



AHM News

INTRODUCTION

Welcome to winter! The colder weather has hit us with a bang in Auckland recently, and we are looking around desperately for those winter pyjamas and scarves that we packed away somewhere... We are however glad to report that there has been no sign of the cold weather slowing down legal and resource management matters, and new issues, decisions and points of interest continue to flood in.

In this newsletter we address some of the more recent events in resource management, including:

1. Details of environmental initiatives in the 2018 Budget
2. The appointment of members to the Interim Climate Change Committee
3. Notification of the first draft set of national planning standards
4. Amendments to the National Policy Statement for Freshwater Management
5. An update on the peculiar case of *Auckland Council v Auckland Council*
6. The successful defence of the Waiheke marina consents
7. Successful resolution of Biosecurity Act 1993 appeals in the Northland Region.

ENVIRONMENTAL INITIATIVES IN THE BUDGET

While the focus of the 2018 Government Budget was on bread and butter issues such as health and education, a number of environmental initiatives were also announced:

1. A new unit to oversee compliance with the Resource Management Act (RMA). The unit is intended to improve the consistency, effectiveness and transparency of council enforcement of the RMA. Operating funding of \$3.1 million over four years has been allocated for the unit.
2. An extra \$181.6 million in operating funding for the Department of Conservation, over four years, made up of \$81.3 million for predator control, \$76 million for biodiversity initiatives, \$5.5 million for better visitor management and \$16.2 million for DOC to strengthen its core capability.
3. \$1.7 million over the 2017/18 and 2018/19 years for the Ministry for the Environment to lead the next phase in the investigation into sites contaminated with per- and poly-fluorinated alkyl substances, mainly from the use of fire-fighting foam.
4. An extra \$8.0 million of new operating funding over the two years to 2020 for the Environmental Protection Authority to continue managing the environmental effects of activities, such as offshore mining and drilling and space debris, in the exclusive economic zone and continental shelf.
5. Funding to support an independent review into the fisheries management system and modernise the fisheries monitoring and compliance functions to ensure that the full benefits of the

investment in digital monitoring technology can be realised.

6. Additional funding for the response to *Mycoplasma bovis*, the cattle disease. Most of the \$85m allocated is for compensation to affected farmers, the rest is for responding to the outbreak. An additional \$9.4 million has been allocated over four years for other biosecurity needs.
7. Over \$11 million in funding for new climate change law work and setting up the Independent Climate Change Commission.

INTERIM CLIMATE CHANGE COMMITTEE BEGINS WORK

Members have been appointed to the Interim Climate Change Committee (ICCC) and the committee has begun its work. The purpose of the ICCC is to provide independent evidence and analysis on issues identified in its terms of reference.

The primary deliverables under the ICCC's terms of reference are how surrender obligations could best be arranged if agricultural methane and nitrous oxide emissions become part of the New Zealand Emissions Trading Scheme, and planning for the transition to 100% renewable electricity by 2035.

These reports will be handed over to an independent Climate Change Commission in 2019 to inform its recommendations to Government. A zero carbon bill to establish the permanent independent Climate Change Commission is expected to be introduced to the house in late 2018.

The ICCC is chaired by Dr David Prentice, most recently CEO and Managing Director of Opus International Consultants. The committee members (left to right) are:

- Dr David Prentice - chair
- Lisa Tumahai - Kaiwhakahaere of Te Rūnanga o Ngāi Tahu
- Dr Jan Wright - former Parliamentary Commissioner for the Environment
- Dr Harry Clark - Director of New Zealand Agricultural Greenhouse Gas Research Centre
- Dr Keith Turner - former CEO of Meridian Energy
- Dr Suzi Kerr, Senior Fellow at Motu Economic and Public Policy Research (not shown).



PUBLIC NOTIFICATION OF NATIONAL PLANNING STANDARDS

The Ministry for the Environment is working towards public notification of the first set of draft National Planning Standards in June 2018. A package of supporting materials will also be released detailing the analysis that has informed the draft planning standards.

For the first set of Standards, the Ministry are focusing on plan and policy statement components that will benefit the most from standardisation. The first set will likely address:

- district plan structure
- district and regional plan form
- definitions
- metrics
- mapping
- regional plan and policy statement structures
- zones and overlays
- incorporation of national direction
- administrative problems
- accessibility of plans online

Submissions are proposed to be open for 10 weeks, subject to approval by Cabinet. During the consultation period there will be a roadshow and a series of hui in regional centres across the country. The Ministry will also meet with council staff at each roadshow to discuss local context in detail. It is not proposed that there be a hearing on the first set of standards so interested parties will need to ensure that make a case in their written submission and/or attend workshops and hui.

