



AHM News

INTRODUCTION

Where has this year gone?! After the two months at levels 3 and 4 COVID-19 restrictions, we seem to be all systems go! This month's newsletter covers the COVID-19 recovery responses in legislation, progress on the Resource Management law reform, Government announcements on Freshwater Reform and Fit for a Better World. We also cover case law developments and provide an update on the AHM team.

COVID-19 RECOVERY (FAST TRACK CONSENTING) ACT

The Government's [COVID-19 Recovery \(Fast-track Consenting\) Act](#) came into force on 9 June 2020 after receiving Royal Assent, accepting recommendations of the Environment Committee.

The Act's purpose is to urgently promote employment growth to support New Zealand's recovery from the economic and social effects of COVID-19. It also aims to support the certainty of ongoing investment across New Zealand while continuing to promote the sustainable management of natural and physical resources.

Former Principal Environment Court Judge Laurie Newhook has been appointed to convene the expert consenting panels that are enabled under the Act. These panels will determine applications for resource consents and notices of requirement for designations, and to issue certificates of compliance. The panels replace the role of local authorities as consenting authorities under the RMA. The fast-track consenting process is to be available for listed projects and referred projects. Judge Newhook's three-year term in this role will expire one year after the fast track Act self-repeals, in two years' time.

The Act includes 11 projects listed as Government-led infrastructure projects. Consent applications or Notices of Requirement for these will automatically be referred to one of the panels to determine.

Private projects and non-listed Government projects can also apply to the Minister for the Environment to have their project fast-tracked. If the Minister considers the project is suitable to be fast tracked, the Minister will recommend making an Order in Council which would refer the project to a panel to consider. These decisions will be made jointly with the Minister of Conservation if any part of a project would occur in the coastal marine area.



There is also an ability for Waka Kotahi NZ Transport Agency, and KiwiRail Holdings Ltd to undertake repair, maintenance and minor upgrade works on existing infrastructure in the road and rail corridor as a permitted activity, which means it would not require a resource consent but is subject to certain standards.

RESOURCE MANAGEMENT LAW REFORM

The [Resource Management Amendment Act 2020](#) received royal assent on 30 June 2020. The Act makes critical changes to the RMA, particularly regarding freshwater, and aims to reduce complexity, increase certainty, and improve processes.

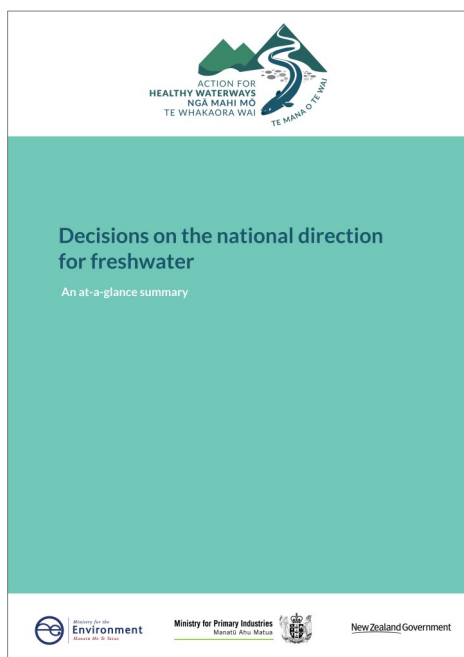


The Amendment Act backs up the Government's [Essential Freshwater programme](#), allowing a faster process for regional freshwater plan changes to implement the new National Policy Statement for Freshwater Management once it is released later this year. Professor Peter Skelton CNZM has been appointed as Chief Freshwater Commissioner and Alternate Environment Court Judge Craig James Thompson has been appointed Deputy Chief Freshwater Commissioner for the newly established Freshwater Planning Process.

The Amendment Act also brings requirements for RMA decision-makers to consider the emissions reduction plans and national adaptation plans that must be published under the Zero Carbon Act for plan changes and consenting. Mandatory farm environment plans and requirements on reporting of fertiliser sales are also introduced.

Prosecution and enforcement powers have also been increased, with higher infringement fees and longer timeframes for councils to file prosecution charges.

This is the first stage in the Resource Management reform, with a report from the RMA Review Panel on a more comprehensive review due at the end of this month.



