court considered whether land preparation activities should be set back 10 metres from īnanga spawning sites; how the īnanga spawning sites should be defined for the purposes of C.8.2.1 and C.8.3.1 until mapped by the council; and how land preparation activities should be managed within wetlands, lakes and continuously or intermittently flowing rivers.

The Court tentatively concluded that the definition of "īnanga spawning site" should read: "the margins of the inundated area within 100 metres of the upper reach of the tidal prism during Spring High Tides". This definition was to apply for Rules C.8.2.1 and C.8.3.1. Rule C.8.2.1(2) was to be amended so that the setback for land preparation was: 10 metres from īnanga spawning sites, lake beds and natural wetlands; and 10 metres from the bed of a continually or intermittently flowing river (unless specified exceptions applied where the setback could be reduced to five metres). The Court stated there might be consequential amendments to Rule C.8.3.1. These rules were to prevail over the provisions of the NES-F under s 43B of the RMA.

The council was to prepare its preferred wording of the provisions in accordance with this decision and circulate them to the other parties within 15 working days. Parties were to provide comment to the council within 15 working days. If wording could not be agreed the council was to provide its preferred provisions with the alternative wording and reasons of all parties within a further 15 days. The Court would then finalise the wording on the papers. Applications for costs were not encouraged.

Decision Date 29 June 2021  Your Environment 30 June 2021

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**Director-General of Conservation v Thames-Coromandel District Council**
[2021] NZEnvC 83

***Keywords: district plan proposed; earthworks; tree protection; district plan proposed***

This was a draft decision on the s 293 RMA process after the primary decision on the appeal in *Director-General of Conservation v Thames-Coromandel District Council* [2018] NZEnvC 133. The original appeal by the Director-General of Conservation ("D-G") criticised inadequate provisions in the proposed Thames-Coromandel District Plan to control earthworks where there

was a risk of the pathogen *Phytophthora agathidicida* (“Pa”) being transferred from infected kauri trees to uninfected ones. The relief in that appeal sought to amend provisions in three zones in the district plan covering about 95 per cent of it, the Conservation, Rural and Rural Lifestyle Zones.

The Court in its primary decision held in its decision on the relevant provisions in those zones that the maintenance of indigenous biological diversity was mandated under the RMA as a district council function and directed that provisions be included in the district plan. The D-G's relief did not extend to all the zones in the proposed plan, so the Court invoked s 293 of the RMA and directed the Thames-Coromandel District Council (“the council”) to consult parties on controls to prevent the spread of Pa to apply in other zones ("urban zones") that made up the balance of the district. The Court directed a consultation process concerning urban zones to involve provisions replicating the rules ordered in the rural zones, in summary to the effect that any earthworks proposed to take place within a Kauri Hygiene Zone would be a restricted discretionary activity requiring a management plan to be prepared, approved and implemented. Following consultation, the council created what it considered an appropriate new version on 20 May 2020. The key change was that there would now be provision for certain permitted activities, with others remaining as restricted discretionary.

A hearing of the s 293 process that had been directed by the Court, was cancelled at short notice because the Auckland region was locked down under an Alert Level 3 situation in the COVID-19 pandemic. Members of the Court tentatively concluded at that point that there was a moderate level of agreement among the parties about the shape of proposed plan provisions under consideration and that it might not be necessary in the circumstances for witnesses to be cross-examined. The Court indicated that it would issue a draft decision for comment by the parties before finally ruling on whether cross examination of witnesses was necessary or issuing a final decision.

In making its draft decision, the Court addressed issues in contention including: rules about domestic gardening and cultivation; rules about fencepost installation; drainage works; and utility works. The Court considered that there was extremely limited scope to agree to permitted activities. There were however some very minor manifestations of some of the debated activities that for practical reasons should be set up as permitted activities for purely practical governance reasons, but in each of those cases the plan would need to clearly spell out the limited extent and standards for such activities.

