



AHM News

INTRODUCTION

The environmental law and policy space has been abuzz with reform to welcome us into the second half of the year. This newsletter briefly details the long-awaited exposure drafts for policies on freshwater and indigenous biodiversity, which were published for submissions in the middle of this year. Hot on the heels of this policy update, the government also released the Water Services Entities Bill, which outlines the governance structure for the new water services entities. A brief case note on interesting judgments will round off the legal portion of this newsletter, before we share an abundance of firm news.

NATIONAL POLICY STATEMENT ON FRESHWATER MANAGEMENT AND NATIONAL ENVIRONMENTAL STANDARDS ON FRESHWATER (NPS-FM AND NES-F)

After much consultation, the government released the exposure drafts of proposed changes to the [NPS-FM](#) and [NES-F](#) 2020. These contained several amendments following public submissions, with a particular focus on the inland wetland provisions. The definition for “natural wetland” was amended in response to feedback on the broad catchment of the original wording. References to “improved pasture” were further replaced with simply “pasture” to address concerns with ambiguity. This worked in conjunction with a new proposed list of exotic pasture species, which will give greater certainty in determining whether an area of land falls into the wetland protections.

In addition, several new consent pathways were introduced to ensure existing and new activities are permissible even where they occur near a wetland area. These new pathways include quarrying, landfill and cleanfill areas, mining, and activities necessary for urban development. This change works in conjunction with clarifications to the take, use, dam, diversion, and discharge of water, to ensure the distinction between the discharge of water near or into a natural wetland, from the drainage of that natural wetland.

Other important changes were the addition of aquatic offset and aquatic compensation principles to the effects management hierarchy, drawing on the principles from the



NPS-IB, and amendments to the restoration provisions, to ensure they are more easily workable by local authorities.

Consultation on the NPS-FM and NES-FW closed on 10 July 2022. The next step in the process is analysis of the submissions, before the Minister for the Environment will decide whether to action the advice on the proposed changes.



NATIONAL POLICY STATEMENT ON INDIGENOUS BIODIVERSITY (NPS-IB)

Following hot on the heels of the freshwater policies, the government also released the [exposure draft for the NPS-IB](#), which folded in responses received during public submissions to the 2020 consultation process. The updated exposure draft sought to ensure that the NPS-IB had adequate provision for activities vital to community wellbeing, that significant indigenous biodiversity could more easily be identified and accounted for, and that tangata whenua were appropriately recognised as kaitiaki.

The NPS-IB introduced the fundamental concept of Te Rito o te Harakeke. This assists in achieving a holistic approach to indigenous biodiversity. Te Rito o te Harakeke recognises that the health of indigenous biodiversity has far reaching effects into other aspects of society, due to the interconnectedness between the natural world and our community environments.

Significant Natural Areas have been slightly re-defined to allow easier, consistent identification by local authorities. These authorities will be required to follow main principles of transparency and partnership in identifying and managing SNAs. There is no longer any distinction between high and medium categories. Protection of indigenous biodiversity outside of SNAs is also recognized, with councils being required to maintain levels of biodiversity. Adverse effects of new activities are required to be managed appropriately to ensure this maintenance.

Consultation on the NPS-IB closed on 24 July 2022. Submissions will be analysed, and policy change recommendations provided to Associate Minister for the Environment (Biodiversity). The final policy will then be provided to Cabinet for consideration for gazettal.

WATER SERVICES ENTITIES BILL

The [Water Services Entities Bill](#) (WSEB) is part of the Government's three waters reform, and sets to create four new entities for the purpose of providing efficient, safe, and reliable water services to their relevant areas. These water services entities (WSE) would be publicly owned, and replace the myriad local authorities currently in place. Each entity would be responsible for water services in specific geographical zones, which are new delineations across the motu.

As a high-level governance bill, the WSEB focuses mainly on the structures and activity of each WSE. The bill prescribes the board and advisory make-up



required by each WSE, and outlines the duties of each type of member. It also sets out how each of the entities would be required to operate, and the ways in which they're accountable to the public.

Consultation on the bill closed on 22 July 2022, and it is now going through the select committee process.



MUAŪPOKO v MINISTER FOR ENVIRONMENT

This judicial review case concerned the [decision](#) by the Minister of Environment to approve the NPS-FM 2020 with clause 3.33, the “Vegetable Exemption”. The exemption applies to the Pukekohe and Horowhenua regions, and allows the local authorities to set target attribute states that are below national bottom lines. The exemption arose as a compromise between competing interests to improve the severely degraded freshwater bodies in those regions, and to maintain the production of fresh fruit and vegetable for domestic supply using land otherwise subject to the NPS-FM.

Two iwi from the Horowhenua, Muaūpoko and Raukawa, sought a judicial review on the basis that the exemption contravened numerous clauses of the RMA and hence was invalid, and that the Minister’s decision was unreasonable, and based on inadequate consultation. The appellants failed on all grounds.

Edwards J was satisfied that the exemption was neither invalid by breaching the RMA, nor by internal inconsistency, and did not invalidate the rest of the NPS-FM. In addition, she held that the Minister’s consultation had been adequate, in good faith, and conducted with an open mind. The decision to include the exemption was also not unreasonable, having been reached through logical reasoning, and with the support of evidence. Lastly, though the Crown has duties to protect taonga in accordance the Treaty of Waitangi / Te Tiriti o Waitangi, Edwards J found that the exemption did not breach these duties, as the lower target attribute levels would still require an overall improvement for the relevant freshwater bodies.

The decision has been appealed by both Raukawa and Muaūpoko.



AHM TEAM NEWS

The past few months have been full of excitement for the team at AHM. First, we would like to share congratulations to Senior Solicitor Nicole Buxeda for not one but two wonderful life events. In April she and partner Daniel became engaged, celebrating 12 years together. Following one joyous occasion with another, the pair welcomed their first child, Albert, at the end of June. Nicole and Albert did well after the birth, and the new parents are now settling into life as a family unit with their baby boy. We are excited for Nicole to start this next chapter of her life, and look forward to receiving updates on wee Albert. Nicole has kindly sent in the photo at left, and we couldn't be more smitten.

Next, congratulations are also in order to our team member Louise Ford, who was recently promoted to Senior Solicitor. Louise has been with the firm since 2019 and has built up strong experience in all aspects of the firm's work.

Finally, we are excited to expand our team by welcoming two new solicitors—Amelia Scharting and Tait Hoby.

Amelia started with AHM in May, moving from an Auckland commercial property firm to start afresh in an area of law more closely aligned with her undergraduate studies. Amelia graduated in 2019, gaining admission the same year, and completed a further year of post-graduate study and teaching before joining the legal profession. She is excited to enter the resource management and environmental space.

Tait joined AHM in July, coming from a background in Treaty Law in a mid-size Auckland firm. While studying at Victoria University, Tait gained experience at a boutique employment firm in Wellington, before completing his Master of Laws and being admitted to the bar in 2021. Tait has had a strong passion for environmental law throughout his studies and is looking forward to working in the environmental field.



Questions, comments and further information

If you have any questions, comments or would like any further information on any of the matters in this newsletter, please contact :

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