



AHM News

INTRODUCTION

And just like that – half the year is gone! Unlike the arrival of winter, things are heating up in environmental law and there are a few things that will have far-reaching implications across the sector.

The mammoth Resource Management Reform has brought another Working Paper as the Environmental Defence Society (**EDS**) moves into the final phase of the project. This Working Paper looks at the previous stage and its' applicability in the future, before offering potential models of reform to be reviewed. This is certainly something to keep an eye on as the project moves into meatier discussions.

We have also seen the arrival of the long-awaited National Planning Standards; a new rule book from the Minister for the Environment. These are part of the 2017 Resource Management Act 1991 (**RMA**) amendments and aim to align the format and function of plans. Implementation of these plans will be interesting to say the least.

The Environment Court has made an example of consent-holders who let their water consents lapse, declining to make a declaration that conditions were given effect to. This addresses the issue of long-delayed consents holding up subsequent allocations.

Investors in farms have also been put on notice with the Environment Court dishing out over \$200,000 in fines this month. The message is clear that there is a duty on investors, owners and managers to ensure proper practice is maintained.

Sadly, AHM also farewelled a member of the team last month as Nicole Buxeda has left to embark on a trans-continental journey. She will be missed and envied by those of us here and we wish her safe travels.



FIRST WORKING PAPER IN PHASE 2 OF EDS RESOURCE MANAGEMENT REFORM PROJECT

The EDS RMA reform project continues to take a first-principles look at how New Zealand’s resource management system could be improved. Phase 1 of the project outlined three potential models for what a future system could look like, while the second and final Phase is now starting to look at designing a single preferred model.

Phase 2 is arranged in three stages across two Working Papers. This first Working Paper largely focuses on stage 1 and looks at criteria for reform before offering three alternative sets of criteria that could be applied: a “progressive” set, a “transformational” set, and a “market-led” set. The Paper is careful not to select or indicate a preferred set at this stage.

The Paper covers six substantive chapters, beginning with a more in-depth description of the overall structure of the project and how Phases 1 and 2 fit together. Chapters 3 and 4 summarise the key messages from the Phase 1 report, as well as the many options and presents three overall models. Chapter 5 introduces the concept and categorisation of criteria for reform, while Chapters 6 and 7 set out some possible criteria and considers some of the key relationships between them.

The second stage of Phase 2 (to be the main focus of Working Paper 2) is about applying a preferred set of criteria to construct a preferred model for a future system in detail, with the final stage (also in Working Paper 2) being about charting a pathway to reform.

Working Paper 2 will be released by the EDS at the end of the year and will introduce significant real-world elements including the drafting of key legislative provisions. The content of the working papers will evolve over the course of the project and be synthesised into a final report. As such, this working paper is intended to elicit feedback, which will be fed into the project—responses can be directed to RMProject@eds.org.nz.

The Working Paper can be found in full [here](#).

NATIONAL PLANNING STANDARDS

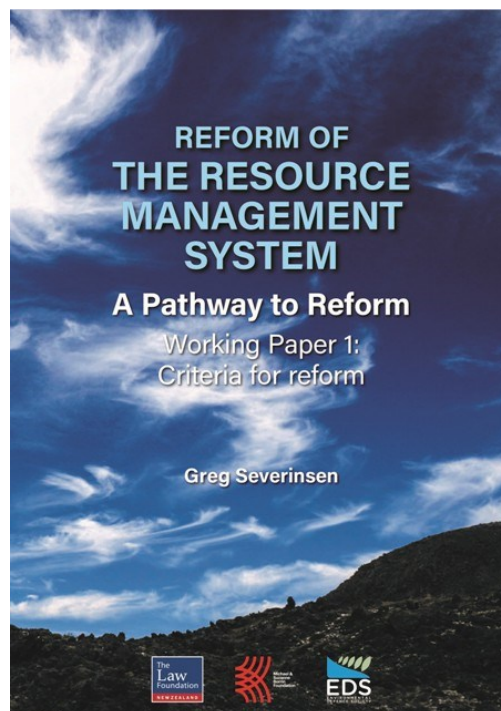
A new rule-book has been released by David Parker, the Minister for the Environment, to improve the consistency of council plans and policy statements.

[National Planning Standards](#) were introduced as part of the 2017 amendments to the Resource Management Act 1991 (RMA) under the National-led government and have been developed further over the last two years under the current coalition government.

The Ministry for the Environment held nationwide meetings and received 201 submissions on the draft Standards from the public, councils, resource management professionals and iwi last year. Changes were then made to increase clarity and make the Standards more adaptable to local contexts before coming into force on 3 May 2019.