Parties were permitted to comment on the draft decision “within reason”. The Court also sought drafting changes from the council in various parts of this decision. Responses were directed by 9 July 2021. Costs were reserved.

Decision Date 7 July 2021 Your Environment 8 July 2021

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**Ngāti Paoa Trust Board v Heritage New Zealand Pouhere Taonga** [2021] NZEnvC 75

***Keywords: archaeological site; Māori values; heritage protection authority; heritage value***

These two appeals related to sites on the Mokoia headland at Panmure, Auckland. The headland was situated on a narrow stretch of the upper Tamaki River in a strategically important position. It was, until 1821, the location of a significant pā and village occupied by Ngāti Paoa. It remained a site of particular historical, cultural and spiritual significance to Ngāti Paoa. It was a recorded archaeological site in the register maintained by the New Zealand Archaeological Association.

Auckland Transport (“AT”), as part of the Auckland Manukau Eastern Transport Initiative project, was constructing a busway bridge next to the Panmure Bridge on which Lagoon Drive crosses the Tamaki River between the Mokoia headland and Pakuranga. The reinstatement works associated with that project included a proposed commemorative park to mark the location of the Mokoia Pa with mahi toi artwork to serve as a monument to the memory of Ngāti Paoa tupuna. AT had applied to Heritage New Zealand Pouhere Taonga (“HNZPT”) and been granted an authority to carry out an exploratory investigation under s 56(1)(b) of the Heritage New Zealand Pouhere Taonga Act 2014 (“the Act”) in respect of five proposed artwork installation sites at 16, 19, 19A and 21 Bridge St, Panmure.

B Jones (“J”) and C Ndukwe (“N”), owners of the property at 14A Bridge St, proposed to build a house for themselves on the site. They applied to HNZPT and had been granted an archaeological authority under ss 44(a) and 48 of the Act in respect of the works associated
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with building that house. The Ngāti Paoa Trust Board ("Trust Board") was a representative of Ngāti Paoa. It considered that the wahi tapu at Mokoia Pa should not be further disturbed for the related reasons of the special significance of the site and the likelihood that the ground contained koiwi. It opposed and appealed against the grant of both archaeological authorities.

The Court assessed the impact of granting and use of the authorities on Ngāti Paoa and their culture and traditions and on the historic and cultural heritage value of the two sites in the context of the purpose and principles of the Act. It also considered the extent to which refusing the authorities might prevent or restrict the reasonable future uses of the two sites for lawful purposes and the direct effects such refusal would have on the interests of AT and of J and N.

The Court concluded the purpose and principles of the Act were promoted and given effect in the circumstances of AT's proposal by enabling exploration of the five areas where mahi toi artworks were proposed to be located. Given the current highly modified character of the site, it considered that the proposed works associated with the authority for exploratory investigations were reasonable and appropriate. The investigations would allow for highly controlled excavation with the aim of avoiding adverse effects on archaeology. The investigations would enable a better understanding of the archaeology of the site, which might then inform any further discussions about the use of the site for a commemorative park.

The Court found the balance of interests in relation to the site owned by J and N was clearly tipped in favour of confirming the grant of an archaeological authority to enable them to build a house there. While their site had not yet been built on and likely contained archaeological material, it was a very small portion of the pāand preserving it for that reason would be disproportionate to the consequences it would have for them. Accordingly the Court considered that the granting of both of the authorities by HNZPT was appropriate and confirmed its decisions. The appeals were therefore dismissed. Costs were reserved.