FURTHER AMENDED FRESHWATER NATIONAL POLICY STATEMENT

The Minister for the Environment David Parker has signalled that there may be further amendments to the [National Policy Statement for Freshwater Management](#) (NPS), saying that there needs to be fewer cows across New



Zealand as, in some areas, the number of cattle per hectare is “higher than the environment can sustain”. Reductions would not be achieved through a cap on cow numbers but through limits on nutrient that is lost from a farm to a waterway. It appears that the amended NPS will introduce a rule preventing increases in land use intensity from being a permitted activity anywhere in the country. The NPS will also bring forward a methodology for the allocation of nutrients in nutrient-enriched catchments.

Minister Parker says New Zealand’s future is in producing high-value products instead of large-scale production in areas such as dairy. The Government is looking into providing subsidies to help introduce new technologies to encourage a change in farming practices.

AUCKLAND COUNCIL v AUCKLAND COUNCIL [2018] NZENVC 56

In our last newsletter we noted the decision of [Auckland Council v Auckland Council \[2018\] NZEnvC 022](#) where the Council appealed against a decision of its delegated hearing commissioners refusing consent for works associated with protection of the esplanade reserve between Kohu Street and Marine View at Orewa Beach.

The Court directed a hearing on the preliminary issue of law regarding whether it is possible for a Council to appeal its own decision. The Court was assisted by an *amicus curiae* (or “friend of the court”) in reaching its determination.

The Court reviewed the most relevant case law and concluded that there is no express authority that a council, as applicant for resource consent, can not appeal against its own decision as the consent authority. The research of counsel and the Court also indicated an absence of clear statements in New Zealand or United Kingdom case law about public bodies being on opposing sides of litigation.

The Court found that given the presence of s 274 parties, both in support of and opposition to the appeal, this was not a case where the Court needed to reach a final conclusion on the role of the Council. The Court considered that there was a real controversy which parties other than the Auckland Council seek to resolve. Therefore the Court left open the possibility that in other circumstances the issue of whether it is lawful or appropriate for a council to appeal against its own decision may need to be decided. This may particularly be so where no other party is involved or there is otherwise no party who acts as a contradictor to the council's case.

The Court directed the parties to confer to see whether they can agree the proposed terms and conditions for the hearing, including the extent to which Council staff may be involved in opposing roles, whether as witnesses or otherwise.

SUCCESSFUL DEFENCE OF WAIHEKE MARINA CONSENTS

In a recently released decision, [SKP Incorporated v Auckland Council \[2018\] NZEnvC81](#), the Environment Court, confirmed the grant of consents for the proposed marina at Kennedy Point, Waiheke. The grant of consents had been appealed by a local community group and a local resident who considered that Kennedy Point, and indeed Waiheke, was not the right place for a marina and that there would be significant adverse effects.



The Court undertook a comprehensive review of the evidence and found against the appellants on all grounds. The Court also took the step of noting that some of the appellants expert evidence was unbalanced and not helpful to the Court. The Court approached the decision making using both the *King Salmon* and overall judgement approach, and found that on either approach the marina was appropriate. Vicki Morrison-Shaw acted as counsel for the Marina Supporters Group.

SUCCESSFUL RESOLUTION OF NORTHLAND BIOSECURITY APPEALS

Appeals against the [Northland Regional Council's Regional Pest and Pathway Management Plan 2017-2027](#) have been resolved in the Environment Court. Appeals were filed with the Environment Court against the decisions of the Regional Council by the Royal Forest and Bird Society of New Zealand, in relation to Kauri Dieback provisions, and a group of marina companies and boat clubs in relation to provisions concerning biofouling of boat hulls. Mediated agreements were reached between the appellants and the Councils, however due to the provisions of the Biosecurity Act 1993 the Environment Court was required to hold a public hearing on the appeals notwithstanding the agreements reached between the parties.

The Court's decisions recorded in [Royal Forest & Bird v Northland Regional Council \[2018\] NZEnvC 23](#) and [Far North Holdings Ltd v Northland Regional Council \[2018\] NZEnvC 57](#) endorsed the resolutions reached by the parties and commended the Regional Council's approach to managing the difficult biosecurity issues of Kauri Dieback and the spread of marine pests. Rowan Ashton acted for the Northland Regional Council on these appeals.

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 the authors:

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