



# AHM News

## INTRODUCTION

The start of spring is upon us, as is more rain than sunshine! There have been several announcements that have made a splash in the environmental law world in recent weeks.

The stream of announcements include:

- the Waitangi Tribunal Stage 2 report on the National Freshwater and Geothermal Inquiry on 27 August 2019;
- the Special Tribunal Recommendation Report on the application for Water Conservation Order (**WCO**) on the Ngaruroro and Clive rivers released on 30 August 2019;
- the Action Plan for Healthy Waterway's on 5 September 2019, including the draft National Policy Statement for Freshwater Management (**NPS-FM**) and the National Environmental Standards for Freshwater (**NES-FW**);
- Resource Management Act 1991 (**RMA**) review, by both the government and the Environmental Defense Society (**EDS**);
- the National Policy Statement on Highly Productive Land (**NPS-HPL**); and
- the National Policy Statement on Urban Development (**NPS-UD**).

It has been a busy couple of months! Luckily, August has also brought a new addition to the AHM team—Louise Ford. Read on for a summary of these developments and an introduction to Louise.

## **WAITANGI TRIBUNAL STAGE 2 REPORT ON THE NATIONAL FRESHWATER AND GEOTHERMAL INQUIRY**

The Waitangi Tribunal released its [Stage 2 report on the National Freshwater and Geothermal Inquiry](#) at the end of last month. The report has been long awaited, with initial claims being made in February 2012 and Stage 2 of the inquiry being put on hold for a year in 2015. The Tribunal's Stage 2 report made a number of recommendations regarding Māori interests and ownership in the freshwater and geothermal resources in New Zealand and the Crown's programme of RMA and freshwater management reforms.

Underpinning the Tribunal's recommendations was a view that a co-governance/co-management model, made up of a national governance body with 50/50 Crown - Māori representation, should be established. Further, a co-design approach to policy options and resources should become a regular feature of government where Māori interests are concerned. In brief, the Tribunal report recommended that it is time for the government to act on its Treaty promises and implement the changes that have been in discussions since the start of the freshwater reform in the early 2000s.



## NGARURORO WATER CONSERVATION ORDER RECOMMENDATION

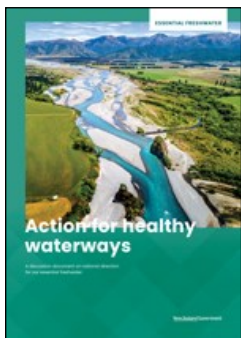
Three and a half years after the application for a WCO over the Ngaruroro and Clive Rivers was lodged, the Special Tribunal tasked with making a recommendation released its [report](#) on 30 August 2019. See our [March 2019 newsletter](#) for a full background. The Tribunal considered the “outstandingness” of the River’s



values and characteristics in terms of the legal test to be applied to whether a WCO should be made. The Special Tribunal found that no WCO should be made over the lower river. However, a WCO should be made over the upper river in respect of the habitat for rainbow trout and fishery, angling amenity and recreation, white water kayaking and rafting amenity and recreation and the wild, scenic and other natural characteristics of the river.

The WCO acts in a similar way to operative regional plan rules but is a higher order document. This means that while the effects are similar to regional plan rules, the WCO also constrains regional council’s discretion in managing the water body. The WCO does not affect existing resource consents or permits in the WCO area. Submitters have until 20 September 2019 to make a further submission to the Environment Court on the Special Tribunal report.

## RECENT FRESHWATER REFORM ANNOUNCEMENTS



Environment Minister David Parker and Agriculture Minister Damien O’Connor held a press conference on 5 September 2019 to launch the “[Action Plan for Healthy Waterways](#)”. The Action Plan is intended to halt the degradation of New Zealand’s waterways, make a noticeable improvement in the quality of the waterways within five years and restore New Zealand’s waterways within a generation. The Ministers recognised that the health of New Zealand’s waterways is a national issue and everyone needs to play a part. Minister Parker rejected the notion of a rural/urban divide and recognised the importance of a fair approach to Māori rights and interests in New Zealand’s waterways.

September also saw the release of a [draft NPS-FM](#) to replace the 2014 NPS-FM, and proposed NES-FW. The proposed NPS-FM:

- supports the fundamental concept of Te Mana o te Wai, “the mana of the water”;
- is intended to strengthen the requirement to identify and reflect Māori values;
- states the compulsory values - ecosystem health, human contact, threatened species, and mahinga kai or tāngata whenua - that must be considered by councils.
- sets national targets for waterways and a number of limits for different attributes in rivers and streams, including phosphorus, e.coli, and nitrogen.

The NES-FW sits below the NPS-FW in the planning hierarchy and outlines the activity status for several activities within the freshwater environment.

The final decisions on changes to policy statements and plans necessary to give effect to the NPS-FW must be publicly notified no later than 31 December 2025. There is a submission tool available on the Ministry for the Environment [website](#) for the Action Plan. The official deadline for submissions on the proposal is at 5pm on 17 October 2019, but submissions will be accepted until 31 October 2019, due to public pushback on the short timeframe. Please contact AHM if you would like help making a submission.