Decision Date 28 June 2021 Your Environment 29 June 2021

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**Smith v Young** _ [2021] NZEnvC 73

***Keywords: costs***

This was a decision on costs following *Smith v Nelson City Council* [2021] NZEnvC 56, where enforcement orders were issued and the consent appeal was resolved by consent order. The proceedings concerned a landslip that affected a residential property in Farleigh St, Atawhai, Nelson. E and M Smith ("S") sought costs against K and G Young ("Y"), whose earthworks caused the landslip, and Nelson City Council ("the council"). S submitted *Bielby* factors were relevant and justified an uplift in an award. Y submitted that all costs should lie where they fell as the parties had reached agreement by way of consent orders. The council submitted that no order for costs should be made against it. The council said it did not cause the unconsented works which created the adverse environmental effects and the council was not a party to the enforcement order proceedings.

The Court found no award of costs was appropriate against the council. Rather than being blameworthy, the council constructively facilitated efficient resolution of the proceedings. The Court considered it fair and just that Y should make some contribution to the costs of S. The Court was not satisfied this was a case for an uplift beyond a standard costs award and costs should be awarded at approximately one-third of the reasonable costs claimed. The application for costs against the council was declined. Y was ordered to pay S the sum of $29,000.

Decision Date 22 June 2021 Your Environment 23 June 2021

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**Tree Council (Auckland) Inc v Auckland Council -** [2021] NZEnvC 69

***Keywords: enforcement order interim; tree protection; district plan change***

In *Tree Council (Auckland) Inc v Auckland Council* [2021] NZEnvC 58, the Court made an interim enforcement order under s 320 of the RMA prohibiting J Zheng ("Z"), or anyone on his behalf, from pruning, removing or damaging in any way the large pohutukawa tree ("the tree") situated at 8 Eglinton Ave, Mt Eden. The Tree Council filed an application under s 292 of the RMA for an order directing the Auckland Council ("the council") to remedy a mistake or defect in the Auckland Unitary Plan ("AUP") and in particular to include the tree in Schedule 10 (being the schedule of notable trees) of the AUP.

Subsequently, on 19 May 2021 counsel for the Tree Council, the council and Z advised the Court that they had reached an agreement as to how to progress the applications. The Court

found it was clear that, in reaching the agreement, the parties had come to a practical arrangement to address and progress both the application for interim enforcement orders and the application under s 292 of the Act.

The Court found the proposal that the scheduling of the tree be the subject of a plan change in terms of sch 1 to the RMA was appropriate. It would enable the status of the tree to be fully assessed and considered, with opportunity for submissions to be made and heard. Leaving the interim enforcement order in place in the meantime preserved the status quo and enabled the proposed plan change to occur according to the statutory timeframes rather than under pressure of an interim application. Z's withdrawal of his request for a certificate of compliance and undertaking not to seek another in the meantime likewise left the status quo in place and was a gesture of good faith to allow the proposed process to occur. The Court was satisfied that the agreement promoted the purpose of the Act and was an effective way of resolving the issues in the two applications. The Court made orders accordingly. Costs were reserved.

Decision Date 11 June 2021 Your Environment 15 June 2021

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**Mawhinney v Auckland Council** _ [2021] NZCA 144

***Keywords: procedural; subdivision; appeal vexatious***

This appeal followed *Auckland Council v Mawhinney* [2019] NZHC 299, where the High Court made an order under s 166 of the Senior Courts Act 2016 ("SCA") restraining P Mawhinney ("M"), in any capacity including as a trustee of any trust, from commencing or continuing any civil proceeding (or matter arising out of a civil proceeding) that related in any way to specified parcels of land in the Waitakere Ranges for a period of five years. M challenged that judgment on several grounds including the interpretation and mode of application of the "totally without merit" threshold in s 167(2) of the SCA and the High Court Judge's ("the Judge") finding that the three proceedings pursued by M satisfied that test.

The Court stated the case raised issues regarding: the meaning and application of the "totally without merit" test; whether the Judge erred in interpreting and applying the test; were any of the three candidate proceedings totally without merit; did the Judge err in granting a restraining order; were there exceptional circumstances warranting an order of five years' duration; and were the terms of the order deficient?

