



AHM News

INTRODUCTION

It is hard to believe it is now April, with the first three months of this year having flown – two mini lockdowns notwithstanding!

In this issue we provide an update on the legislative changes that are occurring in the environmental law space, including the replacement of the Resource Management Act (**RMA**), the new Water Services Bill and the upcoming National Policy Statement for Indigenous Biodiversity. The High Court has also made a determination on appeals against the decision to approve consents for a four-lane highway linking SH20 to SH1 in Auckland.

Congratulations go to Tom Gray and Louise Ford, two of our solicitors. In February this year Louise completed the Coast to Coast multisport event, and over Easter Tom and his wife Charlotte welcomed a baby girl to their family.

REPLACEMENT OF THE RMA

The Government has announced that it will be repealing the RMA and replacing it with three separate but related Acts: *a Natural and Built Environments Act*; *a Strategic Planning Act*; and *a Climate Change Adaptation Act*. This announcement followed the comprehensive review undertaken last year by the Independent Resource Management Review Panel, which culminated in recommendations being published in the *New Directions for Resource Management in New Zealand* report.

The Natural and Built Environments Act is the primary replacement for the RMA and will include a new National Planning Framework with mandatory national policies and standards on specified aspects of the new system and provide the consenting regime. Environmental natural limits, outcomes and targets will be set with the goal to enhance the quality of the environment to support the wellbeing of present and future generations.

The strategic and long-term approach to planning for the use of land and the coastal marine area will then be covered by the Strategic Planning Act with long-term spatial strategies developed in each region.

The Climate Change Adaption Act is intended to support the Government's response to the effects of climate change. This Act will also address complex issues associated with managed retreat and funding and financing adaptation.

The Government is working with a collective of pan-Māori entities on key elements of the proposed Natural and Built Environment Act including stronger recognition of tikanga Māori and Te Tiriti o Waitangi.



In terms of timing, the Government expects that all three bills will be introduced to Parliament in late 2021, after which they will be considered by a standard select committee process, including submissions from the public. All three pieces of legislation are expected to be enacted by the end of 2022.

WATER SERVICES BILL

The Water Services Bill was introduced in July 2020 with public submissions closing at the start of March this year. 946 submissions were received showing the significant interest from Councils, local communities, and the water industry. The Select Committee Report is due on 8 June 2021.

In terms of a brief recap, the Water Services Bill is intended to comprehensively reform the drinking water regulatory system following the Havelock North inquiry. Repealing Part 2A of the Health Act, the Bill will create a stand-alone Act to regulate drinking water. The Bill gives the Drinking Water Regulator – Taumata Arowai – its regulatory powers and legislative tools. Taumata Arowai takes over as the regulator from the Minister of Health on 1 July 2021.

A higher standard of care is required under the Bill and suppliers must guarantee the safety of the drinking water they are providing, taking on a duty of care to those supplied. Source water protection has also been given a high importance. Suppliers will need to register their supplies with Taumata Arowai and meet drinking water standards. Taumata Arowai will have powers to inspect supplies for compliance and is then required to publish an annual report on compliance.

The Bill also requires that those exercising powers and duties under it give effect to Te Mana o te Wai, mirroring the requirement in the National Policy Statement for Freshwater Management 2020.

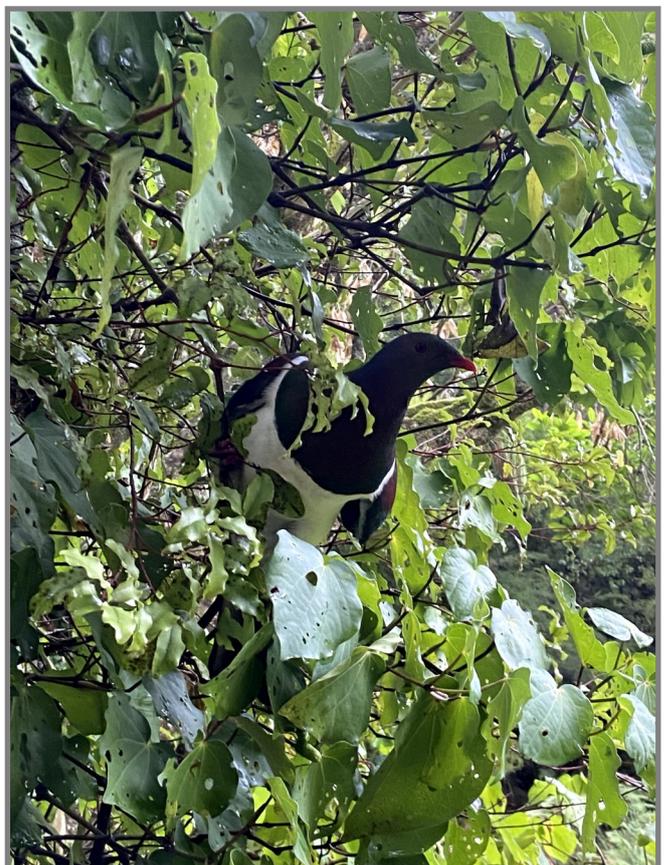
Fluoridation, a topic on which there tends to be some division of views, is not addressed in the Bill other than to prohibit Taumata Arowai from setting minimum limits of fluoride in drinking water. The 2016 Health (Fluoridation of Water) Amendment Bill has since been revived and this Bill proposes to transfer local authorities' discretion regarding the fluoridation of water to district health boards.

NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

The Ministry for the Environment (MfE) released the draft National Policy Statement for Indigenous Biodiversity (NPSIB) in late 2019 with consultation closing in March 2020. However, further development of the NPSIB was put on hold due to the COVID-19 pandemic and level 4 restrictions. Associate Minister for the Environment Nanaia Mahuta has now agreed to extend the timeframe of the delivery of the NPSIB to July 2021.

Key aspects of the draft NPSIB are the protection and management of Significant Natural Areas (SNAs), and the concept of Hutia te Rito. Hutia te Rito recognizes the environment's intrinsic value as well as people's connections and relationships with it, through the explicit inclusion of mātauranga and tikanga Māori in decision making processes. The draft NPSIB proposes to have all SNAs mapped, in partnership with tāngata whenua, landowners and local communities, within 5 years of the draft NPSIB coming into effect.

The draft NPSIB recognizes that there is no clear RMA process for iwi/Māori to proactively identify



their kaitiaki interest in taonga species. The draft NPSIB includes an optional process for tāngata whenua to identify taonga, but tāngata whenua who choose not to identify taonga should still be consulted. The draft NPSIB also includes provisions regarding existing activities, the ability for Māori to use and develop their land where they may otherwise not be able to due to the NPSIB provisions and requiring councils to consider the impacts of climate change when making or changing resource management plans and regional biodiversity strategies.

The draft NPSIB sets out a framework and options for how to best consider biodiversity offsetting and compensation to address the inconsistent approach being taken to offsetting and compensation currently occurring across New Zealand. Areas for restoration and enhancement will need to be identified by councils and outlined in resource management plans and regional biodiversity strategies. Councils will need to consider incentives to promote restoration and enhancement, particularly on Māori land, and commit to increasing indigenous vegetation cover in both urban and rural settings.

The draft NPSIB will need to be implemented by councils as soon as practicable but no later than 2028. Councils will have 6 years after the commencement date to develop a regional biodiversity strategy.



***ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NZ
INC v NEW ZEALAND
TRANSPORT AGENCY [2021]
NZHC 390***

The High Court has dismissed Forest and Bird’s and Ngāti Whātua Ōrākei Whai Maia Ltd’s appeals from the Board of Inquiry decision approving NZTA’s Notice of Requirement to construct a four-lane highway linking SH20 at Ōnehunga to SH1 at Mt Wellington (which would affect the Manukau Harbour foreshore) and the associated works.

The proposed ‘East West Link’ is intended to run from Māngere Bridge in the west, along the northern shore of the Manukau harbour through the Māngere Inlet, before altering

course to meet up with SH1 and the existing Auckland motorway network at Penrose.

The Board had approved the required resource consent applications and Notices of Requirement in December 2017. That decision was appealed to the High Court by Forest and Bird and Ngāti Whātua (with support of Te Kawerau ā Maki). Forest and Bird argued that the Board had no jurisdiction to consider the merits of the East West Link as it was contrary to the objectives and policies of the Auckland Unitary Plan (**AUP**) and therefore did not meet the ‘gateway’ test under s.104D(1)(b) of the RMA. In the alternative, Forest and Bird and Ngāti Whātua argued that the Board failed to have regard to the New Zealand Coastal Policy Statement (**NZCPS**).

In determining whether the proposal was contrary to the objectives and principles of the AUP, all provisions in the AUP were required to be reconciled as per the approach in King Salmon. Despite finding that the Board had made errors in arriving at their decision, the High Court held that the decision approving the highway was valid once the provisions of the AUP were reconciled as a whole.

The High Court also found that the Board erred in its approach to provisions in the AUP. In particular the Board erred in finding that the power to provide for “enhancement of or enabling activities” in the AUP prevailed over later provisions in the same chapter which were to “avoid entirely” other effects

including removal of vegetation or loss of biodiversity during construction of works, or development that results in permanent use and occupation.

The High Court considered that the Board's finding that the proposal regarding certain species and shorebirds was inconsistent with the Board's findings elsewhere in its report that the effects on these species was significant.

In terms of the NZCPS, the High Court held that the Board had correctly satisfied itself that the NZCPS was properly reflected in the AUP and at no stage had the Board simply assumed that the AUP was consistent to the NZCPS.

The appeals were subsequently dismissed.

TEAM NEWS

One of our solicitors, Louise Ford, completed the gruelling two-day individual Coast to Coast event in February this year. It was Louise's first time competing in the event which traverses 243km from Kumara Beach on the West Coast to New Brighton Beach in Christchurch. Her overall time was 16 hours 40 mins and she is very happy with how the two days went. On the back of Coast to Coast Louise raised \$1690 for the Outward Bound Trust of New Zealand.

Congratulations also go to another of our solicitors' Tom Gray and his wife Charlotte on becoming new parents to a beautiful baby girl over the Easter weekend.



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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