## RESOURCE MANAGEMENT REVIEW

### Government review of the RMA

The government also recently confirmed its commitment to undertaking a comprehensive review of the RMA and established a review panel to undertake the review. The Panel will be chaired by the former Court of Appeal Judge the Hon Tony Randerson QC and joining him are Amelia Linzey (planner), Dean Kimpton (former Chief Operating Officer of Auckland Council), Kevin Prime (Environment Court Commissioner), Rachel Brooking (lawyer) and Raewyn Peart (policy director at EDS).

The review is expected to resolve the debate on key issues which were identified in the EDS RMA reform project (see below). The spatial planning processes currently being developed under the Urban Growth Agenda must be considered as part of the review and be integrated into any changes the Panel recommends to the RMA.

The final report by the Panel is due to be delivered in May 2020. Cabinet is responsible for the final decisions coming out of the Panel's report.

### EDS RMA reform

The first set of workshops in the EDS RMA reform project regarding the First Working Paper in Phase 2 are now underway. The workshops are a chance for practitioners, planners, iwi, industry and other sector interests to have their say regarding the proposed EDS RMA reform options. Two members of our AHM team - Louise and Tom - attended an Auckland workshop at the end of August. One of the key areas of discussion was the role of Part 2 in New Zealand's resource management framework, particularly how prominent the purpose section of the RMA was in case law and in decision making – especially when compared to other types of legislation. The workshop also discussed more generally what features of the RMA might need to change and the reasons such changes are required.

## NATIONAL POLICY STATEMENTS—HIGHLY PRODUCTIVE LAND AND URBAN DEVELOPMENT

The proposed NPS-HPL and accompanying discussion document was released on 14 August 2019 and the proposed NPS-UD was released on 21 August 2019.



### National Policy Statement on Highly Productive Land

The government has released a [discussion document on the NPS-HPL](#) which aims to provide clarity on how highly productive land should be managed under the RMA. The government considered two other options to achieve this, including a National Environmental Standard and amendments to the National Policy Statement on Urban Development Capacity (**NPS-UDC**). However, the NPS-HPL is the government's preferred option.

The NPS-HPL proposes that highly productive land is land classified as Class 1, 2, or 3 using the Land Use Capability (**LUC**) system. However, the NPS-HPL will allow local authorities to undertake their own assessments of highly productive land so that regional and district characteristics are considered.

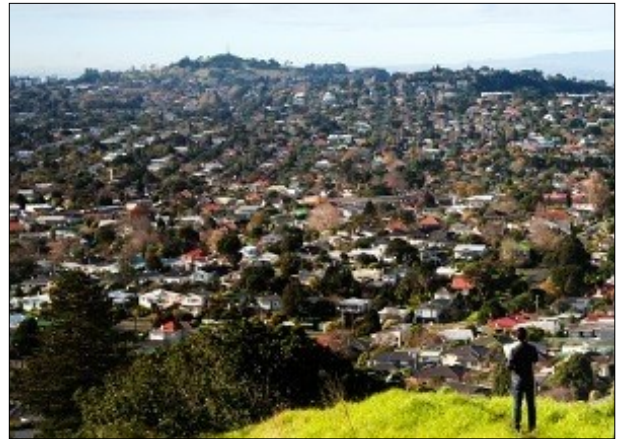
One of the issues that the NPS-HPL aims to address is the encroachment of urban expansion onto highly productive land. The discussion document recognises that in the almost 30 year period from 1990 to 2008, 29 percent of new urban areas in New Zealand occurred on LUC Class 1, 2, or 3 land. Other issues that the NPS-HPL aims to address include the fragmentation of highly productive land, reverse sensitivity issues and the need for national direction to ensure councils consider the value of highly productive land alongside other priorities.

The discussion document sets out a broad framework of what the NPS-HPL will include, including high level discussion of 7 policies and a number of questions for consultation.



## National Policy Statement on Urban Development

The [proposed NPS-UD](#) will replace the 2016 NPS-UDC as the Ministry of Housing and Urban Development considers the NPS-UDC is not adequate to achieve the desired outcomes. Overall, the NPS-UD discussion documents states that the proposed NPS-UD will “build on existing requirements for greater development capacity, but will broaden its focus and add significant new content.”



One of the key differences between the proposed NPS-UD and the current NPS-UDC is the split of policies applying to ‘all urban environments’ and ‘major urban centres’. The rationale for this change is to shift the focus to larger cities and urban areas where the national impact of housing challenges is greatest and to keep the costs down for the small local authorities with limited resources.

The discussion document includes draft provisions for the proposed NPS-UD and seeks feedback on the broad direction of the NPS-UD, the text of the specific provisions, as well as the merits of the proposals and options.

### Submission deadlines

Both the NPS-HDL and NPS-UD are open for submission until 5pm on 10 October 2019. More information on how to make a submission and an online submission tool is available from the Ministry for Primary Industries [website](#) for the NPS-HPL and the Ministry for the Environment [website](#) for the NPS-UD. Please get in touch if you require assistance with a submission.

### AHM TEAM UPDATE

We are pleased to welcome Louise Ford, our new solicitor, to the AHM team. Louise grew up on a sheep and beef farm just south of Rotorua before honing her passions in earth science and law at the University of Waikato. Louise graduated with first class honours before being admitted to the Bar in February 2019. Louise has on-the-ground knowledge of the kinds of issues our rural clients face as a result of her farming and agricultural background. We are excited to be a part of the next stage of Louise’s career.

### 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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### We welcome your feedback!

If you know someone who might be interested in reading this newsletter, please feel free to pass it along.

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