The Court considered the meaning and application of the "totally without merit" test, stating that in order for a proceeding to satisfy the s 167 threshold, it will be necessary that all the causes of action pleaded should have been bound to fail. Regarding whether the Judge erred in interpreting and applying the test the Court stated no issue was taken with the Judge's two-step approach. However, the Court found the Judge erred in her interpretation of the statutory provisions to the extent that previously relevant vexatious considerations were imported into the threshold analysis rather than being reserved for the second step in the exercise.

The Court was satisfied that all the causes of action in M's subdivision consent litigation were bound to fail. Consequently, that proceeding in its entirety was totally without merit. Further, the Court found M's boundary adjustment litigation and compliance certificate litigation were also totally without merit. As to whether the Judge erred in granting a restraining order under s 166, the Court found that while sincere in his convictions, it was apparent that M was unable to recognise the vexatious nature of his pursuit of litigation with the respondent. The Court found the Judge was "amply justified" in concluding that a s 166 order was appropriate.

As to whether there were exceptional circumstances warranting an order of five years' duration, the Court had two concerns. First, from a process perspective, a question plainly arose as to fairness vis à vis M. The matters said to constitute exceptional circumstances were never specified, and given that Auckland Council presented no submissions on the issue, it was uncertain how M was to know the matters to which he needed to respond. Secondly, the Judge did not descend to any particularity with reference to the matters which constituted exceptional circumstances. The Court found it was necessary for the matters relied on as constituting exceptional circumstances warranting the maximum period of restraint to have been identified with greater particularity. The Court considered the five-year order should be set aside and an order of three years substituted. Finally, as to whether the terms of the order were deficient, the Court found the order was sufficiently clear about the land to which it related.
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The appeal was allowed to the extent that the five-year order of the High Court was set aside and an order of three years substituted. The appeal was otherwise dismissed. The remaining terms of the order remained unchanged. There was no order for costs.

Decision Date 27 May 2021 Your Environment 28 May 2021

*(Reports of the many court cases involving Mr Mawhinney and Auckland Council on subdivision-related matters, have been documented in previous issues of Newslink – RHL)*

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

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**Other News Items for August 2021**

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### Reserve Bank: Monetary Stimulus Reduced

The Reserve Bank has released a press statement commenting on the latest meeting of the Bank's Monetary Policy Committee.

The Monetary Policy Committee agreed to reduce the current stimulatory level of monetary settings in order to meet its consumer price and employment objectives over the medium-term.

The Reserve Bank will halt additional asset purchases under the Large Scale Asset Purchase (LSAP) programme by 23 July 2021. The Committee will keep the Official Cash Rate (OCR) at 0.25 percent and the Funding for Lending Programme unchanged.

The global economic outlook continues to improve, providing ongoing price support for New Zealand's export commodities. Global monetary and fiscal settings remain at accommodative levels supporting the recovery in economic activity. Rising vaccination rates across many countries are providing further economic impetus. However, the need to reinstate COVID-19 containment measures in some regions highlights the ongoing global health and economic risks posed by the virus.

Recent data indicate the New Zealand economy remains robust despite the ongoing impact from international border restrictions. Aggregate economic activity is above its pre-COVID-19 level. Household spending and construction activity are at high levels and continue to grow. Business investment is now responding to capacity pressures and labour shortages, and measures of economic confidence continue to improve.

The Committee reiterated that there will be near-term spikes in headline CPI inflation in the June and September quarters. These reflect factors that are either one-off in nature, such as high oil prices, or expected to be temporary in duration, such as supply shortfalls and higher transport costs.

The Committee agreed that, in the absence of any further significant economic shocks, more persistent consumer price inflation pressure is expected to build over time due to rising domestic capacity pressures and growing labour shortages. However, the Committee noted that uncertainties remain as to the pace and magnitude of any pass-through of costs onto medium term inflation, especially given reported underutilisation of labour, modest wage growth, and well anchored inflation expectations.