The standards align the format and function of plans. The Minister notes that they do not determine local policy matters or the substantive content of plans as these “remain the responsibility of local councils and communities”.

While acknowledging that there will be some upfront costs, the Minister stated that the standards will make plans easier to prepare, use and understand reducing overall costs to both councils and users over the long-run.



The new standards will address some of the undue complexity of RMA plans and will also help transition planning documents to electronic interactive plans, helping to make them more user friendly for the public and resource management practitioners.

The standards contain mandatory and discretionary directions from the Minister determining whether provisions have immediate effect or must follow the standard process involving the public.

Many of the provisions will be automatically adopted across the country with little or no public process. Some discretionary directions require local authorities to choose provisions from a range of options appropriate to their area and the public will be involved in choosing provisions relating to a zone framework component. In those instances, the changes will happen within five to seven years.

Looking forward, the Minister states that "while this is an excellent start, there is more that could be done, like more standardised definitions. We hope that future iterations of the national rule book will continue at the same pace."

The Resource Management Law Association (**RMLA**) supports the standards and hopes that future iterations continue at the same pace and standardise more definitions. The RMLA maintains that within a year anyone looking for plans will be able to see the same structure of planning information online, regardless of where they live.

LAPSING WATER CONSENTS

Kilmarnock Farm Ltd v Canterbury Regional Council [2019] NZEnvC 84

The Environment Court has declined to make a declaration that two water consents held by Kilmarnock Farm were given effect to before they lapsed.

In October 2017 Council advised Kilmarnock that the water consents were held for irrigation purposes had lapsed, stating that conditions for both consents involving the requirement for water metering, a Farm Environment Plan (FEP) and installation and certification of a fish screen had not been complied with. Kilmarnock then sought a declaration disputing this.

The Court held that the breaches relating to the water metering were technical breaches only and any breach of the FEP conditions would be irrelevant. In fact, the main concern was over the fish screen installation. The conditions required that a report showing the final design plans be sent to Council. The Court found that the term 'final designs' implied an element of permanence to the screening. The clearly temporary design sent to Council was therefore not compliant and no permanent design was ever received. Rather Kilmarnock used one mobile pump across the two takes, meaning that for at least one take the arrangement could not have been permanent.

Due to receiving prior notice and subsequent extension of the consents, the Court held the view that Kilmarnock was on notice to do things right or at least reasonably correctly.

The Court considered that Kilmarnock's compliance with the imperfect fish screening requirements were perfunctory and temporary, finding that neither of the two consents had been adequately or sufficiently given effect to and as a consequence they lapsed on 30 September 2017.



FARM INVESTOR FINES

The Environment Court has given a warning of liability to those investing in dairy farms by imposing \$204,000 worth of fines. The fines were levelled at the owner of the farm, Blue Rata Investments Ltd; the manager, Farm Ventures Ltd; and the sharemilker's company, Khloby Dairy Ltd, for the discharge of dairy effluent and silage leachate into a tributary of the Mangatete Stream at Ōkato.

According to the Council's Director of Resource Management, Fred McLay, the discharges arose from substantial carelessness in the way the effluent treatment system and the silage pit were managed and operated. McLay stated that "the case highlights the fact that all parties involved in a dairy farm – including any passive investors not normally involved in day-to-day operations – have a duty of care to ensure environmental and legal obligations are met".

The discharges resulted in green discoloration of the stream for up to 100m and other downstream effects including the growth of sewage fungus up to 140m from the discharge.

While the target of enforcement action for previous non-compliances at the farm on a number of occasions since 2008, Blue Rata received the first dairy effluent warrant of fitness in Taranaki for Okato farm in 2014. Tim Barrett, co-owner of Blue Rata and CEO of Farm Venture, said that the audit leading to the award ensured the system was up to scratch, stating that "confidence the farm is fully compliant and is being operated using good industry practice is extremely valuable to owners".

While all parties pleaded guilty, these are the highest fines ever imposed for dairy effluent discharges in Taranaki by the Environment Court. The message Fred McLay is sending is that "you can't just say it's up to the manager or operator or staff. You need to know when things are going wrong, and you need to be proactive and check compliance and ensure any faults are addressed with fit-for-purpose equipment".

AHM TEAM UPDATES

The AHM team bids farewell to Nicole Buxeda this month. After joining the firm three years ago as a Law Clerk and becoming a fully-fledged solicitor not long thereafter, Nicole is challenging herself again—this time to travel the world on an open-ended voyage.

Nicole has been an integral part of AHM team and will be missed. We wish her all the best for her exciting adventure.

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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