FRESHWATER REFORM

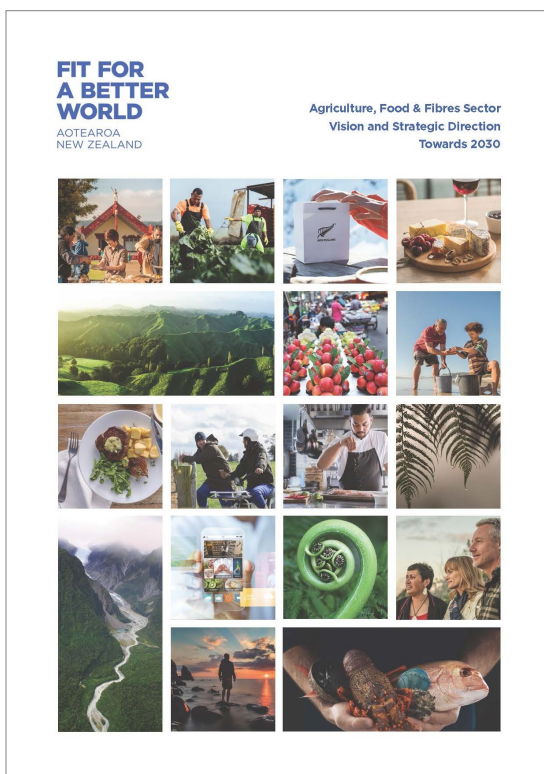
The Minister for the Environment and the Minister for Agriculture released the full [Action for Healthy Waterways](#) package in May 2020. Importantly, this introduces new rules and regulations which are intended to stop further degradation of New Zealand's freshwater resources and improve water quality within 5 years; and reverse past damage and bring New Zealand's freshwater resources, waterways, and ecosystems to a healthy state within a generation.

The package, originally released for consultation in 2019, was significantly amended following consideration of more than 17,500 public submissions and recommendations from the independent advisory panel. Various amendments have also been made in response to the COVID-19 pandemic.

The package contains a new and much awaited [National Policy Statement for Freshwater Management](#) 2020 (NPS-FM). This will provide local authorities with updated direction on how they should manage freshwater under the RMA and comes into force later this year.

The NPS-FM includes requirements to: give effect to Te Mana o te Wai; maintain or improve the water quality of all water bodies using defined baselines; and expand the national objectives framework, including setting tougher bottom lines for Nitrate Toxicity. The NPS-FM also sets out how it will avoid further loss or degradation of wetlands, target outcomes for fish abundance and diversity, and a requirement to monitor and report on freshwater, culminating in a synthesised report to be published every five years.

The package is one of several upcoming pieces of national direction for freshwater management. National Environmental Standards for Freshwater and RMA Section 360 regulations for stock exclusion are also being introduced. Guidance on these new rules and regulations will be released as they come into force.



FIT FOR A BETTER WORLD

The Government recently announced its ‘roadmap’ to a better, post-COVID, world. The [Fit for a Better World – accelerating our economic potential](#) (released July 2020) report sets out actions to bring together opportunities the Government considers will accelerate the productivity, sustainability and inclusiveness of the primary sector, to deliver more value for all New Zealanders. *Fit for a Better World* puts the Food and Fibres sector at the forefront on New Zealand’s export recovery.

Fit for a Better World draws together the vision and direction for the Food and Fibres Sector, set by the Primary Sector Council and launched in December 2019, with the Governments response and recovery approach for New Zealand, post-COVID. The roadmap sets out three pillars of New Zealand’s economic recovery: Productivity, Sustainability and

Inclusiveness. These pillars aim to add \$44 billion in export earnings over the next decade, reduce biogenic methane to 24-47% below 2017 levels by 2050 and employ 10% more Kiwis in the primary sector by 2030 and 10,000 more New Zealanders in the primary sector workforce over the next four years.

DAVIS v GISBORNE PISTOL CLUB INCORPORATED [2020] NZENVC 074

This is an Interim Environment Court decision allowing an appeal relating to a review of conditions of the Gisborne Pistol Club Incorporated (Club) 2001 consent, which was undertaken by Gisborne District Council. The Appellant, Mr Davis, sought that the Court set aside the decision made on the consent condition review, or that appropriate conditions are set that “both constrain noise generated from the Club to a reasonable level as experienced by adjacent and surrounding residential land owners and occupiers, and better constrain the hours of operation within which such noise can be generated.”

The main arguments before the Court related to the extent of the activities authorised by the 2001 consent and the reverse sensitivity issues caused by a residential subdivision occurring near the Club. The Court found that the Club, the neighbouring residents and the Council were all aware of the potential for reverse sensitivity issues, but that knowledge didn't alter the fact that noise levels must be reasonable.

The Court considered what was a reasonable level of noise to both the residents and the Club. From the residents' perspective it was what level of noise is required to ensure the residents could have reasonable enjoyment of the environment they live in. From the Club's perspective it was what is a reasonable level of noise to be made so that the members can continue the types of shooting the Club had historically facilitated.

The Court held that there must be a significant and immediate reduction in the current levels of noise coming from the Club. Within two years the level must reduce further. The Court considered that two years was sufficient time for the Club to investigate alternative methods, including alternative sites, as part of a comprehensive best practicable option assessment to

reduce noise to reasonable levels. The Court's decision and condition review focussed on the hours of operation, noise levels and locations within the Club site. Overall, the case discusses that a consented activity cannot be reduced by way of a condition review, but the activity must meet the best practicable option under the RMA.



AHM TEAM NEWS – WELCOME BACK NICOLE!

Nicole Buxeda has returned to the firm after her gap year was cut unexpectedly short due to COVID-19. Nicole was lucky enough to travel to a range of exciting and diverse countries during her time away. Nicole is very happy to be back at AHM, and the team are delighted to welcome her back as a Senior Solicitor.

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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