The Committee noted that medium-term inflation and employment would likely remain below its *Remit* objectives in the absence of some ongoing monetary support. However, the Committee agreed that the level of monetary stimulus could now be reduced to minimise the risk of not meeting its mandate.

In the "Summary Record of Meeting" section of the press release, the Reserve Bank said:

"As required by their *Remit*, the [Monetary Policy] Committee assessed the impact of monetary policy on the Government's objective to support more sustainable house prices. The Committee agreed that the recent rate of growth in house prices remains unsustainable. Members noted that some of the factors supporting the ongoing house price increases have eased. These include a rise in housing supply as construction picks up pace, and more constrained investor demand due to increased loan-to-value restrictions and changes to housing tax policies. The Committee agreed that any future increases in mortgage rates will further dampen house price growth." Please click on the link for the full statement: media release

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### $2.5 billion package to support local government transition through water reforms

*Radio New Zealand* reports that Local Government Minister Nanaia Mahuta and Prime Minister Jacinda Ardern have announced $2.5 billion in funding to ensure the Three Waters reform programme leaves no council worse off. Read the full story here.

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### Silverfern's houses "not fit for a dog to live in", company in liquidation

*Radio New Zealand* (RNZ) reports on the liquidation of Silverfern Property Services (SPS), a company that had received $15 million from the Ministry of Social Development (MSD) to provide shelter to needy families. Silverfern went into liquidation in May, with landlords and Inland Revenue among the company's creditors; MSD is reported to be seeking the return of $53,000 paid to company as COVID-19 wage subsidies. RNZ reports on the opinion of some of the people housed by Silverfern under MSD contracts, including one person who lived with her two children in emergency housing for two years, including placements in three Silverfern properties for which MSD paid Silverfern $2,800 but were "not fit for a dog to live in", according to RNZ's report from this person. RNZ reports that "After MSD stopped using private rentals for emergency accommodation last year, Silverfern's director Zubeen Andaz wanted to know why her business had been cut off". RNZ reports the Auditor General is now investigating MSD's use of private rentals, which is estimated to have seen $38m handed out between November 2017 and June last year. - Read the full story here

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### He Puapua explained - what does it mean for property law in NZ?

Stuff explains the ins and outs of the He Puapua report, commissioned by Te Puni Kōkiri, outlining what New Zealand is required to do to realise its commitments to the United Nations' 2007 Declaration concerning the Rights of Indigenous Peoples. Article 26, says: "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." Minister of Māori Affairs at the time, Parekura Horomia, said of Article 26: "It appears to require recognition of rights to lands now lawfully owned by other citizens, both indigenous and non-indigenous. This ignores contemporary reality and would be impossible to implement." The report looks at how the Declaration could be applied. Read the full story here.

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### More than a million tonnes of "dirty" coal imported last year

*Radio New Zealand* reports that New Zealand imported 1.084 million tonnes of coal from Indonesia in 2020. Almost all of the coal was a low grade, high emissions type - sub-bituminous coal. Read the full story here.

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### More Kiwis opting for retirement village living boosts demand for the construction industry

*Stuff* reports that the about 26,000 more retirement village units will need to be built over the next decade to accommodate the number of people seeking such accommodation. The article discusses the regions most in need of new construction. Comments from Retirement Villages Association executive director John Collyns are reported, including that more people over the age of 75 are seeking to to move into retirement villages because it gave them a high level of financial security; the association's response to the Retirement Commissioner's recent comments on the commercial terms offered by operators; relicensing terms; requirement to
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obtain lawyer's affirmation that a person has received advice and understands it when signing a contract with a retirement village operator for a licence to occupy. - Read the full story here

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### Kōkako moved to predator-free Kāpiti Island

*Radio New Zealand* reports that the Department of Conservation has moved 11 kōkako from Pureora Forest to Kāpiti Island, the first of 35 scheduled to be moved over the next two years. It is hoped to build up an "insurance population" of kōkako on the island. Read the full story here.

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### Record sales post-COVID-19 lock down for retirement village operator Summerset

*Stuff* reports that retirement village operator Summerset Group has posted its highest sales of occupation rights for units and apartments in a half year in its 23-year history: 270 sales of occupation rights for 154 new units and 116 existing units. Summerset chief executive Scott Scoullar says “post-Covid we are seeing an increasing volume of people wanting to come into a village”. Real estate consultants JLL monitor the building and expansion of the retirement village industry. JLL managing director Todd Lauchlan says its data suggests that if current rates of demand continue, there will need to be 26,000 more retirement village units built than are currently predicted to be built by 2033. - Read the full story here

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### Healthy Homes enforcement should not fall to tenants

*NZ Herald* reports that those advocating for tenants say it should not be up to renters to enforce the Healthy Home Standards, due to the power imbalance already extant. From this month, landlords have to meet the healthy homes standards within 90 days of a new tenancy. However, housing lawyer Machrus Siregar, from Community Law Wellington, explained there were complications if the landlord had not complied after that 90 day period, as the onus is on the tenants to seek remedy through the Tenancy Tribunal. "My concern with this is that it puts enforcement onto the tenants", said Siregar. Read the full story here.

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### Disappointment for housing developers in the Waipa

*Stuff* reports that a major residential development could be forced to hit the reset button while a neighbouring cohousing project has taken a step closer to reality. 3MS, Cambridge-based property developers, applied unsuccessfully to develop 260 lots within the Waipā District Council’s “C2 growth cell” on 161 hectares west of Cambridge. It comprised 246 residential sections, a large lot for a retirement village, a commercial centre, future residential development, high density residential development, a school, roads and reserves. A neighbouring co-housing development is however one step closer to reality. Read the full story here.

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### Unfinished and unruly site being used as makeshift toilet

*NZ Herald* reports that a West Auckland resident who has refused to mow the berm neighbouring his property, on the grounds it is the responsibility of the Auckland Council, has captured numerous occasions of people using his unmown patch as a toilet in the night hours. The Massey resident is so fed up with the situation on the land neighbouring his home that he has installed CCTV to soak up the nocturnal leakage. Problems began on the street after a nearby development stalled, leading to an unfinished site and steep, unmown berms. Read the full story here.

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### 260-lot Cambridge subdivision plan rejected

*Stuff* reports that independent hearing commissioners have rejected an application to develop 260 lots within the Waipā District Council’s “C2 growth cell” on 161 hectares west of Cambridge. The commissioners refused the application because it deviated from a structure plan which set guidelines for how C2 should be developed. Read the full story here.

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### Tax changes will have “chilling effect” on housing supply
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*Stuff* reports that any hope of large-scale build-to-rent development will be gone if the Government does not rethink its new investor tax policies, the Property Council opines. Build-to-rent involves the development of multi-unit residential buildings for long-term rentals, rather than sales to individual owners - popular overseas but relatively uncommon in NZ. The Government has said new builds will be exempt from the changes to interest deductibility, but it remains unclear what that will mean for build-to-rent developers and investors. Read the full story here.

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### House prices a relative bargain for those moving out of the Super City

*Stuff* reports that Hamilton's house prices present as a bargain – if you're an Auckland homeowner, that is. Tom and Chloe Corkill recently sold their 2¿-bedroom Greenlane house for $1.5 million and are now in the market to buy a four- to five-bedroom house and lifestyle block on Hamilton's southern fringe. Talk of a possible cooling of Hamilton's housing market is premature, say real estate bosses, given demand for properties continues to outstrip supply and real estate agencies continue to field inquiries from Auckland homeowners and professionals eyeing a shift south. Read the full story here.

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### Microplastics found in high levels in shellfish in the Bay of Plenty

*Radio New Zealand* reports that research by Waikato University student Anita Lewis has found microplastics in both sediment and shellfish, such as tuatua, cockles and wedge shells, in every area sampled along the Bay of Plenty coast from Tauranga harbour to Ōpōtiki. The highest density of microplastic particles was found close to pipe outfalls and populated areas. Read the full story here.

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### Real estate deal gone bad: Offer to settle $323,441.53 debt for $5

*Stuff* reports on the bankruptcy proceedings involving Eugene DeMarco, who offered $5 to settle a real estate debt of more than $320,000 when he appeared before Associate Judge Kenneth Johnston sitting in the High Court at Wellington. Associate Judge Johnston is reported to have said he he would consider the case further before giving his decision later in writing. The debt follows DeMarco losing a civil case taken against him by a couple who cancelled a $1.2 million agreement in 2018 to buy his 220 square metre home in Fortification Rd, overlooking Karaka Bay, Wellington. An anonymous tip-off had alerted the buyers to look more closely at the home's weathertightness, who then discovered earlier building reports much less favourable than the one DeMarco offered during the sale process, a judge was told in 2020. DeMarco kept the $120,000 deposit Rebecca Carrasco and Norman Anderson paid. A judge accepted DeMarco misrepresented the condition of the house in more than one respect. The couple began bankruptcy proceedings against DeMarco when the debt, which included the deposit, consequential losses and significant legal costs, was not paid. - Read the full story here

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### 99 year old evicted, takes landlord to Tribunal

*Northern Advocate* reports that Betty Hooper, of Hikurangi, was in the middle of planning her 99th birthday celebrations when she received an eviction notice. She had lived in the now run-down home since 2004. The Tenancy Tribunal issued its decision - landlord, Steve Poole, was ordered to pay $1079.04, of which $408.60 was to refund incorrectly charged water costs and $650 for inconvenience and distress caused by works during her eviction period. Read the full story here.

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### Residents in Christchurch suburb plead with council to 'be on the right side of history'

*Stuff* reports that a slice of ratepayer-owned land in a rapidly growing Christchurch suburb will be sold off for social and affordable housing, despite community pleas for the council to keep it. Christchurch City Council bought land in Halswell to build a stormwater treatment facility. At the time, the council was forced to buy more land than it needed because the owner did not want to sell only a portion of the property. The council planned to sell the surplus land to help recoup costs, but the local community board wants a third retained for a park or community facility. Residents said more facilities needed to be catered for. Read the full story here.

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### Auckland landlord who called tenant a "bloody Māori" must pay $8,900 in damages

*Stuff* reports that the Tenancy Tribunal has ordered a landlord to pay a former just over $8,900 in rent refunds due to the landlord letting the tenant live on an unlawful rental (a sleepout), forbidding the tenant from having guests, entering the sleepout without permission and making offensive comments about the tenant's race to the tenant. (The Landlord is reported to have called the tenant a “bloody Māori” and told him, in front of other people, to take his “Māori a...” somewhere else.) The landlord also gave the former tenant only two weeks' notice to leave the tenancy.  - Read the full story here

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### Court cuts compensation for buyer of leaky Sirocco apartment

*Stuff* reports the Court of Appeal has reduced, from $118,500 to &81,000, the damages payable by a body corporate secretary who the Court said had made an innocently misleading statement. The body corporate secretary had been sued for $600,000 by a 2014 purchaser of a three-bedroom flat in the Sirocco Apartments, central Wellington - the leaky apartments are now said to be probably uneconomic to repair. The Court noted the statements made by the body corporate secretary about the extent of weathertightness issues were "obviously material to the quality of the apartment and therefore to its value”.  - Read the full story here

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### New Tuakau water treatment plant commissioned

*Radio New Zealand* reports that a new $145 million Watercare water treatment plant in Tuakau will provide Auckland with up to 50 million litres of water a day from the Waikato River. The facility is part of a $224 m package approved by the Auckland Council last year to boost the city's water supply.  Read the full story here.

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